IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Excise Appeal No. 41358 of 2019

(Arising out of Order-in-Appeal No. 147/2019 (CTA-I) dated 6.5.2019 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

M/s. Bimetal Bearings Ltd. Appellant
Huzur Gardens, Strip Mill Plant
Chennai – 600 011.

Vs.

Commissioner of GST & Central Excise Respondent
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Chennai – 600 034.

APPEARANCE:

Shri T.R. Ramesh, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **41151 / 2019**

Date of Hearing: 30.09.2019
Date of Decision: 30.09.2019

Brief facts are that the appellants had an amount of Rs.22,03,313/- as balance in their PLA while transition to GST occurred with effect from 1.7.2017. They filed refund claim for refund of the amount in PLA since they could not use for payment of central excise duties as such duties no longer exist. The refund claim was filed on 14.9.2018. The same was rejected by the department alleging that applying section 11B of the Central Excise Act, 1944, refund ought to have been filed within one year of the relevant date which is 30.6.2018. Against such order, though the appellant filed appeal before Commissioner (Appeals), the same was dismissed. Hence this appeal.

2. The ld. counsel Shri T.R. Ramesh appeared and argued on behalf of the appellant. He submitted that the transition provisions does not specifically state which is the relevant date in respect of PLA balance. Further, the amount so kept in the PLA belongs to the appellant and is not in the nature of duty. The refund claim in respect of PLA cannot come under section 11B of Central Excise Act, 1944, since the said provision arises only in cases of refund of duty, interest etc. He relied upon the decision in the case of Fluid Controls Pvt. Ltd. Vs. Commissioner of Central Excise, Pune – 2018 (364) ELT 1041 (Tri. Mumbai).

3. The ld. AR Shri Arul C. Durairaj supported the findings in the impugned order.

4. Heard both sides.

5. On perusal of the records, it is seen that the refund claim is for refund of the amount that was held by the appellant as unutilized in their PLA. The funds in the said account belong to the appellant and it is not a duty. The Tribunal in the case of Fluid Controls Pvt. Ltd. (supra) has discussed that section 11B does not apply to amounts held in PLA. Therefore, the refund claim cannot be rejected on the ground of limitation. The impugned order is set aside and the appeal is allowed with consequential relief, if any. The department is directed to refund the amount lying in PLA in cash to the appellant.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex