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

Excise Appeal No.41055 of 2015

(Arising out of Order in Appeal No.18/2015 dated 8.1.2015 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore)

M/s. Indian Immunologicals Ltd. **Appellant**
Kozhipannai
Pudumund Post
Udhagamandalam – 643 007.

Vs.

Commissioner of GST & Central Excise **Respondent**
6/7 A.T.D. Street, Race Course
Coimbatore – 641 018.

APPEARANCE:

Shri M.V. Vishal Sundar, Advocate for the Appellant
Shri Harendra Singh Pal, Authorized Representative for the Respondent

CORAM

HON'BLE SHRI M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 41567/2024

Date of Hearing : 05.11.2024
Date of Decision: 06.12.2024

This appeal filed by the appellant is against Order in Appeal No 18/2015 dated 8.1.2015 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore (impugned order).

2. Brief facts of the case are that the appellant is a manufacturer of anti-rabies human vaccine. They had filed a refund claim for Rs.1,47,423/- on 28.2.2014 being excess duty paid inadvertently for the months of February and March 2013 at the time of clearance from their factory gate to five institutional buyers. On scrutiny of the refund claim, it appeared that the appellant has not produced evidence to prove that the tax element has not been passed on to the buyers. After due process of law, the original authority rejected the entire refund

claim of Rs.1,47,423/- under sec. 11AB of the Central Excise Act, 1944. Against such order, appellant preferred an appeal before Commissioner (Appeals), who vide the impugned order rejected the appeal filed by the appellant. Hence this appeal.

3. Shri M.V. Vishal Sundar, learned Advocate appeared for the Appellant and Shri Harendra Singh Pal, learned Authorized Representative appeared for the Respondent.

3.1 The learned Advocate submitted a table showing cum-duty price as at paragraph 4.4 of Page 8 of the Appeal book. The same is reproduced below:

Central Excise Invoice for clearing goods to C&F agents	Commercial Invoice under which C&F agents cleared the goods to Institutional customers	Price (i.e., Cum- duty value) on which excise duty (@2.06%) was paid at the time of clearance of goods to C&F agents	Rate at which goods were cleared by C& F agents to Institutional customers	Actual Assessable Value on which Excise duty ought to have been paid at the time of clearance of goods to C & F agents (co1umn 3*100/ 102.06)
(1)	(2)	(3)	(4)	(5)
2101200217 dated 08.02.2013	9740121791 dated 26.02.2013	126	126	123.45

Aggrieved by rejection of refund the Appellant preferred an appeal before the First Appellate Authority, which came to be rejected *vide* Impugned OIA on the following grounds:

i. The Appellant cannot submit evidence at the Appellate stage when they had failed to furnish documentary evidence during adjudication stage.

ii. No documentary evidence had been produced to show incidence of duty had not been passed to the consumers as per Section 11B of the Excise Act.

The Ld. Advocate stated that;

- The Appellant discharged excise duty @ 2.06% on the goods cleared to various agencies and customers but in the case of supply for institutions, they enter into an agreement on a price (i.e, Cum- duty value) agreed upon by both the parties for a fixed period of time;
- The duty has been worked out and paid on the total value (i.e, the cum duty value) agreed upon for the supply of goods instead of the actual assessable value.
- The refund claim is within limitation.
- The excess duty paid by the Appellants was verified with the invoices and found to be in order.
- The price agreed upon by the claimant for the supply of goods is cum-duty price i.e, price inclusive of excise duty.
- Free supplies were made out of duty paid stocks held at C&F agents.
- They have submitted Certificate from their Chartered Accountant at the appellate stage, wherein it was certified that the Appellant had indeed paid excise duty on cum-duty value at the time of clearance of goods to C&F agents and that no incidence of duty has been passed on to the consumers. This did not involve any fresh evidence as it was only a consolidation of their clearance details as done by their CA to facilitate verification and to further strengthen their claim.

He prayed that the impugned order be set aside and their appeal be allowed.

3.2 The Ld. AR stated that;

i. There is no mention about the exact quantum of other taxes viz., VAT, Additional. Tax, Octroi in order to calculate duty element as contemplated under section 4(1) of the Central Excise Act, 1944.

ii. No proper explanation has been provided as to whether the selling price of the final product has taken into account free supply of vials for the cum duty price.

iii. Documentary evidence was not produced to show that the excess duty paid was not passed on to others as required under section 11B (1) of Central Excise Act, 1944

iv. The Appellant cannot submit evidence at the Appellate stage when they had failed to furnish documentary evidence during adjudication stage.

He prayed that the appeal may be rejected.

4. I have gone through the appeal memorandum and connected papers and have heard both the parties to the dispute. The dispute relates to the claim of refund for excess duty stated to have been paid inadvertently by the appellant for the months of February and March 2013 at the time of clearance from their factory gate. The appellant states that they clear goods to institutions, as per a Cum-duty value agreement wherein the price is inclusive of excise duty only. VAT etc gets paid only on clearance by their C&F agents to the consumers and no duty other than excise duty is paid on cum duty value by the Appellant at the time of clearance of goods from the factory to the C&F agents.

5. They had submitted excise invoices, commercial invoices and the extract of month-wise PLA for the impugned period along with the refund application and have explained in detail that no incidence of duty has been passed on to the customers. Hence the claim that no documentary evidence i.e, ledger accounts, copy of receipts of payments, had been produced by them is not true. Their claim can be corroborated with the commercial invoices which had been issued by them to the consumers and a copy of which was enclosed with the refund claim.

6. Further at the Appellate stage, to further strengthen their claim they have submitted Certificate from their Chartered Accountant wherein it was certified that the Appellant had indeed paid excise duty

on cum-duty value at the time of clearance of goods to C&F agents and that no incidence of duty has been passed on to the consumers.

7. As regards the findings on free supply of vials made to M/s Kerala Medical Services Corporation Limited a doubt was raised in the impugned OIA that it is not clear whether selling price of the final product has taken into account the free supplies for the cum-duty price. The Ld. Counsel stated that in respect of all transactions referred to in the refund claim, first goods are cleared on payment of duty on cum duty value to their own C&F agents. From there, goods are supplied to intended customers under cover of a commercial invoice. Thus, all goods supplied by C&F agents were duty paid and free supplies were made out of duty paid stocks held at C&F agents. Hence, excess excise had also been paid on the free samples that have supplied by the Appellant and duty paid on such samples have not been passed on to the customers.

8. While it is true that new evidence is normally not allowed at the appeal stage, the C.A.'s statement is only a summation of the details in the appellants record already submitted to the department. Its use will only help answer the query's raised. In fact it is a department prescribed document for the sanction of refunds.

9. Further what the appellant is claiming is only a double payment of excise duty which could easily have been verified from the invoices and the price agreed for sale, to the institution buyers. The appellants claim that since the excise duty alone was paid for the second time at the factory gate there was no mention about the exact quantum of other taxes viz., VAT, Additional. Tax, Octroi since no such deduction was being claimed from the cum-duty price and these taxes were being paid only on clearance by their C&F agents to the consumers, is also

plausible and easily verifiable. That no samples were being cleared without payment of duty could have been examined from the appellants records and invoice. The buyers having agreed to a pre-determined cum-duty price the chance of passing on the excise duty to them is remote. Denying substantive benefits on technical grounds needs to be avoided. Hence all these objections mentioned are not on strong grounds and the issue merits being examined afresh. Considering the time lapse that has occurred the matter requires to be processed expeditiously.

10. This being so the impugned order is set aside and the matter is remanded to the Original Authority for a decision afresh on the refund claim after taking into consideration all the documents submitted by the appellant including the CA's statement and reconciliation sheet / statement. In case any part of the refund is found ineligible, the Original Authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellant should also co-operate with the adjudicating authority in completing the process expeditiously and in any case within ninety days of receipt of this order.

11. The appeal is disposed of accordingly.

(Order pronounced in open court on 06.12.2024)

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

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