CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. : E/61881/2018-[SM]

[Arising out of Order-in-Appeal No. 127-CE-CGST-APPEAL-GURUGRAM-SG-2018-19 dated 17/09/2018 passed by the Commissioner of CGST (Appeals), Gurugram]

Oswal Castings Private Limited : Appellant(s)

VS

C.C.E. & S.T., Faridabad-I : Respondent(s)

Appearance:
Present for the Appellant(s): Mr. Puneet Bansal, Advocate
Present for the Respondent(s): Mr. Tarun Kumar, A.R.

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

Date of hearing/decision: 31.01.2019

FINAL ORDER NO. 60064/2019

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the refund claims have been rejected as time barred by the Ld. Commissioner (Appeals).

2. The facts of the case are that initially the appellant filed rebate claims for goods exported by them on account of Cenvat credit laying their account unutilized. Some rebate claims were sanctioned in cash, the some were allowed in their Cenvat credit account during the period September-November, 2017. As per Section 142(3) of the Central Goods & Service Tax Act, 2017, the refund claims are to be

sanctioned in cash; therefore, the appellant approached the adjudicating authority that they are entitled to claim the refund in cash instead of Cenvat credit account. The said request of the appellant was rejected on 28.03.2018, but the appellant got the said rejection letter only in 05.06.2018. Against that order, the appellant filed the appeal before the Ld. Commissioner (Appeals) on June, 2018. The Ld. Commissioner (Appeals) held that as they have not challenged the order of sanctioning the refund claim, therefore, the appeal is not maintainable. Moreover, the appeal filed by the appellant against the order dt. 28.03.2018 is barred by limitation. Against the said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that in this case, after introduction of Central Goods & Service Tax Act, 2017, refund claims were required to be sanctioned in cash, whereas the adjudicating authority allowed partly refund claim in cash and partly in Cenvat Credit account. Therefore, the appellant under bonafide belief, requested the adjudicating authority to modify the adjudication order. In that circumstance, the appellant did not file the appeal before the Ld. Commissioner (Appeals) against the order sanctioning the refund claim. He further submits that the order of rejection of their request for sanctioning the refund claim in cash dt. 28.03.2018 was not received by the appellant and as and when they received the letter of rejection, they immediately filed the appeal before Ld. Commissioner (Appeals). Therefore, the appeal is maintainable before the Ld. Commissioner (Appeals) and is within time. Moreover, under Section

142(3) of the Central Goods & Service Tax Act, 2017, they are entitled to claim the refund in cash.

4. On the other hand, Ld. A.R. opposes the contention of the Ld. Counsel and submits that it is an admitted fact that the orders of sanctioning refund claim to Cenvat credit account have not been challenged by the appellant, therefore, they cannot claim the refund in cash. Moreover, the request made by the appellant for modification of the order by adjudicating authority has been quashed by the adjudicating authority for rejecting the said request and against the said request, the appellant did not approach the Ld. Commissioner (Appeals) within time, therefore, the appeal cannot be maintainable.

5. Heard the parties and considered the submissions.

6. On hearing both the sides, I find that the following issues arise:-

(A) Whether without filing the appeal against the orders of sanctioning the refund claim into Cenvat credit account, the appeal is maintainable before this Tribunal or not?

(B) Whether the appeal filed by the appellant before the Ld. Commissioner (Appeals) against the order of rejection of their request dt. 28.03.2018 is barred by limitation or not?

6.1 <u>Issue No.(i)- Whether without challenging the orders of sanctioning the refund claim into Cenvat credit account, the appellant is entitled to claim the refund or not?</u> – I find that in this case due to introduction of Central Goods & Service Tax Act, 2017, the appellant is entitled to claim the refund in cash and the appellant after giving refund claim into Cenvat credit account, approached to the adjudicating authority for modification of the order. When the appellant has approached the adjudicating authority for modification, it means that the appellant has not agreed with the adjudication order and when request for modification in adjudication order has been entertained and rejected and the same has been appealed against, in that circumstance, it is concluded that the appellant has challenged the adjudication order of refund claim. Therefore, I hold that the appeal filed before the Ld. Commissioner (Appeals) is maintainable.

6.2 <u>Issue No.(ii)- Whether the appeal filed by the appellant before the Ld. Commissioner (Appeals) is barred by limitation or not?</u>– I find that against the adjudication order, the appellant approached to the adjudicating authority for the modification of the same. Therefore, the time consumed by the adjudicating authority is required to be deducted from the time of filing the appeal before the Commissioner (Appeals). If same is deducted, then the appeal filed before the Commissioner (Appeals) is within time. Therefore, I hold that the appeal filed by the appellant before Ld. Commissioner (Appeals) is within time.

7. Now I deal with the merits of the case.

8. Admittedly, as per Section 142(3) of the Central Goods & Service Tax Act, 2017, all refund claims were required to be sanctioned in cash and the adjudication order is violating the said

provisions. Therefore, I do not find any merit in the impugned order. The same is set aside for sanctioning the refund claim into Cenvat credit account. In that circumstance, I hold that appellant is entitled to refund claim in cash. Accordingly, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

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