CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60026 of 2021

[Arising out of Order-in-Appeal No. APPL/PKL/COMMR/48/2020-21 dated 08.10.2020 passed by the Commissioner (Appeals) of CGST, Panchkula]

M/s Soorajmull Baijnath Industries Pvt Ltd ......**Appellant**
E-4, Industrial Area
Sonepat, Haryana

VERSUS

Commissioner of CE & ST, Rohtak ......**Respondent**
Pacific City Centre, IInd Floor, Near Jat Bhawan
Delhi Road, Rohtak, Haryana

APPEARANCE:

Present for the Appellant: Mr. Naveen Bindal, Advocate

Present for the Respondent: Mr. H. S. Brar, AR

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60889/2021

DATE OF HEARING: 18.08.2021

DATE OF DECISION: 27.08.2021

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order rejecting their claim for interest on the refund from the date of deposit till its realization.

2. The facts of the case are that the appellant was manufacturer of zinc ingots, aluminum alloys ingots, lead ingots etc by using zinc scrap, aluminum scrap, ingots and lead scrap as their raw material. The Revenue was of the view that zinc skimming and zinc ash are

final products and the appellant is liable to pay duty. Therefore, an investigation was started. The appellant paid an amount during the period 2008-09 and 2009-10 under protest to avoid interest liability. Later on, the matter was settled in favour of the appellant on the basis of CBEC's circular in this regards wherein it was observed that no duty is payable on zinc skimming and zinc ash arising during the course of manufacturing of the final products. Thereafter, the appellant filed refund claim on 02.12.2016 which was ultimately sanctioned on 04.09.2019, but no interest was given to the appellant from the date of deposit.

3. The claim of the appellant is that they are entitled to interest on the delayed payment of refund from the date of deposit till its realization.

4. The ld. Counsel for the appellant relied on the decision of Hon'ble Allahabad High Court in the case of *EBIZ Com Pvt Ltd – 2017 (49) STR 389 (All.),* the decision of Hon'ble Gujarat High Court in the case of *Parle International Ltd – 2001 (127) ELT 329 (Guj.),* the decision of Hon'ble Madras High Court in the case of *CCE vs. UCAL Fuel Systems Ltd – 2014 (306) ELT 26 (Mad.)*.

5. On the other hand, the ld. AR opposes the contention of the ld. Counsel and submits that the appellant intimated to the department and paid the duty on zinc skimming and zinc ash under protest. The issue of its excisability which was sub-judice. There was no reference to any direction, verbal or written from the respondent to the appellant. The lodging of the protest only enables the appellant to

cross the bar of time limit prescribed under Section 11B(1) in terms of second proviso thereof. It does not change the nature of the duty so deposited into a deposit beyond the scope of Central Excise Act nor does it purport that the same had been deposited under coercion. He further submits that demand deposited under protest became due on account of Board's Circular No. 1027/15/2016-CX dt. 25.04.2016 holding that the Sections 2(d) and 2(f) of the Central Excise Act, 1944 have to be satisfied conjunctively for imposition of excise duty on impugned goods. Therefore, it can at the best be a case of mis-interpretation/mis-application of the law and not unconstitutionality of any provision of law. He relied on the decision of Hon'ble Apex Court in the case of *Mufatlal Industries Ltd vs UOI – 1997 (89) ELT 247 (SC)* to say that in cases where a tax or duty is claimed on the ground that it has been collected from the petitioner by mis-interpreting/mis-applying the provisions of Central Excise Act, 1944 or any of the rules, regulations or notifications issued thereunder, such a claim has necessarily to be preferred under and in accordance with the provisions of the said enactment before the authorities specified thereunder and within the period of limitation prescribed therein. He further submits that only way where a refund is claimed on the ground that the provisions of the Act under which it was levied, is or has been held to be unconstitutional, such a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition. To support his contention, he also relied on the following case laws:

(i) Ranbaxy Laboratories Ltd vs. UOI – 2011 (273) ELT 3 (SC)

(ii) UOI vs. Hamdard (Waqf) Laboratories – 2016 (333) ELT 193 (SC)

(iii) MGM International Exports Ltd vs. ACST Madras – 2021-TIOL-989-HC-MAD-ST

(iv) S R Polyvinyl Ltd vs. CC – 2020 (371) ELT 283 (Del)

(v) 3F Industries Ltd vs. ACC Nagapattinam – 2020 (373) ELT 463 (Mad)

(vi) Tanna Electrical Co vs. CCGST Mumbai – 2020 (35) GSTL 129 (Tri. Mumbai)

(vii) Veer Overseas Ltd vs. CCE Panchkula – 2018 (15) GSTL 59 (Tri. L.B.)

(viii) J K Cement Works vs. CCE – 2004 (170) ELT 4 (Raj.)

(ix) Manisha Pharmo Plast Pvt Ltd vs. UOI- 2020 (374) ELT 145 (SC)

(x) Dee Kay Exports vs. UOI – 2020 (371) ELT 200 (P&H)

(xi) Om Refoils Ltd vs. UOI – 2018 (361) ELT 200 (P&H)

(xii) Moon Light Auto Pvt Ltd vs. CCE, Ludhiana – 2018 (364) ELT 872 (Tri. Chand.)

(xiii) Ajay Exports vs. CC, Mumbai – 2016 (335) ELT 150 (Tri. Mum.)

5. Heard the parties and considered the submissions.

6. The facts of the case are not in dispute that the appellant paid the amount during the period 2008-09 and 2009-10 under protest wherein the Revenue is of the view that the appellant is liable to pay the duty on zinc ash and zinc skimming. Later on, the levy was held unconstitutional. It was the understanding of the appellant that they

are liable to pay duty, that's why they paid the duty under protest. In these circumstances, the amount deposited under protest is not to take the benefit of time limit, but liability of duty as alleged. Further, if Revenue is of the view that this amount could not be collected at that stage, the Revenue was free to refund the said amount but the respondent enjoyed the amount without any authority of law. The ld. AR failed to show that in case the amount deposited under protest is governed under Section 11AB of the Act for claims of interest. The case laws relied by the ld. A.R. are not relevant to the facts of the case as not dealt the issue where the amount deposited under protect, the provisions of Section 11AB of the Central Excise Act, 1944 are applicable.

7. Further, the Hon'ble Allahabad High Court in the case of *EBIZ Com Pvt Ltd (supra)* has dealt the issue in details and observed as under:

> ***"23.*** *It has been consistent view of various Courts that any amount, deposited during pendency of adjudication proceedings or investigation is in the nature of deposit made under protest or pre-deposit and, therefore, principles of unjust enrichment would not be attracted.*
>
> ***35.*** *The consensus of the authorities of various High Courts as well as Supreme Court is that any amount received by Revenue, as deposit or pre-deposit i.e. unauthorizedly or under mistaken notion, etc., cannot be retained by Revenue since it has no*

authority in law to retain such amount and it must be refunded with interest."

8. Same view was taken by Hon'ble Gujarat High Court in the case of *Parle International Ltd (supra)* and Hon'ble Madras High Court in the case of *UCAL Fuel Systems Ltd (supra).*

9. In view of this, I hold that the appellant is entitled for interest on delayed refund from the date of deposit till its realization @12% p.a.

10. In result, the appeal is allowed by setting aside the impugned order.

(Order pronounced in the court on 27.08.2021)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RA_Saifi