CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.1844 of 2011

(Arising out of Order-in-Appeal No.23-CE/ALLD/2011 dated 07/03/2011 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad)

M/s Saraya Sugar Mills, **.....Appellant**
(Sardarnagar, Gorakhpur)

VERSUS

Commissioner of Central Excise &

Service Tax, Allahabad **....Respondent**

(CGST Commissionerate, Allahabad)

APPEARANCE:

Absent on call, for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70182/2025

DATE OF HEARING & DECISION : 10 February, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.23-CE/ALLD/2011 dated 07/03/2011 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad. By the impugned order, Commissioner (Appeals) has rejected the appeal and upheld the Order-in-Original dated 31.03.2010 wherein following has been held:-

"The party's contention that all the legal provisions shall be relaxed and no legal proceedings shall be Affective against the unit, registered under Sick Industrial Companies (Special Provisions) Act, 1985 and also the scheme is sanctioned by the BIFR, is not at all sustainable. If the party is engaged in production of Excisable goods clearing

the same, they have to comply with the express provisions of Central Excise Law Rule 8(3), 8(3A) and 8(4) of the Central Excise Rules, 2002 are, no doubt, self contained and very clear as to what requirements are to be fulfilled by the assessee and what action the department will take against the assessee who have defaulted the timely payment of Central Excise duties and no relaxation is any when mention in the Central Excise Law for any such unit that is declared sick. There is an express provision in the said Rule that in case of default the party have to pay the amount of duty alongwith interest due theres in terms of Section 11AB of Central Excise Act, 1944 without utilizing the Cenvat Credit. Hence, there is question of any refund of the amount of interest paid by the party in cash. The payment of duty throug Cenvat Credit in the case of default shall amount to removal of goods from the factory without payment duty. As such from all the nook and corners, the refund claim deserves to be rejected.

Accordingly. I pass the following order:

ORDER

I reject the refund claim dated 24.09.2009 for Rs.14,56,613/- filed by M/s Saraya Sugar Mills Ltd., Sardar Nagar, Gorakhpur (U.P.) under Section 11B of Central Excise Act, 1944."

2.1 Appellant is registered with Central Excise Department.

2.2 Appellant has filed a refund claim of Rs.14,56,613/- on the ground that they had deposited the payment of duty on clearance of sugar during April, 2007 to July, 2007. They had deposited Rs.72,59,275/- on account of duty from defaulted along with interest of Rs.14,56,613/- on the clearance of sugar for the period April, 2007 to July, 2007 under Rule 8(3) of Cenvat Credit Rules, 2002.

2.3 They being a sick company, the interest paid by them should be allowed as refund under the Sick Industrial Companies (Special Provisions) Act, 1985 by the BIFR as it has overriding effect over any other Law. Hence, insistence on payment of duty in cash, was against Section 22(3) of the Act and contrary to the decision of the Tribunal in the case of M/s Andhra Cement Ltd. 2009 (243) ELT 41 (Tri.-Bang).

2.4 After scrutiny, show cause notice dated 27.11.2009 was issued to the appellant asking them to show cause as to why their refund should not be rejected under Section 11B of the Act as the amount of interest has been rightly got deposited.

2.5 This show cause notice has been adjudicated as per the Order-in-Original referred in para-1 above.

2.6 Aggrieved appellant have filed appeal before Commissioner (Appeals), which has been dismissed as per the impugned order.

2.7 Aggrieved appellant have filed this appeal.

3.1 Learned Counsel for the appellant through a letter has requested as under:-

BEFORE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL KENDRIYA SADAN 6th and 7th FLOOR , 34 MG MARG, CIVIL LINES, ALLAHABAD-211001

APPEAL NO. E/MISC/70005/2025 E/1844/2011

M/S SARAYA SUGAR MILLS
SARDA NAGAR
GORAKPHUR

Vs
Commissioner
C.G.S.T & Central Excise
ALLAHABAD

Humble Submission of the appellants

Most respectfully showeth;

That the appellants have already filed aforesaid appeal before this Hon'ble Tribunal they refer to and reply upon the contents thereof.

PRAYER

It is therefore most respectfully prayed that your honour graciously be pleased :-

It is therefore most respectfully prayed that this Hon'ble Tribunal graciously be pleased to prayed that the aforesaid appeal may kindly be decided on its merits.

Signature of the
consultant

3.2 I have heard Smt Chitra Srivastava learned Authorised Representative appearing for revenue and taken up the appeal for decision.

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

4.2 Impugned order records as follows for upholding the Order-in-Original:-

"(iii) The above ground of the appellant has been examined and is not tenable inasmuch as -

(a) The present proceedings are not proceedings for recovery of any dues The appellant has already paid the interest. The Department in the present proceedings is not asking the appellant to pay anything at all. All that has been done is to reject the appellant's claim for refund of interest.

(b) Nowhere has the appellant shown that there are any special provisions having a general effect requiring the taxing authorities to grant refund of amounts correctly paid by the assessee (and in respect of which the appellant has no right to claim eligibility for refund under the concerned taxation law (which in the present case, is the Central Excise Act, 1944 and the Roles made thereunder.)]. in other words, nowhere has the appellant shown any provision that in a general manner grants undue benefit of any amount already paid to the tax authorities.

(c) The appellant has mentioned Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1944 but has also mentioned that the BIFR (Board for Industrial and Financial Reconstruction) had already sanctioned a

rehabilitation scheme in 2004, whereas, the period in question in the present case is from April, 2007 to July, 2007 Therefore, the reference to earlier history of facts detailing the earlier attempts to rehabilitate the unit is only an attempt by the appellant to mislead the matter. Once the rehabilitation package has been worked out and the appellant made clearances of sugar it means that the unit was working and was in a position to pay the excise duty which, in fact they did and the said payment was made alongwith interest. Now for the appellant to again revert back and say that they were a sick unit and, therefore paid interest by mistake has no basis in law and fact.

(d) With the rehabilitation package in place they cannot claim recourse to Section 22. In fact, the appellant are quite silent as to when was any Order under Section 22 passed, when was it made operational and upto what period and when did it prevent the Central Excise authorities from collecting Central Excise duty on clearances of sugar. The appellant has made a contradictory stand that on the one hand there was no prohibition against payment of Central Excise duty but there was a prohibition from paying interest unget the above section 22. There is no basis for such an assertion Delayed payment of Central lexcise duty attracts interest as per the provisions of the Central Excise Act 1944

(e) The reference to the judgement in the case of Andhra Cements Limited versus Commissioner Central Excise Customs and Service Tax, Guntur [2009 (243(ELT) 41 (Tri-Bang.)] is misplaced because the facts in that case were entirely different In that case the proceedings concerned proposed recovery of dues the facts in that case were that interest and duty from PLA (Personal Ledger Account) had not been paid by the assessee and there was a specific order in their favour from BIFR as recorded in the judgement of the Honourable Tribunal.

(1) Whereas, on the other hand, in the present case, there is no proposal for any such recovery. Rather it is a case where refund has been demanded by the appellant. The interest and duty from PLA (Personal Ledger Account) have already been paid by the appellant and no further or extra liability has been proposed in these proceedings by the Central Excise Department

(g) In the case of Andhra Cements Limited the judgement of the Tribunal referred to a specific clause "9.4 Central Government Income Tax Department Central Excise ....to exempt from the penal provisions....to provide any other reliefs permissible to a sick industrial company as per the policy of the Central Govt..... To re-schedule all statutory dues and extend reliefs.....as per Government policy guidelines...(C) Central Excise, Customs and Service Tax Authorities (1) To waive entire interest and penalty levied or leviable on Excise Duty and Service Tax arrears and to accept payment of excise duty of service tax outstanding as on the cut-off date over a period of seven years without any interest /penal interest /penalty The company vide their letter dated 8-5-07, has accepted the outstanding dues of Deptt. as Rs.6,29,62,666/- and repayment of their dues in five (3) annual installments. The Honourable Tribunal observed that "From the above reproduced portion of the order of the Board, it is very clear that the appellant's liabilities towards penal interest and penalty are waived by the Board Emphasis supplied. Thus there was a specific order in that case detailing the reliefs and conditions with reference to Central Excise.

(h) Thus it is clear that in the case of Andhra Cements Limited, the waiver was for a particular unit for a particular period under particular facts and circumstances. Thus that case is clearly distinguishable on facts.

(i) The appellant in the present case has not been able to show any such order as in the case of Andhra Cements which was specific and mentioned "(C) Central Excise,

Customs and Service Tax Authorities (i) to waive entire interest and penalty levied or leviable on Excise Duty and Service Tax arrears and (ii) to accept payment of excise duty /service tax outstanding as on the cut-off date over a period of seven years without any interest /penal interest/penalty"

(j) If there was such an order, then, the appellant should have made it known to the Central Excise authorities instead of saying that they made the payment of interest on insistence of the Department.

(k) No relief has been granted to the appellant in respect of Central Excise in the present case as per the copy of the order of BIFR filed by the appellant Even now in the present appeal of the appellant. M/s.Saraya Sugar Mills Limited, all that the appellant has done is to file a copy of the scheme for rehabilitation vide letter number 26/97 dated 16.04.2004 The summary record of proceedings of the hearing held on 26.03.2004 does not mention the Central Excise Department and at Para XI titled "RELIEFS AND CONCESSIONS" there is specific mention of eight parties namely, "111 SDF", " 11.2 State Bank of India", "11.3 Government of Uttar Pradesh" 114 Workers", "11.5 Cane growers". "11.6 CBDT To consider to grant exemption from provisions of Section 72 of the Income Tax Act, 1961 for 11.7 Registrar of Companies" and" 11.8 Promoters/Company (SSML & SIL.). It is obvious that Central Excise is not among these eight specified parties. Thus the reliefs and concessions are specific in the present case of M/s. Sarya Sugar Mills Limited and mention, inter alia "CBDT" and specify the relief and concession There is no such relief or concession measure mentioned in respect of Central Excise."

