Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12006 of 2013

(Arising out of OIO-40-COMMISSIONER-2013 dated 15/03/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT)

Welspun Corp Limited ....**Appellant**
Welspun City, Survey No. 665,
Village : Varsamedi, Taluka : Anjar,
Kutch, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ....**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri Hardik Modh, Advocate for the Appellant
Shri Ghanasyam Soni, Additional Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. A/ 10345 /2023

DATE OF HEARING/DECISION: 14.02.2023

RAMESH NAIR

The issue involved in the present case is that whether the adjudicating authority has rightly ordered for recovery of erroneously granted rebate under Section 11A of the Central Excise Act, 1944 with interest under Section 11B of the Act.

02. The brief facts of the case are that the appellant company availed the benefit of Area Based Exemption under notification no. 39/2001-CE dated 31.07.2001 for manufacture of goods. In respect of amount in this case which was ordered to be recovered was sanctioned as rebate by the Deputy Commissioner against export of goods post 17.09.2007 in terms of Rule 18 of the Central Excise Act, 1944 against the sanction order, the revenue had preferred appeal wherein, the learned Commissioner (Appeals) allowed the appeal and quashed and set aside the order for the rebate sanctioned for the goods exported after 17.09.2007. The said order was further challenged before the revisionary authority which was confirmed by the Revision Authority thereafter, the appellant company preferred writ petition before

the Hon'ble High Court which was rejected. Against the Hon'ble High Court order, the appeal filed as Civil Appeal No. 26136 of 2013 before the Hon'ble Supreme court, the Hon'ble Supreme court also dismissed the civil appeal of the appellant. Pending the said proceeding, the Central Excise authority issued show cause notice which is subject matter of this appeal for recovery of erroneous rebate sanctioned to the company. The Commissioner adjudicated the show cause notice and confirmed the demand of duty and interest hence, the present appeal has been preferred.

03. Shri Hardik Modh, learned counsel appearing on behalf of the appellant at the outset submits that the rebate matter has attained finality with the order of the Hon'ble Supreme Court whereby, the rejection of refund was upheld. Therefore, this appeal may be disposed of accordingly. He further submits that the adjudged amount in the impugned order has already been recovered by way of appropriation in order No.1583/2011/12 dated 30.01.2012 therefore, no further recovery can be made.

04. Shri Prakash Kumar Singh, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

05. We have carefully considered the submissions made by both the sides and perused the records. We find that this proceeding is initiated as consequential by issuing a protective show cause notice for the reason that the Assistant Commissioner had sanctioned the rebate but the revenue says that they had filed an appeal before the Commissioner (Appeals) hence, the said appeal was allowed accordingly, the amount stand recoverable. The appellant have taken up the matter up to the Hon'ble Supreme Court but could not succeed therefore, the order of the Commissioner (Appeals) whereby, the order of sanction has already attained finality and accordingly, the recovery of the said sanctioned rebate is legal and correct accordingly, the recovery order made in the impugned order is absolutely correct has no infirmity therefore, we uphold the impugned order and dismiss the appeal.

(Operative portion pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L.MAHAR)
MEMBER (TECHNICAL)

Mehul