CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60257 of 2023

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-206/22-23 dated 07.02.2023 passed by the Commissioner (Appeals), CGST, Jammu]

M/s Pace Non Woven Fabric Products ……**Appellant**
SIDCO Industrial Area,
Kathua, J&K 184101

VERSUS

Commissioner of CE & CGST, Jammu ……**Respondent**
OB 32, Rail Head Complex,
Jammu, J&K 180012

APPEARANCE:

Present for the Appellant: Sh. Vikrant Kackria, Advocate

Present for the Respondent: Sh. Raman Mittal, Authorized Representative

CORAM: **HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60442/2024

DATE OF HEARING: 23.07.2024
DATE OF DECISION: 23.07.2024

PER: S. S. GARG

The present appeal is directed against the impugned order dated 07.02.2023 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant by upholding the Order-in-Original.

2. Briefly stated facts of the present case are that the appellant were working under Notification No. 01/2010-CE dated 06.02.2010. During the audit of the appellant for the period from April 2016 to

June 2017, it was pointed out that the amount of tax paid by the appellant during the above said period in their ER-Returns was more than the figures shown in their balance sheet. It was also alleged that since the appellant had availed the refund of the excess tax which was not payable by them, hence the refund was proposed to be recovered by invoking the extended period of limitation. The appellant had stated that the excess tax was paid due to certain sales returns which came in the knowledge of the appellant at the time of filing of balance sheet and thus the same was corrected in the balance. Further, the extended period of limitation was invoked to demand the amount of refund already sanctioned to them. Aggrieved by this order, the appellant filed appeal before the Commissioner (Appeals), who has upheld the Order-in-Original and rejected the appeal of the appellant. Hence, the appellant preferred the present appeal.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed by ignoring the judicial precedents on the identical issue.

4.2 He further submits that the appellant had availed the refund of the duty paid by them and had not claimed anything in excess of an amount which has actually been paid by them in cash. He also submits that even if it is assumed that for the sake of arguments that the duty has been paid in excess than what was payable by them;

even then the amount cannot be recovered because the self-credit has been claimed of what has been paid by them.

4.3 He further submits that this issue has already been settled by the majority view of the Tribunal in the case of ***M/s Medley Pharmaceutical Ltd vs. CCE & ST Chandigarh-I – 2019 (21) GSTL 522 (Tri. - Chan.)*** wherein by majority it has been held that the refund cannot be rejected even if higher duty has been paid than what was payable because the refund is eligible for the amount of duty paid by the appellant.

4.4 He further submits that the department had not challenged the refund sanction order till date and in the absence of challenge to the refund sanction order, the refund cannot be rejected. This issue has been considered by the Hon'ble Gauhati High Court in the case of ***CCE, Shillong vs. Jellalpur Tea Estate - 2011 (268) ELT 14 (Gau)*** wherein it has been held as under:

> *"**13**. That apart, the Assistant Commissioner of Central Excise, Silchar had passed a final order in favour of the assessee on 29-4-2002 and admittedly, this order was revisable under Section 35-E of the Act. For reasons best known to the Commissioner of Central Excise, Shillong no action was taken to have the order of the Assistant Commissioner revised or set aside. Having failed to avail of the statutory remedy available under the Act, the Revenue sought to circumvent the law (as it were) by taking recourse to Section 11A of the Act. In our opinion, this was clearly impermissible inasmuch as what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all."*

4.5 He further submits that this Tribunal in the case of ***M/s Ravi Crop Science (& Shri Dinesh Garg Partner) vs. CCE, Jammu*** vide ***Final Order No. 60486-60487/2023 dated 11.10.2023*** has held that if the refund sanction order has not been challenged, then the same cannot be recovered by way of show cause notice.

4.6 He also submits that the entire demand is barred by limitation as there is no reason to invoke the extended period of limitation as there cannot be any fraud, suppression or wilful mis-statement on the part of the appellant because they have availed the amount of tax paid by them and not the excess refund.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the sides and perusal of the material on record, I find that this issue is no more *res integra* as the same is covered by the majority decision of the Tribunal in the case of ***M/s Medley Pharmaceutical Ltd vs. CCE & ST Chandigarh-I*** *(supra).*

7. Further, I find that since the department has not challenged the refund sanctioned order till date and in the absence of challenge to the refund sanction order, the refund cannot be rejected as held by the Hon'ble Gauhati High Court in the case of ***CCE, Shillong vs. Jellalpur Tea Estate*** *(supra)*.

8. Further, I find that the Division Bench of this Tribunal in the case of ***M/s Ravi Crop Science vs. CCE, Jammu*** (supra) by following the decision of the Hon'ble jurisdictional High Court of Jammu & Kashmir in the case of ***Krishi Rasayan Exports Pvt Ltd –***

CEA No. 06 of 2018, has held that if the refund sanctioned order is not challenged by the department, then the same cannot be recovered by way of issuance of show cause notice.

9. Further, I find that the entire demand is also barred by limitation as the department has failed to establish the ingredients for invoking the extended period as provided in Section 11A sub-section (4) of the Central Excise Act, 1944, therefore, on this point also, the impugned order is bad.

10. In view of my discussion above and by following the ratios of the decisions cited supra, I am of the considered view that the impugned order is not sustainable in law and therefore, I set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

RA_Saifi