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

REGIONAL BENCH - COURT NO. III

EXCISE APPEAL No. 41398 of 2014

[Arising out of Order-in-Appeal No.38/2014 (M-IV) dt. 08.04.2014 passed by Commissioner of Central Excise (Appeals), Chennai]

M/s.Dynamatics Technologies Ltd. **Appellant**
F-67, SIPCOT Industrial Park,
Irungattukottai,
Sriperumbadur,
Kancheepuram 602 105.

Vs

The Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12^{th} Main Road,
Anna Nagar,
Chennai 600 040.

APPEARANCE:

Shri R. Janardhanan Pillai, Consultant for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

CORAM :

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

Date of Hearing: 02.08.2021
Date of Decision :02.08.2021

FINAL ORDER No. 41712 / 2021

Brief facts of the case are that the appellant filed a refund claim on 25.04.2011 under Section 11B of Central Excise Act, 1944. Though the refund claim was initially for Rs.9,32,212/-, later the appellant filed revised claim for Rs.3,06,139/- vide letter dt. 05.09.2011. The appellant was supplying parts to M/s.Hyundai Motor India Ltd. (M/s.Hyundai, for short) and due to change in the model / version of the cars manufactured by M/s.Hyundai, the parts supplied by the appellant were returned. Later, appellant supplied necessary parts to M/s.Hyundai. They requested for the refund of the excise duty paid on the parts that were returned by M/s.Hyundai Motor India Ltd. by filing the above refund claim. The original authority observed that the appellant did not produce necessary documents to establish that the refund is not hit by unjust enrichment. Consequently, the refund claim was rejected vide OIO dt. 28.12.2011. Against this, the appellant filed appeal before the Commissioner (Appeals). It was contested by them before the Commissioner (Appeals) that the original authority did not issue any show cause notice or give them personal hearing to establish their case. The Commissioner (Appeals) vide order impugned herein observed in para-8 that no SCN has been issued to the appellant and also that the appellant was not accorded sufficient opportunity of personal hearing. He held that there is violation of the principles of natural justice and remanded the matter to the original authority directing him to reprocess the refund claim after giving sufficient opportunity to the appellant. Appellant aggrieved by this order, have approached this Tribunal.

2. On behalf of the appellant, Ld. Consultant Shri R. Janardhanan Pillai appeared and argued the matter. He submitted that show cause notice ought to have been issued and any order passed without issuance of a show cause notice is void

ab initio. It is also submitted by him that the appellant was not given an opportunity of personal hearing. On the merits of the case, Ld. Consultant submitted that appellant had submitted necessary documents to prove that refund is not hit by unjust enrichment. The GRN (Goods Receipt Note) which would show that the goods supplied were returned by M/s.Hyundai is also submitted before the refund sanctioning authority. In spite of this, the refund has been rejected. He prayed that the appeal may be allowed.

3. Ld. A.R Shri L. Nandakumar appeared and argued the matter. He adverted to the discussions made by the Commissioner (Appeals) in para-8 of the impugned order to argue that the Commissioner (Appeals) has correctly remanded the matter to the original authority to reprocess the refund claim after granting the appellant reasonable opportunity of personal hearing and also to produce documents. This order passed by the Commissioner (Appeals) is quite legal and proper and there are no grounds to interfere with this order; that the appeal filed by the appellant against such remand order is without any merits and also only to protract and delay the matter of refund.

4. Heard both sides.

5. On perusal of records, it is seen that the original authority has rejected the refund observing that the appellant has not produced necessary documents to process the refund. It is stated in the said order that the appellant has not submitted documents to establish that the refund is not hit by unjust enrichment. Countering this observation in the O-I-O,

Ld. Consultant has argued that the appellant had filed all the necessary documents including the GRN before the original authority; that the refund was rejected by the original authority without issuing a show cause notice or granting an opportunity of personal hearing. In para-8 of the impugned order, the Commissioner (Appeals) has correctly taken note of all these facts and circumstances of the case. The relevant paragraphs 8 to 10 of the impugned order are reproduced as under :

> "8. It is observed that no Show Cause Notice was issued to the Appellant. Also, the appellant was not accorded sufficient opportunity of personal hearing. I am in agreement with the contention that there has been disregard of the principles of *Audi Alterem Partem*. It amounts to clear violation of the principles of natural justice. An opportunity of being heard to the claimant, before rejection of their refund, would have been in order. In the circumstances, in the interest of justice, I consign the matter to the Respondent, the Refund sanctioning Authority, to decide the matter afresh.
>
> 9. The Impugned Order explains Company Act which is not required. There is no domain to transgress into it. Further, the Impugned Order is neither a speaking order nor a well reasoned one. There is no discussion or finding as to the nature of proof required from the Appellant to prove that there was no unjust enrichment.
>
> 10. In view of the above, the Order-in-Original No.249/2011-RF dated 28/12/2011 is set aside and matter consigned to Respondent to grant an opportunity of personal hearing to the appellant and taking on record the evidences that may be produced and pass a speaking Order."

6. The matter has been thus remanded to the original authority for reprocessing the refund claim after granting the appellant sufficient opportunity to produce documents and also for personal hearing. This being the fact, I do not understand as to on what grounds the appellant is aggrieved and has filed the present appeal. Neither the Commissioner (Appeals) nor this Tribunal has any authority to reprocess the refund by verifying the documents. It can only be done by the refund sanctioning

authority. The Commissioner (Appeals) has therefore correctly decided the issue raised in the appeal filed before him. The appeal filed by the appellant has no merits. I uphold the order passed by the Commissioner (Appeals). The present appeal is dismissed.

(Dictated and Pronounced in open Court)

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

gs