CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60363 of 2023 [SM]

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-LDH-APP-109-2022-23 dated 28.03.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

M/s Aditya Pipes And Strips Pvt Ltd ......**Appellant**
Village Ambey Majra, Mandi Gobindgarh,
Punjab 147301

VERSUS

Commissioner of Central Excise and Service Tax, Ludhiana ......**Respondent**
GST Bhawan, F Block, Rishi Nagar,
Ludhiana, Punjab 141001

APPEARANCE:

Shri Aman Garg, Advocate for the Appellants

Shri Shivam Syal, Authorized Representative for the Respondent

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

FINAL ORDER NO. 60491/2025

DATE OF HEARING: 16.04.2025
DATE OF DECISION: 22.04.2025

The present appeal filed by the appellant is directed against the impugned order dated 28.03.2023 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has upheld the Order-in-Original rejecting refund claim as being time barred under Section 11B of the Central Excise Act, 1944.

2. Briefly stated facts of the present case are that the Deputy Commissioner, Central Excise Division vide Order-in-Original dated

22.10.2013 disallowed the Canvat Credit of Rs.1,40,113/- to the appellant alongwith interest and penalty. The appellant had reversed the Canvat Credit of Rs.1,40,113/- on 28.11.2012 and the same was also appropriated in the said Order-in-Original; thereafter, against the said Order-in-Original, the appellant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal dated 23.02.2018 rejected their appeal; thereafter, against the Order-in-Appeal dated 23.02.2018, the appellant filed appeal before this Tribunal and the Tribunal vide its Final Order No. A/63416/2018 dated 01.11.2018 set aside the said Order-in-Appeal and allowed the Cenvat Credit of Rs.1,40,113/- to the appellant. Consequently, the appellant filed refund claim of Rs.1,40,113/- on 16.12.2019. Further, the sanctioning authority, instead of sanctioning the refund, issued a show cause notice dated 10.05.2020 to the appellant proposing to reject the refund claim on the ground of refund application being time barred under Section 11B of the Central Excise Act, 1944. After following the due process, the sanctioning authority rejected the refund claim vide Order-in-Original dated 23.06.2021. Aggrieved by the said Order-in-Original, the appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide impugned order has also rejected their appeal. Hence, 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 appellant never received the Tribunal's Final Order dated 01.11.2018 allowing the Cenvat Credit to them. He further submits that the appellant vide their letter dated 18.12.2019 requested the CESTAT Registry for providing certified copy of the Final Order dated 01.11.2018 as they never received the same; thereafter, the said certified copy of the Final Order was supplied to them on 18.12.2019 by the CESTAT Registry, which is also clear from the letter dated 28.02.2020 by the Assistant Registrar, CESTAT, Chandigarh to the Assistant Commissioner, Central Excise Division, Mandi Gobindgarh.

4.2 The learned Counsel further submits that the appellant filed the refund claim on 16.12.2019 based on the copy of the Final Order available with their Counsel. As the refund claim had to be filed alongwith the certified copy of the Final Order, therefore, the appellant requested the CESTAT Registry for providing certified copy of the said Final Order. He also submits that the letter dated 28.02.2020 by the Assistant Registrar, CESTAT, Chandigarh to the Assistant Commissioner, Central Excise Division, Mandi Gobindgarh clearly states that the certified copy of the said Final Order was supplied to the appellant on 18.12.2019 and therefore, the appellant is well within time limit as per Section 11B of the Central Excise Act, 1944 to file the refund application. He also submits that it would not have been possible for the appellant to file the refund application without obtaining the certified copy of the Final Order allowing the Cenvat Credit of Rs.1,40,113/-. He further submits that the period of one year would commence from the receipt of the certified copy of the Final Order from the CESTAT Registry.

4.3 In support of his above submissions, the learned Counsel relies on the following decisions:

- Prontos Steerings Ltd Vs CCE, Chandigarh-I - 2011 (274) ELT 218 (Tri. Del.)
- Petronet LNG Ltd Vs Asstt Commr, Customs Division - 2021 (377) ELT (Guj.)

5.1 On the other hand, the learned Authorized Representative ('AR') for the Revenue reiterates the findings of the impugned order and submits that the refund has rightly been rejected as time barred. He further submits that the Tribunal's Final Order dated 01.11.2018 was pronounced on the date of hearing itself (i.e. 01.11.2018) in the open court in the presence of the counsel for the appellant. Even, the subsequent Final Order dated 17.01.2019 (setting aside the penalty on the director of the appellant) was also pronounced on the date of hearing itself (i.e. 17.01.2019) in the open court in the presence of the appellant's counsel. But consequent to the Tribunal's Final Order dated 01.11.2018, the refund application was filed by the appellant on 16.12.2019 which is beyond the period of one year as prescribed under Section 11B of the Central Excise Act, 1944.

5.2 The learned AR further submits that the said Final Order was pronounced on the date of hearing itself in the presence of the appellant's counsel, which clearly proves that the said order was very much in the knowledge of the appellant.

5.3 The learned AR further takes me through the 'clause [(ec)]' of Section 11B of the Central Excise Act, 1944 regarding the "relevant date" for filing the refund arising out of duty being refundable as a consequence of judgment/order/direction of the Court, which is as under:

> *"**Section 11B***
>
> ***(5) ------***
>
> ***(B) "relevant date"** means –*
>
> *[**(ec)** – in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction]."*

5.4 The learned AR further submits that as per the statutory provision, the refund has to be filed within one year from the relevant date and in the present case, the relevant date is the date of order passed/pronounced in the open court in favour of the appellant, which was very much in the knowledge of the appellant.

5.5 The learned AR further submits that the subsequent date of the letter by Assistant Registrar, CESTAT addressed to the Assistant Commissioner, Mandi Gobindgarh cannot be considered to be the date on which the certified copy of the order was given to the appellant.

5.6 The learned AR further submits that it is a well settled law that when clear/ unambiguous provisions have been laid down in the statute, there is no scope of interpreting the same differently.

6. I have considered the submissions made by both the sides and perused the material on record. I find that in the present case, the Tribunal passed the order on 01.11.2018 in the presence of both the parties and the appellant was very much aware of the decision of the

Tribunal as the order was passed on the date of hearing itself; but the appellant filed refund application on 16.12.2019 which is beyond the period of one year.

7. Further, I find that there is a statutory provision as prescribed under Section 11B (5) (B) (ec) of the Central Excise Act, 1944, which says that in case, where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction will be the "relevant date" and the limitation period of one year will start from that date.

8. Further, I find that this issue of "relevant date" has been considered by the Tribunal in the case of **Prontos Steerings Ltd Vs CCE, Chandigarh-I** (supra). The relevant findings are reproduced herein below:

> **"4.** The limitation period prescribed under Section 11B for filing the refund claim is one year from the relevant date. The term "relevant date" in the case where the duty becomes refundable as the consequences of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court has been defined in Explanation B (ec) of Section 11B as the "date of such judgment, decree or direction". Unlike the judgments of the Courts or Tribunals which are either dictated in the open Court or are pronounced in the open court and thus the date of the pronouncement and date of the communication to the affected parties are same, in case of adjudication of any dispute by the Departmental Adjudicating Authorities or Commissioner (Appeals), the judgments are not pronounced or dictated in presence of

the parties but are sent by post and, thus, there would be a time gap between the date on which the order has been signed, the date of dispatch and the date on which the order is received by the assessee. The point of dispute, thus, in this case is as to whether the words "date of such judgment, decree order or direction" used in Clause (ec) of Explanation (B) to Section 11B refer to the date of signing of the order or date of dispatch order or the date of actual communication of the order to the assessee. The Commissioner (Appeals) has held that it is the date of dispatch of the order, which would be the date of the order for the purpose of counting the limitation period. However, I find that Hon'ble Supreme Court in the case of *CCE* v. *M.M. Rubber Co.* (supra) while considering the question of relevant date for the calculating the limitation period for the purpose of review under Section 35E(1) of the Central Excise Act, has in para 13 of the judgment, observed as under :-

> "13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore Courts have uniformly laid down as a rule of law that for seeking the remedy, the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set. This is based upon, as observed by Rajamanner, CJ in *Muthia Chettiar* v. *CIT* (supra) "a salutary and just principle". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the

> particular statute, but it is so under the general law."
>
> **5.** From the above observations of the Hon'ble Supreme Court, it is clear that when some order of Court or an authority affects an assessee, the limitation would start from the date on which the order was communicated to the assessee or the date on which it was pronounced or published so that the party affected by which have reasonable opportunity of knowing of the passing of such an order and what it contains. ………"

Though the above said decision has been relied upon by the learned Counsel for the appellant in support of his submission, but the perusal of the said decision shows that this is against the appellant. In the said case, the Tribunal followed the judgment of Hon'ble Supreme Court passed in the case of **Collector Vs. M.M. Rubber Co. – 1991 (55) ELT 289 (SC)** wherein also the question of relevant date for calculating the limitation period was discussed and it was held by the Hon'ble Supreme Court that the limitation would start from the date on which the order was communicated to the assessee or the date on which it was pronounced.

9. Further, the statutory provision also prescribed that the period of one year would start from the date of the judgment on which the same is pronounced in the open court. Therefore, in the present case, the date of communication of the Tribunal's order is 01.11.2018, on which the order was pronounced in the open court in the presence of the appellant's counsel, but the refund application was filed on 16.12.2019; hence, I find that the refund claim filed by the appellant

on 16.12.2019 is beyond the prescribed period of one year, accordingly, is clearly time barred.

10. In view of my discussion above, I am of the considered view that there is no infirmity in the impugned order passed by the learned Commissioner (Appeals), accordingly I uphold the same by dismissing the appeal of the appellant.

(Order pronounced in the open court on 22.04.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

RA_Saifi