CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70105 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-830 & 831/2020-21 dated 06/11/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Yadu Sugar Ltd., ...Appellant
(Sujanpur, Ranet Chauraha, Bisauli, Badaun-243720)

VERSUS

Commissioner of Central Goods &

Service Tax, Greater Noida ....Respondent

(C-56/42, Sector-62, Noida)

WITH

Excise Appeal No.70106 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-830 & 831/2020-21 dated 06/11/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Yadu Sugar Ltd., ...Appellant
(Sujanpur, Ranet Chauraha, Bisauli, Badaun-243720)

VERSUS

Commissioner of Central Goods &

Service Tax, Greater Noida ....Respondent

(C-56/42, Sector-62, Noida)

APPEARANCE:

Shri Aalok Arora, Advocate for the Appellants
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70663-70664/2024

DATE OF HEARING : 11 July, 2024
DATE OF PRONOUNCEMENT : 21 October, 2024

SANJIV SRIVASTAVA:

These two appeals are directed against Order-in-Appeal No.NOI-EXCUS-002-APP-830 & 831/2020-21 dated 06/11/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order, Commissioner (Appeals) has upheld the rejection of the refund claim filed by the appellant, claiming refund of certain amount which was debited by the appellant in response of audit objection raised.

2.1 Appellants were engaged in manufacture of V.P. Sugar and Molasses. They are also availing benefit of Cenvat credit scheme. During the course of audit it was observed that certain credits have been wrongly availed by the appellants.

2.2 Appellants had reversed on the direction of central excise audit parties, appellants have reversed Rs.13,016/- on 01.05.2013, Rs.14,642/- and Rs.12,484/- vide entry no.123 and 124 both dated 20.03.2014, Rs.67,800/- vide Entry no.01 dated 01.04.2015, Rs.1,12,613/- vide Entry no.02 dated 01.04.2015. In compliance of IAR 54/HPR/CE/2015-16, they reversed Rs.66,546/- vide entry No.03 dated 01.04.2015, in compliance of IAR 62/HPR/ST/2016-17, they reversed Rs.2,40,163/- vide entry No.02 dated 04.05.2017.

Thereafter, they filed refund claim with jurisdictional Assistant Commissioner claiming refund of the above amounts totally amounting to Rs.5,34,341/-.

2.3 Similarly, in compliance of IAR 18/2014-15, they reversed an amount of Rs.57,755/- vide entry No.157 dated 20.03.2014. In compliance of IAR 54/HPR/CE/2015-16, they reversed Rs.24,619/- vide entry No.01 dated 01.04.2015. In compliance of IAR 23/HPR/Ex/2016-17, they reversed Rs.5,94,178/- vide entry No.01 dated 04.05.2017.

Thereafter, they filed refund claim with jurisdictional Assistant Commissioner on 20.12.2019 claiming refund of the above amounts totally amounting to Rs.6,76,552/-.

2.4 After scrutiny of the refund claims, show cause notice dated 05.03.2020 was issued to the appellants asking them to show cause as to why the refund claim filed by them should not be rejected for want of clear, related and relevant grounds under Section 11 B of Central Excise Act, 1944.

2.5 This show cause notice was adjudicated as per the Order-in-Original No.R-73/CE/AC/2020-21 dated 10.06.2020, vide the order Original Authority has rejected the refund claims filed by the appellants. Aggrieved Appellants have filed appeal before First Appellate Authority, who has dismissed the appeals filed by the appellants as per the impugned order referred in para 1 above.

2.6 Aggrieved appellants have filed the present appeals before this Tribunal.

3.1 I have heard Shri Aalok Arora, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellants learned Counsel produced certain decisions to submit that these reversals were made for the reasons stated in the audit reports. The decisions rendered by various Courts and Tribunal are reproduced as follows:-

- M/s Yadu Sugar Ltd. Final Order No.70776 of 2019 dated 14.03.2019 (Tri.-All.);
- M/s Ramco Cements Ltd. 2017 (5) GSTL 105 (Tri.-Chennai);
- Mundra Ports & Special Economic Zone Ltd. 2015 (39) STR 726 (Guj);
- Dhampur Sugar Mills Ltd. 2012 (276) ELT 528 (Tri.-Del.);
- DSCL Sugar Ltd. 2015 (322) ELT 769 (SC);

Accordingly, this reversal could not have been held to be proper and correct and the refund claims may be allowed. Appeals be allowed.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For upholding the order rejecting the refund claim, Commissioner (Appeals) has in the impugned order observed as follows:-

"7. I have carefully gone through the issues involved & the submissions made in the appeals & I find that the appellant in their grounds of appeal in both the appeals has admitted that the reversal in appeal no. 294/CE/NOIDA/APPL/ GBN/2020-21 dated 26.8.2020 were made on 1.5.2013, 20.3.2014, 1.4.2013, 1.4.2015 & 4.5.2017 & in appeal no. 296/CE/NOIDA/APPL/GBN/2020-21 dated 27.8.2020 reversals were done on 20.3.2014, 1.4.2015 & 4.5.2017 and this factual position is not disputed.

8. From the records of the proceedings before the adjudicating authority, I find that the reversals were made by the appellant themselves from time to time on the basis of audit objections which were conducted by the officers from time to time. From the available records, I find that the audit reports or observations were complied with by the appellant from time to time & such compliances were deemed to have been concluded as no further proceedings has been initiated by the department. The adjudicating authority also specifically noted that there was no indication of any payment made under protest by the appellant. I also find that Section 11A of the Central Excise Act, 1944 authorizes the department to conclude any proceeding of duty short paid or not paid once it is paid up along with interest etc.. In that view, I find that the submission of appellant that no show cause notice was issued is meaningless, as it was already deemed to have been concluded as per law. Such being the case, there was no occasion for the appellant to file the refund claims as there was no cause of action or there was no favourable order for refund of such amounts from any higher authority. From such factual background, I find that the refund claims submitted by the appellant in both the cases on 20.12.2019 are barred by limitation under Section 11B of Central Excise Act, 1944 & as held by the constitutional bench of the Hon'ble Supreme Court in the case of Mafatlal

Industries Ltd. Vs. UOI reported in [1997 (89) ELT 247] the limitation under Section 11B is sacrosanct & can not be extended by any authority under the statute. This position of law was again re-affirmed by the Hon'ble Supreme Court in the case of Porcelain Electrical Mfg. Company Vs. CCE reported in [1998 (98) ELT 583] in which the Hon'ble Supreme Court authoritatively directed that refund claim filed before department are governed by the time limit provided under the statute & the general law of limitation shall not apply. The decisions of the High Courts invoking their extra ordinary jurisdiction shall not be applicable before the revenue authorities.

9. On the contention of the appellants that payments were made under protest, I find that the adjudicating authority has already given a factual findings & I also find that the challan etc. does not indicate any payment was made under protest. I also find that during the relevant period the assessment on monthly basis were done by the appellant themselves in the form of SELF- ASSESSMENT in ER-1. The appellant has not produced copies of such self-assessment made by them for the relevant period & since there is no indication of any provisional assessment made by them I find that the self-assessments were final. Also, there is no provision under the Central Excise Act, 1944 & Rules made thereunder for the relevant period to enable them to pay Central Excise duty under protest & as such their claim to that affect is only an empty formality.

10. On this issue, I find that once the assessment is final & there is no challenge to that assessment, it can not be re-opened by way of a refund claim which was the position of law decided by the Hon'ble Supreme Court in the case of Flock India (P) Ltd. in 2000, in BPL Telecom Ltd. in 2015 which was again re-affirmed by three judges bench of the Hon'ble Supreme Court in the case of ITC Ltd. Vs. CCE reported in [2019 (368) ELT 216]. In the case of ITC Ltd. the Hon'ble Supreme Court categorically held that unless *an assessment order is challenged, refund application can not be filed as re-assessment can not be done unless it is appealed against or set aside. The law is that even self-assessment which may be non-speaking are also liable to be appealed against being appealable & suo-moto refund application can not be filed by ignoring the appeal provisions.*

11. The contention of the appellant that there were decisions of the Tribunal/ High Court/Supreme Court on several issues that were applicable to the issues pertaining to the appeals, I find that such contentions can not be accepted as there was no favourable order from any authority against the reversals of Cenvat Credit & payments made by them during the relevant period pertaining to those specific audit paras. In that view of the matter, the contention of the appellant that Cenvat Credit was admissible to them on merit does not sustain. I also found that their contention of payment under protest was not factual in as much as the appellant themselves in their correspondence dated 17.7.2013 & 15.5.2017 had categorically stated that the payments along with the interest etc. have been made by them & that they requested the department that the audit para may be deemed to have been settled & no show cause notice may be issued to them. In such a background it is conclusively proved that the audit proceedings have been concluded on the request of applicant themselves after due compliances, and therefore, they can not turn around and request for refund of such amount which has been already been concluded in terms of Section 11A of Central Excise Act, 1944.

12. In view of the factual positions as above, as well as the settled position of law on the issue, I find that both the appeals bearing nos. 294/CE/NOIDA/APPL/ GBN/2020-21 dated 26.8.2020 & appeal no. 296/CE/NOIDA/APPL/GBN/2020-21dated 27.08.2020 filed *by M/s Yadu Sugar Ltd., Sujanpur, Bisauli, District, Budaun, Uttar Pradesh are liable to be dismissed. Accordingly I upheld OIO Nos. 72/CE/AC/2020-21 dated 10.06.2020 & R-73/CE/AC/2020-21 dated 10.06.2020 & dismiss appeal nos, 294/CE/NOIDA/APPL/GBN/2020-21 dated 26.8.2020 & 296/CE/NOIDA/ APPL/GBN/2020-21 dated 27.08.2020."*

4.3 Hon'ble Supreme Court in the case of M/s ITC Ltd. [2019 (368) E.L.T. 216 (S.C.)] observed as follows:-

"43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified *before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India - 2009 (240) E.L.T. 490 (Bom.) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra)."*

4.4 Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. [1997 (89) ELT 247 (SC)] following has been held:-

99. (iv) is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A

> *person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment of levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund."*

4.5 In view of the above decisions, I find that the submissions made by the appellant relying upon various decisions rendered in respect of some other parties or in their own case cannot be the ground for claiming the refund of amount paid by the appellant in these proceedings.

4.6 I also find that both the authorities bellow have categorically concluded that the amounts were paid by the appellants, they deposited these amounts for the closer of the proceedings that would have been initiated against them for recovery of these amounts in response of the audit objection raised. Taking note of such deposit these proceedings were initiated against the appellants. Accordingly, the claim made by the appellants that amounts were paid in protest also do not have any merits and needs to be rejected. For this reason, these claims would be hit by the bar of limitation also. I also find that Hon'ble Bombay High Court in the case of M/s National Leather Cloth Manufacturing Co. 2003 (156) ELT 654 (Bombay) following has been held:-

> ***"5.****As regards the rejection of refund claim for the period from 12th November, 1977 to 12th November, 1980 is concerned it was submitted that by a letter dated 4th January, 1980 the Petitioners had informed the Respondents that, they were paying duty under protest*

and, therefore, refund claim at least from the date of payment of duty under protest ought to have been held to be within time. A perusal of the letter dated 4th January, 1980 (Exhibit 'A' to the petition) clearly shows that in the said letter nothing was stated as to which item is a post-manufacturing expense and which item cannot be included in the assessable value. In fact, by a letter dated 21st January, 1980, the Respondents had informed the Petitioners that their letter dated 4th January, 1980 is vague and in the absence of particulars, the payments made thereafter cannot be treated as payment under protest. Under the circumstances, we see no reason to interfere with the finding given by the adjudicating authority in rejecting the Petitioners claim as time-barred. Since the payments made during the relevant period are not under protest and the refund claim is beyond the period prescribed under the Act, the adjudicating authority is justified in rejecting the claim as time-barred."

