IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/41650/2017

(Arising out of Order-in-Appeal No. 260/2017 CXA-II dated 22.05.2017 passed by the Commissioner of Central Excise (Appeals), Chennai).

M/s. Bray Controls India Pvt. Ltd. : Appellant

Vs.

CCE, Chennai-IV : Respondent

Appearance

Shri R. Ravikumar, Adv.
for the appellant

Shri R. Subramaniyam, AC (AR)
for the Respondent.

CORAM:

Hon'ble P. DINESHA, Member (Judicial)

Date of Hearing: **22.05.2018**
Date of Pronouncement: 12.06.2018

FINAL ORDER No**.** **41782/2018**

In this case the appellant-assessee is aggrieved by the order of the Commissioner of Central Excise (Appeals-II) who vide the impugned order dated 22.05.2017 rejected its claim for refund of excise duty.

2. The brief facts as noted in the SCN dated 08.01.2016 are that the appellant informed the office of the adjudicating authority vide their letter dated 07.10.2015 intimating that they had

cancelled the ARE-1 No. B061/2015-2016 dated 23.06.2015 pertaining to export of goods, on payment of duty of Rs.11,69,079.29 under invoice No.EI-1516500064 dated 23.06.2015. Thereafter, the assessee filed a refund claim in form Annexure No. 28 dated 02.11.2015 for refund of the above amount of Rs. 11,69,079.29 on the ground that the same was erroneously paid and that the export made under ARE-1 above was cancelled and therefore the export duty erroneously debited in their Cenvat Account No. RG.23.A.II Sl.No. 316 dated 23.06.2015 has to be refunded. They also further pleaded that the said goods were cleared vide invoice No.EI 1516500180 dated 26.09.2015 under ARE-1 No. B183/2015-16 dated 26.09.2015 after payment of central excise duty of Rs. 12,21,453.75. Based on the above, the appellant made a claim for refund of duty of Rs.11,69,079/- by its application dated 02.11.2015 before the adjudicating authority under Section 11B of the Central Excise Act, 1944.

3. A few material dates which are relevant are as under:-

S.No.	Date	Event	Value
1	23.06.2015	ARE-1 No. B061/2015-16	11 Lakhs
2	26.09.2015	Resale thro'ARE-1 B183/2015-16	12 Lakhs
3	07.10.2015	Intimation regarding cancellation of ARE-1	
4	02.11.2015	Refund claim of excise duty of Rs.11,69,079/-	
5	08.01.2016	SCN	

4. A SCN was issued dated 08.01.2016 by the adjudicating authority as to why the claim of refund of duty of Rs. 11,69,079/- filed by tem on 02.11.2015 should not be rejected under Section 11B of the CEA, 1944 and therefore vide OIO dated 11.04.2016, the adjudicating authority rejected the refund claim of the appellant mainly on the following grounds:-

i) The jurisdictional Range officer was not informed about the cancellation of the ARE-1 even after 3 months had lapsed from the date of cancellation of export on 23.06.2015 which is contrary to the mandatory requirement of procedures laid down in Para 2.1 of Part V of Chapter 7 of Supplementary instructions.

ii) The Range officer was informed about the cancellation of export vide ARE-1 No. B061/2015-16 dated 23.06.2015 only on 07.10.2015 ie., after a lapse of more than 3 months from the cancelled ARE-1 and more than 10 days after the export had actually happened, making it impossible for the Range officer to ascertain physically as to whether the said goods were retained in the factory premises after the abandoned export on 23.06.15 and that the same were exported subsequently on 26.09.2015.

iii) The daily stock account of the factory is the basic document to substantiate their claim that the subject goods were retained on 23.06.2015 and duty accounted in the Stock Register and subsequently the same were exported on 26.09.2015, the Opening Stock Register submitted by them reveals that as on 26.09.2015, the opening Balance of stock is 0 (nil) and quantity manufactured is also Nil. In such a situation, if the said quantity of goods had been retained in their factory premises owing to failure of export on 23.06.2015, they should have been reflected in the opening balance of the Stock Register as on 26.09.2015. Furthermore, the removal of goods on payment of duty for export under rebate is shown whereas there is no opening balance or quantity manufactured on the date of clearance of the said goods for export ie., on 26.09.2015. The closing stock of the goods as on 26.09.2015 after removal of goods for export under Rebate, reflects 112 Nos, which reveals that neither the said goods were manufactured nor was there any opening balance.

5. An appeal was filed against the OIO before the Commissioner (Appeals-II) and the Commissioner (Appeals) upheld the rejection order and one of the grounds for rejection was that though the appellant contended that they had exported the same goods under the ARE-1 No. B0183/2015-16 after cancelling their earlier ARE-1 B061/2015-16, but they had not produced any substantial evidence against the allegations made against them. The other reasons are also clearly forthcoming from para-7 at page-4 of his order. Aggrieved by the same, the appellant is in appeal before this Tribunal.

6. Heard the Ld. Advocate, Shri R. Ravikumar and perused the materials available on record. The ARE-1 is a form filled up when the exporter removes the excisable goods from the factory for export and this exempts from paying excise duty on clearance. It

is for the exporter therefore to establish that the goods of the first ARE-1 was not cleared. The Commissioner has further stated that the appellant was not eligible for refund also for the reason that instead of substantiating their claim for refund, they should have maintained proper stock account and should have provided proper documentary evidence.

7. I see from the materials placed before me that the appellant has only been arguing vehemently that its first ARE-1 was cancelled which fact was not brought to the notice of the concerned official in time which is a condition precedent since the arguments, allegations and counter allegations howsoever strong cannot take the place of proof. This is also in addition to the fact that the goods alleged to be un-cleared was also required to be established to the situation of the authorities. As to be seen from the table above, the appellant thought it prudent to claim refund allegedly after resale, on 2.11.2015 nearly after five months from the date of first ARE-1. This was done without adhering to the procedures laid down in the statute because in any case, procedures required to be established that the goods remained with the appellant-assessee. As observed by the lower authorities even the Range Supdt. was not informed about the so called cancelled invoice in time nor did the department have any chance to physical verification of the alleged un-cleared goods.

8. In view of the foregoing, I have not convinced about the claim of the appellant which according to me is made without

following the procedures required under the statute and therefore, I do not see any reason to interfere with the findings arrived by the lower authorities. Hence the appeal is dismissed.

(Order pronounced in the open Court on 12.06.2018)

(P. DINESHA)
MEMBER (JUDICIAL)

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