

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SZB, CHENNAI

REGIONAL BENCH - Division Bench B1

Excise Appeal No. E/41650 of 2017

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

M/s. Bray Controls India Private Limited
73, Industrial Estate, Perungudi,
Chennai-600 096.

Appellant

Vs.

The Commissioner of Central Excise (Appeals-II)
Chennai-IV Commissionerate
26/1, Mahatma Gandhi Marg, Nungambakkam,
Chennai-600 034.

Respondent

APPEARANCE:

Shri R. Ravikumar, Advocate, for the appellant

Ms. T. Usha Devi, ADC, Authorized Representative for the Respondent

CORAM :

HON'BLE MR P.DINESHA, Judicial Member

FINAL ORDER Nos. 40763 /2019

Date of Hearing: **03.04.2019**
Date of Pronouncement: **06.05.2019**

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 them 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.

6.1 Heard Shri R. Ravikumar, Ld. Advocate for the assessee and Ms. T. Usha Devi, DC, for the Revenue. I find force in the contentions of the Ld. Advocate when he takes me through the first ARE-1 and the second ARE-1 forms, wherein, there is no change in the quantity or the price except with regard to the foreign exchange rate and this fact has never been disputed by the lower authorities and therefore it can be safely assumed that both forms of ARE-1 are referring to the same/only one invoice. Further, it is a case where the goods were intended to be cleared/removed on payment of duty and not on bond, which fact is also not disputed by the authorities below either in the SCN or in the subsequent orders and therefore, I am of the opinion that the procedures prescribed would not apply to the case on hand. It is a case where goods were exported by the appellant under the subsequent ARE-1 for which the duty was paid twice simpliciter. For the above reasons also when admittedly the goods were not cleared at the instance of the first ARE-1 which was cancelled, the question of re-entry of the goods would not arise at all, since the procedures and conditions under paragraph 2.1 of the

supplementary instructions would arise only when the goods are removed out of the factory for export and brought back later to the factory on cancellation of the export order and not in a case where the export itself did not take place. The authorities below have without considering the above factual aspects rejected the appellant's plea on the ground of not following the procedure which according to me is not correct. Duty is required to be paid on the manufacture or production which has been admittedly paid in this case. There is no allegation by the Revenue as to procurement of additional raw materials for manufacture of "Knife Gate Valves and Parts", there is no finding as to the clearance of manufactured goods outside the books, no whisper about the transportation used for clearance, there is no allegation as to the procurement of raw materials in cash which is not recorded and, further, there is also no evidence or examination of the suppliers, as well.

6.2 The Revenue should have enquired/investigated about, when the appellants made refund claim or thereafter, when the reason for making refund claim was clearly cancellation of the first ARE-1. When the SCN itself refers to the fact of intimation about the non-clearance/cancellation of ARE-1 coupled with the fact of lack of enquiry and no finding as to clearing manufactured goods in any other way than reported, the fact of non-clearance of first ARE-1 has to sustain. Moreover, when the Revenue entertains a dispute as to the daily stock account, it was all the more expected that they make appropriate enquiries at the relevant point of time and therefore in the absence of any contrary factual evidence as to the procurement of additional raw materials, etc., as indicated herein above, such disputes/allegations howsoever, strong cannot be held to be sufficient.

7. For the above reasons therefore, I am of the considered opinion that the impugned order is not sustainable and hence the

same is set aside and consequently the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the Open Court on 06.05.2019)

(P.DINESHA)
JUDICIAL MEMBER

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