4.7 Further, in the case of M/s Lipi Boiler Pvt. Ltd. 2001 (133) ELT 26 (Bom.) Hon'ble Bombay High Court has held as under:-

" ***12.****Since there is no question of any illegal recovery and since it is further clear that the petitioner had paid the excise duty under bona fide belief that he was liable to pay the same and since he further did not pay the same under protest, there is hardly any scope for the petitioner to get himself relieved from the clutches of Section 11B of the said Act. In our opinion, therefore, the petitioner cannot be said to be entitled to the relief of refund of the complete amount of excise duty paid by him, but he is definitely entitled for refund only to the extent which falls within the period of six months as contemplated under Section 11B of the said Act. We, therefore, do not find any illegality in the decision taken by the adjudicating authority in not refunding the amount of Rs. 2,64,327/-. From this position, it is also clear that even, according to the*

Department, if the petitioner would have claimed the refund well within time, the petitioner would have been entitled for the same. The claim which is made within time i.e. of Rs. 32,940/- definitely has to be ordered to be refunded to the petitioner."

4.8 In case of Sterlite Industries [2009 (238) E.L.T. 240 (Mad.)] Hon'ble Madras High Court observed as follows:

5. *As already stated, the appellant filed the bill of entry and allowed the proper officer to assess the same on the value stated in the invoice and declared in the Bill of Entry. After three or four months, the appellant approached the appellate authority stating that he was entitled to certain reductions by way of quality discount and dispatch earnings, which has not been considered by the proper officer. That was righty rejected by the first appellate authority, which has been confirmed by the Tribunal on the ground that the bill of entry has been assessed finally and the appellant has not demurred anything about the assessment and claimed any deduction but accepted the assessment and cleared the goods and the Tribunal has also doubted the credibility of the document. In those circumstances of the case, we are of the view that the order of the Tribunal requires no interference and no question of law much less a substantial question of law is involved so as to entertain the appeal.*

4.9 In case of Tungabhadhra Machinery & Tools Ltd. [1988 (37) E.L.T. 179 (A. P.)] Hon'ble Andhra Pradesh High Court observed as follows:

9. *Mr. K. Subrahmanya Reddy also relied upon a recent decision of the Supreme Court in Salonah Tea Company Ltd. v. Superintendent of Excise, Nowgong -1988-1, S.C. Cases 401 = 1988 (33) E.L.T. 249 (S.C.) to contend that in case of tax collected illegally or unauthorisedly, the Court should not observed any period of limitation in the case of a writ petition. In this case, the Supreme Court reiterated that ordinarily the Court applies the rule of three years for* *claiming refund of tax paid under a mistake, and that this 3-year period is computed from the date when the mistake is discovered. It, however, observed that this period is not an inflexible rule, and that it is for the Court to exercise its discretion having regard to the facts of each case. Indeed, on the facts of that case it was found that the petition for refund was filed within one month of the knowledge. It was further observed in that case that the High Court will exercise its power under Article 226 to direct refund, unless there have been avoidable laches, indicating abandonment of his claim, on the part of the petitioner, or where the laches have remained un-explained. In this case, it would be seen that the petitioner not only paid the duty unquestioningly and without any protest, he did not even challenge it by way of an appeal or otherwise, and has preferred this claim more than four years after the payment of duty. Once we hold that the decision of the 'CEGAT in J.K. Export Industries, Junagadh v. Collector, Central Excise, Ahmedabad -1983 E.L.T. 2390 cannot be treated as a fact leading to the discovery of mistake on the part of the petitioner, it must be held that the petitioner practically abandoned its claim, and that its present claim is a stale one.*

4.9 Accordingly, I do not find any merits in these appeals.

5.1 Both the appeals are dismissed.

(Order pronounced in open court on-21 October, 2024)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp