CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70297 of 2017-Division Bench

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1066-16-17 dated 31/01/2017 passed by Commissioner (Appeals) Central Excise & Customs, Noida)

Principal Commissioner of Central Excise **.....Appellant**

(C-56/42, Sector-62, Noida U.P.)

VERSUS

M/s Autometer Alliance Ltd. **....Respondent**

(C-63, Sector-57, Noida)

APPEARANCE:

Shri Mohd. Altaf, Authorised Representative for the Appellant
Shri Rajesh Chhibber, Advocate for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 71013 / 2019

Date of Hearing : 21 February, 2019
Date of Decision : 22 May, 2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals) vide which he has accepted the respondents appeal, Revenue has filed further appeal. We have heard Shri Rajesh Chhibber learned advocate appearing for the assessee and Shri Mohd. Altaf learned A.R. appearing for the Revenue.

2. On going through the impugned order, we find that the dispute relates to a refund of an amount of Rs.81.41 lakhs approximately deposited by the assessee during the course of

adjudication, which were ultimately dropped by the order of the Adjudicating Authority being Order-in-Original No.38/ADC/N-I/2015-16 dated 30/03/2016. When the appellant approached their jurisdictional Central Excise Authorities for refund of said amount, as a consequent relief granted to them by the Additional Commissioner, the refund claim was rejected on the ground of time bar by observing that the payment were not made under protest.

3. On appeal Commissioner (Appeals) observed that the first payment was made by the appellant on 09/08/2014 whereas the protest was lodged on 07/07/2015 with the following statement:- "However, since we are not in agreed with manner in which the allegation has been leveled in the notice, said deposit of Rs.46,76,089/- on account of Cenvat credit, Rs.27,64,209/- on account of interest and Rs.7,01,415/- on account of penalty be considered as payment UNDER PROTEST".

Accordingly Appellate Authority observed as under:-

> *"This letter clearly exhibits that the appellant have lodged their protest against the deposits made during investigation within the period of one year. Moreover, Section 11B provides that in case where the duty becomes refundable as a consequence of judgment, degree order or direction of Appellate Authority, Tribunal or any court, the date of such judgment, itself will be reckoned for computing period of limitation. In the present case the amount became refundable consequent to relief grated vide Order-in-Original No.38/ADC/N-I/2015-16 dated 30/03/2016, hence, the relevant date for filing refund claim should be considered with reference to 30/03/2016. I find that issue of admissibility of the CENVAT credit taken by the appellant has already been decided vide this office Order-in-Appeal No. NOI-EXCUS-001-APP-0972-16-17 dated 05/01/2017, wherein the departmental appeal against OIO No.38/ADC/N-I/215-16 dated 30/03/2016 was*

rejected by holding that "refund is admissible and correctly allowed to the appellant by the Original Authority and does not call for any interference in the instant appeal. Accordingly, I uphold the Order-in-Original and reject the appeal".

At this moment I do not see any reason to debar the appellant from the legitimate claim of refund on the basis of time limitation. On extensive consideration of material facts, statutory provisions and the submission made by the appellant, I hold that the original order is not maintainable. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief."

4. On going through the above part of the impugned order, we find no infirmity in the same. The Tribunal in the case of Mahesh Raj Chemicals Pvt. Ltd. vs. Commissioner of Central Excise, Ahmedabad 2015 (317) E.L.T. 366 (Tri.-Ahmd.) has observed that if the assessee deposits any amount during investigation, the said amount unless confirmed and appropriated, cannot be considered as duty and Section 11B of Central Excise Act, 1944 cannot be applied thereto. As such, we are of the view that there are no merits in the Revenue's appeal. The same is accordingly rejected.

(Order pronounced in the open court on – 22 May, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks