

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH Court No. III

EXCISE APPEAL NO. 52924 of 2019

[Arising out of Order-in-Appeal No.CC(A) CUS/D-II/ICD/IMP/TKD/13-14/2019-20
dated 08.04.2019 passed by the Commissioner of Customs (Appeals) & Delhi]

**RAYBAN SUN OPTICS INDIA ... APPELLANT
PVT . LTD.**

Plot No.810-811,
RIICO Industrial Area, Bhiwadi
District Alwar, Rajasthan

VERSUS

**COMMISSIONER OF CENTRAL ... RESPONDENT
EXCISE & CGST,
A Block, Surya Nagar,
Alwar 301001 (Raj)**

APPEARANCE

Shri B L Yadav, Advocate for the Appellant
Ms Tamanna Alam, Authorised Representatives for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

**DATE OF HEARING : MARCH 23, 2021
DATE OF DECISION : 29.06. 2021**

FINAL ORDER NO. 51613 / 2021

PER MS. RACHNA GUPTA

The appellant herein is engaged in manufacturing of sunglasses and spectacle frames and have been falling facility of cenvat credit. Vide Show cause notice No. 5060 dated 18.05.2004 the demand of Rs. 16,89,669/- along with interest and equal penalty was proposed observing the violation of Rule 3, 4 and 7 of

Cenvat Credit Rules. the said proposal was initially confirmed vide Order-in-Original No. 67/104 dated 21.10.2004. The appeal thereof was dismissed vide Order-in-Appeal dated 01.03.2005. When the said order was assailed before this Tribunal, vide Final Order No. A/380/2012-Ex(BR) dated 31.03.2012, the demand and penalty was set aside. Department filed an appeal before Hon'ble High Court against the CESTAT order. However, vide order dated 21.04.2017, the department's appeal was dismissed due to monetary limit being less than Rs.15 lakh. It is thereafter that the refund claim was filed on 19.02.2018 about the sum of Rs.16,89,669/- as was deposited by the appellant vide TR 6 Challan dated 08.02.2003. However, vide Show cause notice No. 556 dated 13.04.2018, it was observed that the said refund claim would have been filed within the one year of Final Order of CESTAT dated 31.03.2012, same being the relevant date. Accordingly, rejection of the refund was proposed vide the said show cause notice. The said proposal was confirmed initially vide Order-in-Original No. 99/2018 dated 11.10.2018 and the refund claim was rejected as being barred by time. In appeal, the said findings were upheld. Being aggrieved the appellants are before this Tribunal.

2. I have heard Shri B L Yadav, learned Counsel appearing for the Appellant and Ms Tamanna Alam, learned Authorised Representatives appearing for the Department.

3. Learned Counsel while relying upon the decision of Hon'ble High Court of Allahabad in the case of **Kisan Cooperative Sugar Factory Ltd. vs. Commissioner of Central Excise** reported as **[2018 (8) GSTL 365 (All)]** has impressed upon that amount liable to be refunded along with interest to the assessee excluding period for which assessee had not applied from date it became liable to be refunded. It is submitted that limitation of one year period from the relevant date under section 11B (1) of Central

Excise Act, 1944 is not applicable to the deposits made during investigation. It is submitted that the learned Commissioner wrongly relied on the decision of the Hon'ble Apex Court in the case of Dena Snuff (P) Ltd. vs Commissioner of Central Excise, Chandigarh [2003 (157) ELT 500 (SC)]. It is submitted that date of decision of High Court is the relevant date for the claim of refund order under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed.

4. On the other hand, it is submitted on behalf of the department that the appellant became entitled for the impugned refund after the Final order of CESTAT dated 31.03.2012. Hence, the impugned refund would have been filed within one year thereof. The refund is filed in the year 2018 is substantially beyond the period of limitation. As such, no infirmity has been committed by Commissioner (Appeals) while passing the impugned order. Appeal is accordingly, prayed to be dismissed.

5. After hearing the parties and perusing the entire record, it is observed and held as follows:

Apparently and admittedly, the appellant filed the refund claim on 19.02.2018. The refund was claimed on an amount as was deposited by him during investigation and which was ordered to be appropriated vide Order-in-Original dated 21.10.2004. No doubt the Final order of the CESTAT dated 31.03.2012 had set aside that appropriation entitling thereby the appellant for refund of the said amount. It is also an apparent fact on record that the aforesaid order entitling the refund to the appellant got challenged by the Department. Accordingly, what is to be adjudicated is—"what should be the relevant date from which the period of one year is to recon for the impugned refund?"

Relevant provisions of refund is section 11B of Central Excise Act. Second proviso of (2) to section 11B specifically provide that limitation shall not apply where no duty has been paid under protest. Hon'ble Supreme Court in the case of **Mafatlal Industries Ltd. vs. Union of India** reported as **[1997 (89) ELT 247 (SC)]** has clarified that when the duty is paid under the order of Court, pending the appeal / reference/ writ petition, it will certainly be payment under protest. In such a case, it is obvious, it would not be necessary to lodge the protest as is otherwise provided under the Rules. Since the appellant has challenged the amount which got deposited by him during investigation, the protest is very much lodged on his part not as a party to such decision, the plea of limitation should not debar his claim. However, coming to mote controversy herein, since one year of limitation of refund, from the relevant date, definition thereof becomes important. Same is defined under section 11B itself.

SECTION 11B. Claim for refund of duty. -

(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [six months] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :]
[Provided further that] the limitation of [six months] shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

- (a)
- (b)
- (c)
- (d)
- (e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

(f)

(3)

(4) ...

(5) For the removal of any notification issued under clause (f) of doubts, it is hereby declared that the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

[*Explanation.* - For the purposes of this section, -

(A)

(B) "relevant date" means, -

(a) ...

(i) ...

(ii) ...

(iii)

(b)

(c)

(d)

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]

in the case of goods which are exempt from payment of duty

(eb)

(ec)

6. The aforesaid provision makes it abundantly clear that it is the date of judgement as consequence whereof the amount became refundable. No doubt, the CESTAT's Final order is of 31.3.2012, vide which the amount/duty paid by the appellant was made refundable but the Department opted for continuation of the said litigation by filing an appeal before the High Court. Once that option got exercised, the final judgement about entitlement of appellant to have the refund of said amount/duty paid, is the judgement announced by High Court in the said appeal. Since the said appeal of the Department was dismissed by Hon'ble High Court on 21.04.2017 irrespective of technical ground, the fact remains

that entitlement of the appellant to refund of duty paid got finalised only on 21.04.2017 hence the relevant date under section 11B(ec) is none but 21.04.2017. Refund claim is filed on 19.02.2018 which, therefore, is very much within one year thereof, hence, wrongly been held to be barred by time. Accordingly, I set aside the findings arrived upon by the Commissioner (Appeals). As a result, appeal stands allowed.

(Pronounced in the open Court on 29.06. 2021)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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