CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. IV

SINGLE MEMBER

Excise Appeal No. 52046 of 2019

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-424-18-19 dated 25.3.2019 passed by the Commissioner (Appeals), Central Goods & Service Tax, Customs, Central Excise & Service Tax, Bhopal)

Sun Ultra Tech Private Limited **Appellant**
Sector-A, Maharajpura Industrial Area,
Pinto Park Road,
Gwalior-474005.

Versus

Commissioner, Central Goods & Service Tax, Excise & Customs, Bhopal **Respondent**
35-C, GST Bhawan, Administrative Area,
Arera Hills,Jail Road, Bhopal,
Madhya Pradesh-462015

<u>Appearance</u>

Shri Deepak Kumar Bajpai, CA - for the appellant

Shri P. Juneja, DR - for the respondent

CORAM:HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Date of Hearing: 13.02.2020
Date of Decision: 04.03.2020

Final Order No. 50462/2020

Archana Wadhwa :

As per facts on record, the appellant was registered Central Excise assessee and had deposited amount in their PLA for further utilization. However, with effect from 1 July, 2017, the GST provisions were introduced, thus making the deposits in PLA as non-usable. As per the clarification issued by the Board, only the balance in Cenvat could be transferred to GST account and there were no provisions for transfer of PLA amount and the same was available as a refund to the assessee.

2. Accordingly, the appellant filed refund application for refund of amount of Rs. 2 lakhs available as a closing balance in their PLA. After issuance of a show cause notice the refund application stands rejected by the original adjudicating authority on the ground of limitation by observing that the same was filed on 26 June, 2018 i.e. beyond the period of one year from the date of deposit i.e. 4 June, 2018. The order-in-original passed by the Assistant Commissioner stands upheld by Commissioner (Appeals) and hence the present appeal.

3. After hearing the learned Counsel appearing for the appellant as also the learned Authorized Representative, I find that the short issue involved is as to whether the balance lying in the assessee's PLA, which became non-usable with effect from 1 July, 2017 with the introduction of GST regime, is required to be refunded to them or not. The learned Counsel has drawn my attention to the Tribunal's decision in the case of **Fluid Controls Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Pune-I – 2018 (364) ELT 1041 (Tri.-Mumbai)** laying down that PLA deposit is nothing but "duty waiting to be debited" and "not a duty under the Act" and hence limitation provisions would not apply to the same. If an assessee is not able to utilize the said PLA deposit, the depositor is entitled for refund of the same. Admittedly, in the present case such deposits are made by the appellant for utilization

in future. In case the same could not be used on account of introduction of GST and there being no transitional provision for transfer of such PLA deposit, the same would be refundable to the appellant. The lower authorities have taken the deposit of the same as the relevant date and since the application stands filed after a period of one year from the date of deposit, they have rejected the same on the ground of limitation. Apart from the fact that limitation provisions are not applicable, it is also seen that such refund becomes admissible only with effect from 1 July, 2017 and not before that. The refund application having been filed on 26 June, 2018 is required to be considered as having been filed before the period of one year as the cause of action arose only on 1 July, 2017.

4. As such, in view of the foregoing, I find no justification for denial of the refund. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief to the appellant.

(Pronounced in open Court on 04.03.2020)

(Archana Wadhwa)
Member (Judicial)

RM