4.3 I find that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of M/s Tata Davy Ltd. 1997 (94) ELT 477 (SC) wherein following has been held:-

*"**7.** For the purposes of appreciating the controversy, Section 22(1) of the Central Act needs to be set down.*

> ***"22. Suspension of legal proceedings, contracts, etc. -*** *(1) Where in respect of an industrial company, an enquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Cmpanies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board, or as the case may be, the Appellate Authority".*

8. *Learned Counsel for the appellants placed reliance upon the judgment in Vallabh Glass Works. Vallabh Glass Works had been declared a sick industrial company within the meaning of Section 3(1)(o) of the Central Act. The appellant Gram Panchayat initiated coercive proceedings under Section 129 of the Bombay Village Panchayat Act against Vallabh Glass Works to recover arrears of property tax. Vallabh Glass Works filed a writ petition in the High Court at*

Bombay claiming the protection of Section 22 of the Central Act. The writ petition was allowed, and the Gram Panchayat appealed to this Court. This Court noted that the said Board had been satisfied by its order dated 27th August, 1987, that Vallabh Glass Works had become a sick industrial company and, consequently, steps had been taken under Sections 16 and 17 of the Central Act. As soon as the enquiry under Section 16 was ordered by the said Board, this Court said, the various proceedings set out under Section 22(1) of the Central Act were deemed to have been suspended. Creditors could then approach the said Board for permission to proceed against the sick company for recovery of their dues and the said Board, at its discretion, could accord such approval. If approval was not granted, the creditors' remedy was not extinguished. It was only postponed. The section provided for exclusion of the period during which the remedy was suspended while computing the period of limitation for recovery of the dues.

9. *Learned Counsel for the appellants submitted that in the case of Vallabh Glass Works this Court had dealt with proceedings for recovery of dues under a State Act and had come to the conclusion that Section 22(1) of the Central Act applied thereto. The case of the appellants was, therefore, squarely covered by the Vallabh Glass Works judgment.*

10. *Learned Counsel for the respondents submitted that Section 22(1) of the Central Act should be so read as not to interfere with the exclusive power of the States to legislate under Entry 54 of List II of the Seventh Schedule of the Constitution in respect of sales tax. In his submission, the words "any other* *law" in Section 22(1) of the Central Act must be so read as to exclude all laws on list II subjects, for Parliament must be assumed to know its limitations. Learned Counsel cited the judgment of this Court in Deputy Commercial Tax Officer & Ors. v. Corromandal Pharmaceuticals & Ors. - 1997 (2) SCALE 640, as supporting his case.*

11. *The Vallabh Glass Works judgment covers these appeals. Arrears of taxes and the like due from sick industrial companies that satisfy the conditions set out in Section 22(1) of the Central Act cannot be recovered by coercive process unless the said Board gives its consent thereto.*

12. *The Central Act is enacted under Entry 52 of List I of the Seventh Schedule. The said Entry 52 empowers Parliament to legislate in respect of "Industries, the control of which by the Union is declared by Parliament by law to be in the public interest". The Central Act declares that it is "for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution", namely, "that the ownership and control of the material resources of the community are so distributed as best to serve the common good" and "that the operation of the economic system does not result in the concentation of the wealth and means of production to the common detriment". The Central Act does not impair or interfere with the rights of the States to legislate with respect to sales tax under Entry 54 of List II of the Seventh Schedule. In the larger interest of the industrial health of the nation, Section 22 of the Central Act requires all creditors seeking to recover their dues from sick industrial*

> *companies in respect of whom an enquiry under Section 16 is pending or a scheme is under preparation or consideration or has been sanctioned to obtain the consent of the said Board to such recovery. If such consent is not secured and the recovery is deferred, the creditors' remedy is protected for the period of deferment is, by reason of sub-section (5) of Section 22, excluded in the computation of the period of limitation. The words "any other law" in Section 22 cannot, therefore, be read in the manner suggested by learned Counsel for the respondents."*

4.4 I also find that the issue is squarely covered by the decision of tribunal in the case of M/s SREE VADIVAMBIGAI TEXTILE MILLS LTD. [2005 (179) ELT 151 (Tri. - Chennai)] wherein following has been held:-

> ***"3.*** *On a perusal of the provisions of Section 75, I do not find any scope for leniency in the matter of levy of Service Tax inasmuch as the provisions are couched in mandatory language. Appellants have no case that interest was demanded in excess of what was prescribed under Section 75. In such a situation, I have no option but to affirm the demand of interest. Accordingly, I reject these appeals."*

4.5 In view of the above decisions, I do not find any merits in the appeal filed by the appellant.

5.1 Appeal is dismissed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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