CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70607 of 2019

(Arising out of Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/50/2019-20 dated 22/05/2019 passed by Commissioner (Appeals) CGST, Meerut)

M/s TTL Ltd., Ghaziabad **.....Appellant**
(Merged with M/s QRG Enterprises Ltd., Noida
QRG Towers, Plot No.2D,
Sector-126, Expressway, Noida)

VERSUS

Commissioner, CGST, Ghaziabad **....Respondent**
(C.G.O. Complex-I, Kamla Nehru Nagar,
Ghaziabad-201002)

<u>APPEARANCE:</u>

Written submissions for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO<u>.-70207/2024</u>

DATE OF HEARING : 04.01.2024
DATE OF DECISION : 01.05.2024

<u>P. K. CHOUDHARY:</u>

The appellant has filed the present appeal assailing the Order-In-Appeal passed by the learned Commissioner (Appeals) CGST, Meerut.

2.0 The facts of the case in brief are as under:-

2.1 M/s TTL Ltd., Ghaziabad (Appellant herein) had a factory located in territorial jurisdiction of the Central Excise Division, Ghaziabad and had been manufacturing electric meters therein. During the period from 23.04.2002 to 30.05.2002 the electric meters were sold to State Electricity Boards against the purchase agreements which had price variation clause. The price finally determined in terms of the price variation clause was lower than the price on which duty was paid at the time of clearances of the electric meters from the factory. The Appellant filed two refund claims on 24.01.2003 for the excess duty of Rs. 28,23,503/- paid. The Assistant Commissioner Central Excise, Ghaziabad rejected both the refund claims vide his Orders-in-Original dated 25.02.2005. The matter finally came up before the Tribunal and vide its Final Order No. A/70802/2016-Ex (DB) dated 10.06.2016, the Tribunal allowed the claim of refund with interest as per the Rules.

2.2 The Asstt. Commissioner, Ghaziabad sanctioned refund of Rs. 15,83,707/ in cash and ordered Rs. 12,39,796/- to be credited in CENVAT Credit account vide Order-in-Original dated 19.01.2017. On appeal, the learned Commissioner (Appeals) CGST, Noida vide, Order-in-Appeal dated 28.02.2018, ordered refund of entire amount in cash. Consequently, the Assistant Commissioner, Ghaziabad sanctioned refund of Rs. 12,39,796/- also in cash vide Order-in-Original dated 21.05.2018.

2.3 The Commissioner, CGST, Noida filed Appeal No. E/70775/2018-EX(DB) before the Tribunal against Order-in-Appeal dated 19.01.2017 ordering cash refund. The said appeal has been dismissed by the Tribunal vide Final Order No. A/71321/2019-EX(DB) dated 09.07.2019. Thus, cash refund of the entire amount, already paid to the Appellant has become final as no further appeal before the High Court or the Supreme Court has been filed by the Revenue.

2.4 Against the Order-in Original dated 21.05.2018 of the Assistant Commissioner, Ghaziabad, Revenue filed appeal before the Commissioner (Appeals), CGST, Meerut on the ground that the Assistant Commissioner, Ghaziabad had no jurisdiction to grant cash refund of Rs. 12,39,796/-. The learned Commissioner (Appeals), CGST, Meerut vide Order-in-Appeal dated 22.05.2019 allowed the appeal holding that the cash refund should have been sanctioned by the CGST authorities at Noida on the following grounds:-

(i) M/s QRG Enterprises, Noida in which M/s TTL Ltd., Ghaziabad was merged was registered at Noida.

(ii) Order-in-Appeal dated 28.02.2018 was endorsed to CGST authorities at Noida by the Commissioner (Appeals), CGST, Noida.

(iii) The Commissioner (Appeals), Meerut relied upon the Tribunal's Final Order reported in **2004 (166) ELT 350.**

3. The Appellant by their written submission submitted that the learned Commissioner (Appeals) has erred in holding that the Authorities at Noida and not the Assistant Commissioner, Ghaziabad, had the jurisdiction to grant refund of the duty paid in Ghaziabad Division by the Appellants' factory located in Ghaziabad Division.

4. Learned Departmental Representative appearing on behalf of the Revenue has reiterated the impugned order.

5. Heard the learned Departmental Representative for the Revenue and perused the written submissions filed by the Appellant.

6. We find that the present litigation attained finality with the order of this Tribunal being Final Order No.A/70802/2016-EX[DB] dated 10.06.2016. Subsequently, an appeal was filed by the Commissioner, GST Noida before this Tribunal against the Order-In-Original No.R-373/D-III/GZB/2016-17 dated 19.01.2017 and the same was dismissed by the Tribunal vide Final Order No.A/71321/2019-EX[DB] dated 09.07.2019. Thus, cash refund of the entire amount already paid to the Appellant has attained finality as no further appeal before any of the superior courts has been filed by the Revenue. Learned Commissioner (Appeals) has passed the following order:-

> *"5. I have carefully gone through the facts and records of the case, the grounds of appeal and the submissions of the respondent. I find that the main submission of the revenue was that the refund sanctioning authority had no*

jurisdiction over the assessee, as the assessee was registered at Noida and therefore, the adjudicating authority had passed the order beyond the jurisdiction. In this regard, I find that the refund was sanctioned in consequence of Order-in-Appeal No. NOI-EXCUS-001-APP-1799-17- 18 dated 28.02.2018(OIA) passed by the Commissioner, Customs & Central Tax (Appeals), Noida against the appeal filed by the respondent before the said appellate authority. The respondent was therefore aware of the jurisdictional authority to whom he was required to approach for the compliance of the OIA dated 28.02.2018. Moreover, the said OIA was endorsed to CGST authorities at Noida only and not to CGST, Ghaziabad. Accordingly, the refund was to be dealt by CGST, Noida and not CGST, Ghaziabad. Therefore, the appellant's submission that the impugned order has been passed beyond the jurisdiction is tenable. Hon'ble CESTAT, New Delhi, in the case of C. Cus, Amritsar Vs D. K. Group of Industries, as reported in 2004 (166) E.L.T. 350, had held as under.

> *Commissioner of Customs (Appeals), Jalandhar has no jurisdiction over matters falling within jurisdiction of Commissioner of Customs (Preventive), Amritsar and such matters appealable only to Commissioner of Customs (Appeals), Delhi-I Impugned order passed without jurisdiction by Commissioner (Appeals), Jalandhar set aside*

Accordingly, the impugned order passed without jurisdiction is legally not sustainable.

6. In view of above discussions and findings, the impugned order is set aside and the appeal bearing No. 61/CE/APPL-MRT/GZB/2018-19 dated 16/08/2018, filed by the Assistant Commissioner, CGST Division-VII, Ghaziabad, against the Order-in-original no. R-24/Assistant Commissioner/GZB-VII/2018-19 dated 21.05.2018 is allowed."

7. We find that the factory of M/s TTI Ltd. was located in Ghaziabad. Hence the territorial jurisdiction over the factory was of the Assistant Commissioner, Ghaziabad Division and not the Assistant Commissioner, Noida. Clearances of electric meters took place in Ghaziabad Division and the Central Excise duty was also paid in that Division. Hence, refund of the excess duty paid in Ghaziabad Division was to be sanctioned by the jurisdictional

Assistant Commissioner, Ghaziabad. Initially refund claims were rejected by the Assistant Commissioner, Ghaziabad. Consequent to the Tribunal's Order dated 10.06.2016 cash refund of part of the claimed amount was sanctioned by the Assistant Commissioner, Ghaziabad. The Revenue accepted this order. CGST authorities at Noida had no territorial jurisdiction over the factories in Ghaziabad Division. Order-in-Appeal dated 28.02.2018 is passed by the Commissioner (Appeals) in appeal filed against the Order-in-Original dated 19.01.2017 passed by the Assistant Commissioner, Ghaziabad and not passed by the authorities at Noida. Endorsement of the Order-in-Appeal to Noida Authorities is a mistake. It should have been endorsed to the authority who passed the impugned order. Wrong endorsement of the Order-in- Appeal cannot conquer jurisdiction to the endorsee. It is to be decided on the basis of the location of the factory and of the payment of duty. While jurisdiction of the Commissioners is specified by the Government / Board by issue of a notification., no such notification is issued in case of the Assistant Commissioners of the Division, whose jurisdiction is determined with respect to the location of the factory. M/s TTL Ltd., Ghaziabad surrendered their Registration Certificate to the Assistant Commissioner, Ghaziabad on 09.03.2009 on merger with M/s QRG Enterprises Ltd. Order-in-Original dated 19.01.2017 was passed by the Assistant Commissioner, Ghaziabad after surrender of the certificate. No objection to this order on the ground of jurisdiction was taken by the Revenue. M/s QRG Enterprises Ltd., Noida obtained Central Excise Registration on 21.09.2010 for premises at E-1, Phase-III, Sector-59, Noida and not for M/s TTL Ltd's factory premises in Ghaziabad. Hence reliance on M/s QRG Enterprises Ltd.'s registration in respect of refund claims of M/s TTL Ltd. Ghaziabad is misplaced. Moreover, the said registration certificate was surrendered on 30.03.2013. Hence, reliance on the surrendered certificate of M/s QRG Enterprises Ltd. in the order passed after the surrender is misplaced, particularly when it did not exist even at the relevant time and place when/where duty was paid, refund was claimed and the orders were passed. With the unquestioned Final Order dated 09.07.2019 of the Tribunal, cash refund of the entire amount, which is already paid to the Appellant, has become final. In the appeal against the Order-in-Appeal dated 28.02.2018, the Revenue did not raise the point of jurisdiction of the Assistant Commissioner, Ghaziabad before the Tribunal which dismissed the Revenue's appeal. It is our considered view that the refund was rightly sanctioned by the Jurisdictional Commissioner, Ghaziabad who was having jurisdiction over the factory premises located in Ghaziabad at the appropriate time in which disputed duty was paid which was to be refunded.

8. In view of the above discussions the impugned order cannot be sustained and the same is set aside and the Order-In-Original No.R-24/Asstt.Commissioner/GZB-VII/2018-19 dated 21.05.2018 passed by the Assistant Commissioner, Central GST, Division VII Ghaziabad is upheld.

9. The appeal filed by the Appellant is allowed.

(Pronounced in open court on 01.05.2024)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal