Customs, Excise & Service Tax Appellate Tribunal

SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/60556/2018

(Arising out of OIA-CHD-EXCUS-001-APP-547-17-18 dated 08.03.2018 passed by the Commissioner (Appeals) of Central Excise-CHANDIGARH-I)

Gpi Textiles Limited : Appellant (s)

Vs

CCE & ST- Chandigarh-i : Respondent (s)

Represented by:
For Appellant (s) : Shri Naveen Bindal, Advocate
For Respondent (s): Shri Bhasha Ram, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)

Date of Hearing/Decision: 10.01.2019

ORDER No. A/60011 / 2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the interest of delayed refund has been rejected under Section 11BB of the Central Excise Act, 1944.

2. The facts of the case are that the appellant is an exporter and exported their goods. The appellant filed a rebate claim. Initially the rebate claim were rejected, but, after litigation they were sanctioned with a delay. The appellant is claiming interest after 3 months from the date of filing of the rebate claim till its realization. The rebate claim of interest has been rejected by the authorities below on the ground that the rebate claim has been sanctioned within 3 months from the date of the order of the higher authorities wherein the adjudicating authority was directed to
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sanction the rebate claim. Against the said order, the appellant is before me.

3. Heard the parties.

4. Considering the fact that the issue has been examined by this Tribunal in the case of ***M/s Jct Ltd. Vs. CCE & ST-Ludhiana vide Final Order No. A/63581-63582/2018*** wherein this Tribunal observed as under:-

> *"4. As the facts of the case are not in dispute, therefore, only legal issues are to be examined. As per the CBEC Circular No. 687/3/2003-CX dated 03.01.2003, the duty paid through actual credit or deemed credit account on the goods export must be refunded in cash. For better appreciation, the said circular is extracted herein below:-*
>
> ***Circular No. 687/3 /2003-CX***
> *3rd January, 2003*
>
> ***F.No. 267 /57/2002-CX-8***
> *Government of India*
> *Ministry of Finance & Company Affairs*
> *Department of Revenue*
> *Central Board of Excise & Customs*
>
> ***Subject: – Payment of rebate amount of the duty paid from Cenvat credit account in cash-reg.***
>
> *I am directed to draw your attention to Board's circular No. 21/89-CX6 dated 11.5.89 issued from F.No. 210/21/87-CX6, circular No. 153/64/95-CX dated 12.10.95 issued from F.No.209/47/95-CX6 and circular No. 262/96/96-CX dated 6.11.96 issued from F.No.209/36/96-CX6 wherein it has been, inter alia, clarified that rebate could be sanctioned in cash in respect of the duty payment made through credit accounts of Modvat scheme on inputs or capital goods or deemed credit account. Subsequently, Board has been receiving representations from trade to say that the rebate is not being granted in cash.*
>
> *2. The matter has been examined by the Board. It is the view that there is no discretion with the sanctioning authority to give the refund of the duty paid on goods exported through credit accounts. It is therefore clarified that the duty paid through the actual credit or deemed credit account on the goods exported must be refunded in cash.*
>
> *3. Field formations may please be informed suitably.*
>
> *4 .Receipt of the same may be acknowledged.*
>
> *5. Hindi version will follow.*
>
> *As it is a clear position from the abovementioned circular that the rebate claim was required to be refunded in cash, but, the adjudicating authority while sanctioning the rebate claim instead of sanctioning the rebate claim in cash had partly allowed the rebate claim in cash and partly in cenvat credit account. The reason for sanctioning the rebate claim in cenvat credit account is are best known to the adjudicating authority which are in gross violation of the CBEC Circular dated 03.01.2003, but, the Ld. Commissioner (A) sanctioned the rebate claim in cash. These are not in dispute, therefore, sanctioning the rebate claim in cenvat credit account by the adjudicating authority in contravention of CBEC Circular dated 03.01.2003 is in gross violation of the mandate of law. In these circumstances, for the error committed by the adjudicating authority, the assessee should not suffer. As the rebate claim has been sanctioned in cenvat credit account which is not as per mandate of law, in that circumstances, it cannot be termed that the rebate claim*

has been sanctioned to the appellant in time. Therefore, the date on which the Ld. Commissioner (A) sanctioned the rebate claim in cash is the date of sanctioning the rebate claim to the appellant. Moreover, when the rebate claims were realized is the actual date of sanctioning the rebate claim. In that circumstances, the appellant are entitled to claim interest in terms of Section 11BB of the Central Excise Act, 1944 after three months from the date of filing of the rebate claim till their realization."

The issue is squarely covered by the decision of this Tribunal in the case of ***M/s Jct Ltd. (supra)*** therefore, I hold that the appellant is entitled to claim interest after 3 months from the date of filing the rebate claim till its realization.

5. In these terms, the impugned order is set-aside and the appeal is allowed with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.