CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50827 of 2019

(Arising out of order-in-appeal No. IND-EXCUS-000-App-333-18-19 dated 30.11.2018 passed by the Commissioner (Appeals) Customs, Central Goods and Service Tax and Central Excise, Indore).

M/s Alpha Laboratories Ltd., **Appellant**
33/2, Pigdamber A. B. Road,
Distt-Indore (M.P.) -453446

VERSUS

Commissioner, Central Goods & **Respondent**
Service Tax & Central Goods
Manik Bagh Palace, Post Box No. 10
Indore (M.P.

APPEARANCE:

None for the appellant
Shri P. Juneja, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50389/2020

DATE OF HEARING/DECISION: 24.01.2020

ANIL CHOUDHARY:

The appellant – M/s Alpha Laboratories Limited is a manufacturer of bulk drugs. They have supplied 'Ciprofloxacin Hydrocloride IP' to another manufacturer of 'Ciprofloxacin HCL IP' product, namely M/s MCW health Care (P) Ltd., vide invoice No. 0765 dated 30.11.2015. However, due to oversight, the appellant paid excess excise duty. The actual excise duty was Rs. 1,87,500/-, but the appellant charged Rs. 2,81,250/- i.e. Rs. 93,750/- in excess. The said amount of Rs. 2,81,250/- was paid vide RG-23 part-II entry No. 1013 dated 30.11.2015.

2. Further, on the basis of the invoice issued by the appellant dated 30.11.2015 M/s MCW Health Care (P) Limited took credit in their RG-23 Part-II register vide Entry No. 804 dated 01.12.2015. The appellant subsequently on realising the mistake informed M/s MCW Health Care (P) Limited by their letter dated 14.04.2016 regarding the excess amount of duty charged in the invoice, with request to the said company to debit the excess duty of Rs. 93,750/- and also get a certificate of such debit/ reversal from the Department.

3. On being informed by the appellant M/s MCW Health Care (P) Limited debited the said amount of Rs. 93,750/- in their RG-23 Part-II register with entry No. 43 dated 14.04.2016 and informed the appellant of such reversal vide letter dated 15.04.2016. Further, M/s MCW Health Care (P) Limited approached the department and issued certificate of debit of cenvat credit of Rs. 93,750/- which was issued by the Range Superintendent dated 09.01.2017 certifying that M/s MCW Health Care (P) Limited have reversed cenvat credit of Rs.93,750/- vide debit entry in RG-23 Part-II register. Copy of the said certificate is annexed to the appeal paper book. Thereafter, the appellant approached the department by letter dated 20.05.2017 for permission to take credit of the said amount of Rs. 93,750/-. The Assistant Commissioner vide order-in-original dated 31.07.2018 rejected the refund claim (request of credit on the ground of limitation). Being aggrieved, the appellant preferred appeal before

the Commissioner (Appeals) who was also pleased to reject the appeal, upholding the order-in-original.

4. Being aggrieved, the appellant is before this Tribunal on the ground that the excess amount paid by them is not classifiable as tax or excise duty, rather it is revenue deposit. Further, in case of revenue deposit, the limitation prescribed in Section 11B of the Act is not applicable. Appellant have relied on the ruling in the case of **R. S. Chemicals vs. CCE, Noida – 2017 (353) ELT 247 (Tri. All.)** and in the case of **Satya Prakash Builders Pvt. ltd. vs. CCE, Bhopal - 2018 (8) GSTL 90 (Tri. Del.**) whereunder similar facts and circumstances, appellant have paid tax, was held revenue deposit and accordingly limitation prescribed is not applicable. In view of the facts and circumstances and the certificate issued by the Range Superintendent to the buyer, there is no case of unjust enrichment against the appellant.

5. Learned Authorised Representative appearing for the Revenue relied on the impugned order.

6. Having heard the Authorised Representative and on perusal of record, grounds of appeal and statement of facts, I hold that the excess amount deposited by the appellant is not in the nature of excise duty, but revenue deposit. Further, I find that the law in this case is settled that in case of revenue deposit the limitation prescribed under Section 11B is not applicable. Accordingly, this appeal is allowed and the impugned order is set aside. The adjudicating authority is directed to grant refund in cash in terms of

Section 142(5) of CGST Act, 2017. The appellant shall also be entitled to interest on refund as per rule.

(Dictated and pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

Pant