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

Customs Appeal No. 41380 of 2014

(Arising out of Order in Appeal C. Cus. No. 512/2014 dated 20.3.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Precision Infomatics (M) Pvt. Ltd. **Appellant**
No. 22, Habibullah Road
T. Nagar, Chennai – 600 017.

Vs.

Commissioner of Customs (Air) **Respondent**
Air Cargo Complex, New Custom House
Meenambakkam, Chennai – 600 027.

APPEARANCE:

Shri M. Karthikeyan, Advocate for the Appellant
Shri Harendra Pal Singh, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40170/2024

Date of Hearing: 01.12.2023
Date of Decision: 16.02.2024

Per P. Dinesha,

This appeal is filed by the taxpayer against the order of the First Appellate Authority in Appeal No. 512/2014 dated 20.3.2014 and the only issue that crops up for our consideration is, whether the rejection of SAD refund claim made by the appellant as time-barred is correct?

2. We have heard Shri M. Karthikeyan, learned counsel for the appellant and Shri Rudra Pratap Singh, learned Additional Commissioner for Revenue. We have perused the documents placed on record and also the orders of the lower authorities.

3. The facts are not in dispute, to be precise, paragraph 5 of the impugned order gives the background, that is to say, it appears that the appellant filed refund claim in question on 8.3.2013, i.e. exactly on the last date before the wrong authority and the authority before whom the above claim was filed rejected the same on the very day after observing that the Bill of Entry pertained to Air Commissionerate.

3.1 The first appellate authority has inter alia observed that the claim of the appellant was not even admitted by the wrong jurisdictional authority and hence the correct jurisdictional authority before whom the refund claim was subsequently made on 11.3.2013 has correctly rejected the same as barred by limitation.

4. Having heard the rival contentions, we find that the rejection of refund as done in this case has been considered by various higher judicial fora and laid to rest. In the case of Dalmia Cement (Bharat) Ltd. Vs. The Commissioner of Customs, Central Excise & Service Tax, Tirupati Commissionerate – 2019 (11) TMI 488 – CESTAT Hyderabad, the learned Hyderabad Bench of CESTAT while considering a more or less similar issue, has held as under:-

> *"8. We have considered the arguments of both sides and perused the records. The main question of law which arises in this case is where the original refund application was filed within time but it was returned for deficiencies and is resubmitted by the assessee after rectifying the defects, the original date should be considered or the date of the final submission for purpose of reckoning limitation under Section 11B. We find that this issue is no longer res integra and it has been decided by the Hon'ble High Court of Delhi in the case of Arya Exports (supra) as well as by the Hon'ble High Court of Gujarat in the case of CCE Vs AIA Engineering Ltd [2011(21)STR 367 (Guj)] that the date of the original application should be considered. Thus, the date of original application for refund before LTU should be considered for the purpose of limitation under Section 11B. In this particular case, there is another twist inasmuch as the applicant has filed a consolidated refund application before the LTU covering all their units while the final refund application was confined to their Kadapa unit only and hence the amount of refund claimed was different. Nevertheless, the ratio of the aforesaid judgements applies to this particular case and therefore the date of their original refund*

application filed before the LTU New Delhi should be reckoned as the date of filing the refund application. As far the question of computation and verification of documents is concerned, we find that the original authority should be given an opportunity to verify all the documents and examine and settle the claim as per the provisions of the law. In view of the above, the appeal is allowed by way of remand to the original authority with a direction that the date of filing of the original refund application before the LTU should be considered as the date of refund application for the purpose of limitation under Section 11B and decide the claim of refund as per the rules after verifying the documents, as felt necessary. The appeal is disposed of by way of remand."

5. In view of the above, we are of the view that the rejection of refund claim is not proper and hence orders of lower authorities are unsustainable for which reason, we set aside the impugned order. We deem it appropriate to remand the matter to the file of the original authority who shall decide the claim of refund as per law after verifying the documents and without going into the limitation issue. All the other contentions are left open.

6. The appeal is therefore allowed by way of remand.

(Pronounced in open court on 16.02.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex