CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGIONAL BENCH AT CHANDIGARH
E-HEARING
SINGLE MEMBER BENCH

Appeal No. E/60400/2020
(Arising out OIA No.Appeal/CE/PKL/10/2020-21 dt.2.7.2020 passed by the Commissioner (Appeals), Central Excise, Room No.134, CR Building, I.P.Estate, New Delhi**)**

M/s.HVR Industries P.Ltd **Appellant**
(59/20, Saidpur Industrial Area, Saidpur, Sonepat, Haryana)

Vs.
Commissioner of CGST, Rohtak **Respondent**
(Pacific City Centre, IInd Floor, Near Jat Bhawan,
Delhi Road, Rohtak)

Present for the Appellant: Shri R.P.Singh, Advocate
Present for the Respondent:Ms. Shivani, AR

Date of hearing: 16.03.2021
Date of decision:16.03.2021

FINAL ORDER NO.60516/2021

Per: Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim filed by the appellant holding that the same is barred by limitation under section11B of Central Excise Act, 1944.

2. The facts of the case are that an investigation was conducted against the appellant for the period August, 2019 and it was held that the appellant is not entitled to take credit which appellant has reversed immediately stating that as they want to buy peace, they are depositing the amount. Thereafter, a show cause notice was issued on 2.10.2014 to demand duty on the amount alleged to be taken inadvertently and to appropriate the same further demand of interest and imposed penalty on the appellant. The show cause notice was adjudicated and the amount already paid appropriated

and demand of interest was also confirmed. The said order was challenged before the Commissioner (Appeals) who affirmed the order of the adjudicating authority. The matter travelled upto the Tribunal and this Tribunal has set aside adjudication order. In September, 2017, consequent to the order of this Tribunal, the appellant filed refund claim in January, 2019 and the same was rejected in terms of section 11B of the Central Excise Act, 1944. Against the said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that earlier the appellant has paid the amount under protest to buy the peace and the same has been admitted in their show cause notice. In that circumstance, the time limit prescribed under proviso (2) to section 11B of the Act is applicable to the facts of this case. He further submits that as per proviso (2) to section 11B of the Act, if the duty is paid under protest, the time limit is not applicable. Therefore, the impugned order is to be set aside.

4. On the other hand, Ld.AR reiterated the findings of the authorities below.

5. Heard the parties.

6. Considering the fact that the appellant has reversed immediately the amount to buy peace under protest, in that circumstance, the time limit prescribed under section 11B is not applicable to the facts of this case and as per proviso (2) to section 11B of the Act, the time limit is not applicable as the duty has been paid by the appellant under protest. In that circumstance, I hold that the appellant is entitled to refund of the amount as no time limit is applicable to the facts of the case.

7. In the result, I set aside the impugned order and allow the appeal with consequential relief, if any.

(dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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