CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH AT CHANDIGARH

COURT NO.I

Appeal No.E/55991/2014-Ex (DB)

(Arising out of OIA No.JNK-EXCUS-000-APP-262-13-14 dt.30.09.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II, Central Revenue Building, Plot No.19, Sector 17C, Chandigarh)

M/s. Sudarshan Consolidated Pvt. Limited **Appellant**
(Industrial Growth Centre, SIDCO, Samba, Jammu, J & K)

Vs.

CCE & ST, Jammu & Kashmir **Respondent**
(OB-32,Rail Head Complex, Jammu & Kashmir-180012)

Present for the Appellant: Shri Prashan Shukla, Advocate
Present for the Respondent: Shri Tarun Kumar, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.C.L.Mahar, Member (Technical)

FINAL ORDER No.60545/2019

Date of hearing/Decision: 04.04.2019

PER.AHSOK JINDAL

The appellant is in appeal against the impugned order wherein the demand has been confirmed on account of erroneous refund given to the appellant.

2. The facts of the case are that the appellant is located in the State of Jammu & Kashmir and availing the benefit of exemption Notification No.56/02-CE dt.14.11.2002 and manufacturing pesticides, insecticides, fungicide and herbicides. As per the said notification, the appellant was required to avail Cenvat credit on input and input service and thereafter to pay duty through PLA. The amount paid through PLA is refundable to the appellant. In view of this, the appellant filed refund claim of duty paid in cash after

utilization of credit during the period February, 2008 to October, 2008. The said refund claims were sanctioned after due verification and later on, it was alleged that the appellant have not claimed credit on certain inputs which resulted in excess payment of duty in cash. Consequently, excess refund was not to be sanctioned to the appellant. Therefore, by invoking extended period of limitation for recovery of excess refund was sought. The matter was adjudicated, the demand on account of excess refund sanctioned to the appellant was confirmed. Against the said order, the appellant is before us.

3. Ld. Counsel for the appellant submits that admittedly the order sanctioning refund has not been challenged by the Revenue. Therefore, the show cause notice for recovery of excess refund cannot be issued to the appellant in the light of the decision of Hon'ble Gauhati High Court in the case of CCE, Shillong vs. Jellalpore Tea Estate-2011 (268) ELT 14 (Gau.). He further submits that similar issue has been decided by this Tribunal in the case of Shree Nath Industries vs. CCE, Jammu-2018 (364) ELT 904 (Tri.-Chan.)

4. On the other hand, Ld. AR reiterated the findings of the Commissioner (Appeals).

5. Heard the parties and considered the submissions.

6. The case of the Revenue is that the appellant has claimed excess refund on account of excess payment of duty through PLA. Admittedly, the duty paid through PLA was not required to be paid by the appellant, therefore, the same is refundable.

7. Similar issue has been examined by this Tribunal in the case of Shree Nath Industries (supra) wherein this Tribunal has observed as under:-

> **"5.** We find that in terms of Notification No. 56/2002-C.E., dated 14-11-2002, the assessee is required to pay duty after adjusting the Cenvat credit in cash and whatever duty paid in cash is entitled to self-credit/refund to the assessee. The case of the Revenue is that as they have not availed the Cenvat credit and they have paid excess duty against actual duty payable by them. Therefore, the excess credit was taken by the appellant is not entitled for refund.
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> **6.** We take further note of the fact that the appellant has taken self credit, if only of duty paid in cash and Notification No. 56/2002-C.E., dated 14-11-2002, states that wherein whatever duty has been paid in cash is refundable. Admittedly, the appellant has not claimed refund of Cenvat credit available to them. In that circumstances, it is revenue neutral situation, therefore, there was no requirement to issue show cause notice to the appellant. We further taken note of the fact that the demand has been raised against the appellant under Section 11A of the Central Excise Act, 1944. As per the said provision, if the appellant has not paid duty/short paid duty/erroneously refunded of duty is recoverable. In this case, it is the case of the Revenue itself that they were not required to pay duty, therefore, the excess amount paid by the appellant is merely a deposit not a duty. Hence, the provisions of Section 11A of the Act, is not applicable to the case. In that circumstances, the appellant is not required to pay the excess refund claimed by them."

8. We further take note of the fact that admittedly the order of sanctioning refund has not been challenged by the Revenue, therefore, in the light of the decision of Hon'ble Gauhati High Court in the case of CCE, Shillong vs. Jellalpore Tea Estate (supra), the show cause notice cannot be issued to the appellant.

9. In view of the above analysis, we hold that the demand confirmed against the appellant is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(operative part of order was pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C.L.MAHAR)
MEMBER (TECHNICAL)

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