CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No.52739 of 2018 (SM)

[Arising out of Order-in-Appeal No.211-212(SM)CE/JPR/2018 dated 27.04.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jaipur]

M/s. KEC International Ltd. **Appellant**
14-15, Industrial Area,
Jhotwara, Jaipur.

VERSUS

Commissioner of Central Excise & Central Goods and Service Tax, **Respondent**
NCR Building, Statue Circle, C-Scheme,
Jaipur (Rajasthan).

APPEARANCE:

Shri Alok Kumar Kothari, Advocate for the appellant.
Shri Pradeep Gupta, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51712/2021

DATE OF HEARING/DECISION:26.07.2021

ANIL CHOUDHARY:

Heard the parties.

2. Ld. Authorised Representative for the Department raises preliminary objection stating that in view of the ruling of the Hon'ble Supreme Court in the case of **Singh Enterprises,** and also relying on the ruling of the Hon'ble Supreme Court in the case of **Bharat Nandlal Kalyani – 1997 (94) ELT K251 (SC),** admittedly the appeal was filed before the Commissioner (Appeals) beyond the period of 90 days and hence the Commissioner (Appeals) has rightly dismissed the appeal for lack of power to condone the delay. Accordingly, he states that this Tribunal should not interfere in the matter and dismiss the appeal *in limine.*

3. Ld. Counsel for the appellant points out that the only prayer in the appeal was for rectification due to mistake of law committed by Dy. Commissioner in the order-in-original. The Dy. Commissioner while passing the order-in-original date 11.07.2017 has rightly sanctioned the rebate of Rs.28,04,687/- under Notification No.19/2004-CE read with Rules 18 of CER read with Section 11 B of the Act. Thereafter, he adjusted the recoverable interest of Rs.8,12,603/- and disbursed the balance of Rs.19,92,084/- in cash.

4. It was further ordered that rebate of excise duty of Rs.4,87,015/- paid on the exported goods, was also held to be refundable. However, as per Section 142 (3) of CGST Act under Transitional Provisions, ***" Every claim for refund filed by any person, before, on or after the appointed day, for refund of any amount of CENVAT Credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11 B of the Central Excise Act, 1944 (1 of 1944):"***, the Department was required to grant cash refund, but erroneously the Dy. Commissioner ordered the amount to be credited in the Cenvat Credit Account. Thus, there is mistake of law, which is apparent on the face of the record.

5. Accordingly, the ld. Counsel prays that the order-in-original be modified to correct the mistake of law, with the direction to grant cash refund under the Transitional Provisions of CGST Act.

6. Ld. Departmental Representative for the respondent/Department relies on the impugned order.

7. Having considered the rival contentions, I find that a simple rectification petition before the Adjudicating Authority could have been sufficient pointing out to the Transitional Provisions for granting of cash refund. However, CGST regime was brought into force w.e.f. 1.7.2017 and there was lots of confusion and lack of knowledge, both on the part of the Departmental Officers as well as the assesses.

8. In this view of the matter, I entertain this appeal for doing justice to the appellant. I further find that the delay before the Commissioner (Appeals) was of 282 days and there are no deliberate latches on the part of the appellant. The delay is apparently caused due to confusion prevailing, being the initial period of CGST regime.

9. Accordingly, the appeal is allowed and the order-in-original is modified directing the Adjudicating Authority to grant cash refund of Rs.4,87,015/- with interest from the date of sanction till the date of disbursement, as per Rules.

10. The cost is imposed on the appellant of Rs.10,000/- to be paid to the UNICEF and compliance report to be filed before the Registry within 2 months, by **30.09.2021.**

11. A copy of this order may be kept in the record of appeal No.E/53489 of 2018 (SM).

12. Appeal is allowed.

[Order dictated and pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.