CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50082 of 2020 [SM]

[Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-195-19-20 dated 22.11.2019 passed by the Commissioner(Appeal), Central Excise & Customs, Indore]

M/s. Jaideep Ispat & Alloys Pvt. Ltd. **...Appellant**
Plot No.909-D, Sector-III
Pithampur, Distt. Dhar

VERSUS

Commissioner of Customs,
CGST, Central Excise & Customs, Indore **...Respondent**

APPEARANCE:

Mr. Surabhi Sinha, Advocate for the Appellant
Mr.Nagendra Yadav, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION:**13.09.2021**

FINAL ORDER No. 51826/2021

RACHNA GUPTA

The appellant in the present appeal is the importer for heavy and light melting scrap. During the period w.e.f. 04.09.2015 to 27.06.2016 the scrap has been imported through ICD, Pithampur and filed respective bills of entry for assessment and clearance of imported goods at the declared transaction vale based on sales invoices of the suppliers. However, the said transaction value has been rejected. The goods were reassessed on enhanced value. The value of the imported goods was re-assessed by the Department observing the value mentioned in those bills to be lower than the value of import as per the data available in NIDB data. Aggrieved of the said re-assessment, the same was challenged w.r.t all respective Bills of Entry. The final relief came with the decision of Tribunal dated 28 June, 2018 vide which this Tribunal has rejected the re-assessment done by the Department with respect to the scrap imported by the appellant. Since, the appellant had deposited the differential duty post the said re-assessment, after getting this order, the appellant had applied for the refund of Rs.46,82,332/-. However, the Department vide order No.001/2019-2020 dated 22.08.2019 has sanctioned the refund of the amount which was paid in cash. However, rejected the refund for an amount of Rs.19,97,260/- as was paid by way of credit MEIS scripts. The appeal thereof has been rejected vide order dated 195-19-20 dated 22.11.2019. Being aggrieved the said order has been challenged before this Tribunal vide the impugned appeal.

2. I have heard Ms. Surabhi Sinha, ld. Counsel for the appellant and Mr.Nagendra Yadav, ld. Departmental Representative for the Revenue.

3. It is submitted on behalf of ld. Counsel for the appellant that the refund for an amount as was paid vide MEIS scripts has been rejected despite that there has been ample case law to the effect

that the amount which stands credited under the scripts is as good as an amount in cash and the assessee is entitled for the refund thereof. Ld. Counsel has also brought to the notice that even the Department in appellant's own case for the similar refund about similarly reassessed duty for subsequent periods has been decided. The copies of said orders dated 17.09.2020 and 20.03.2021 have also been produced on record.

3.1 Ld. Counsel has relied upon the following case laws:-

1. **CC & CEX, Bhopal vs. Executive Engineer (Workshop Div.) reported in 2018 (12) GST 285 (M.P.)**
2. **Union of India vs. Slovak India Trading Co. Pvt. Ltd. reported in 2006 (201) ELT 559 (Kar.)**
3. **Union of India vs. Slovak India Trading Co. Pvt. Ltd. reported in 2008 (223) ELT A170 (S.C.)**
4. **K.G. Denim Ltd. vs. CESTAT, Chennai reported in 2017 (7) GSTL 422 (Mad.)**
5. **CC, ICD, TKD, EXPORT, NEW DELHI VS. Sel Manufacturing Co. Ltd. reported in 2019 (369) ELT 1287 (Tri.-Del.)**

to submit that even the refund of the amount as was paid by way of MEIS scripts irrespective those got expired is to be refunded in cash. Order accordingly, is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned D.R. has impressed upon that the entire case law as relied upon by the appellant is with respect to the amount which stood credited towards Department in DEPB scripts but the scripts involved herein are MEIS scripts, hence, the case law referred is not relevant nor applicable for /upon the facts of the present case. Learned D.R. has impressed upon the said justification as being given by Commissioner (Appeals) in para 8 & 9 of the order under challenge. Impressing upon the justification of those findings ld. DR has prayed for the dismissal of the present appeal.

5. After hearing the rival contentions and perusing the entire record as well as perusing the decisions relied upon I observed and hold s follows:-

The moot question to be adjudicated in the present appeal is as to whether the duty which was paid by the appellant by using MEIS scripts can be refunded in cash or not:

5.1 From the decisions referred upon by the appellant, I observe that the issue is no more *res-integra*. Hon'ble High Court of Calcutta in the case of **Ronak Optik India vs. Union of India** reported in **2016 (331) ELT 537 (Cal)** has held that:

> *"Where an assessee is entitled in law to refund of tax paid, it is immaterial whether the payment is in cash or by debit of 'DEPB'. The right to refund is not lost by reason of the 'DEPB' Scheme. ......Even assuming there was delay, the*

delay is condonable. The respondents have themselves sanctioned refund /… duty drawback in respect of the duty paid through demand ….. The Customs authorities cannot make importers and exporters run from pillar to post. Three years have already expired since the application for refund has been made."

5.2 This Tribunal also in the case of **Commissioner of Central Excise, Delhi vs. Sun Pharmaceutical Industries reported in 2018 (11) GSTL 326 (Tri.- Del.).** It has been held that the credit which stands deposited with the Department is required to be refunded to the assessee in cash on the simple ground that the same was not recoverable from the assessee at all. This decision has made emphasis upon the decision of Larger Bench of this Tribunal in the case of **Steel Strips vs. Commissioner reported in 2011 (269) ELT 257** has been distinguished in this case and the Tribunal while referring the decision of Hon'ble Supreme Court in the case of **Union of India vs. Slovak Trading India Pvt. Ltd. reported as 2008 (223) ELT A170 (S.C.)** has allowed the refund to the assessee therein in cash which was otherwise paid in the form of creditable strips. I observe from the case law as referred by ld. Counsel for the appellant that Hon'ble Supreme Court in **Slovak India (Supra**) case has "accepted the reliance of decision on several other decisions as follows:-

1. Eicher Tractors v. CCE, Hyderabad reported in 2002 (147) E.L.T. 457 (Tri.-Del.)

2. Shree Prakash Textiles (Guj.) Ltd. v. CCE, Ahmedabad reported in 2004 (169) E.L.T. 162 (Tri.-Mumbai)
3. CCE, Ahmedazbad v. Babu Textile Industries reported in 2003 (158) E.L.T. 215 (Tri.-Mumbai); and
4. CCE, Ahmedabad v. Arcoy Industries reported in 2004 (a70) E.L.T. 507 (Tri. – Mumbai)

has held that the assessee is entitled to refund of the amount deposited which no more remains his liability towards the Department. It was clarified that refund claim for unutilized Cenvat/Modvat Credit is eligible and refund is to be made in cash when assessee goes out of the scheme. In that case the reason for opting out of the scheme was closure of the factory in the present case the reason for seeking refund is the decision in favour of the assessee rejecting the reassessed value thereby entitling the assessee appellant herein to claim the refund of differential duty as was paid at the time of re-assessment.

6. As brought to the notice even Department itself has differed from the opinion as has been taken by learned Commissioner (Appeal in the order under challenge. The two subsequent orders of the Department bearing No.052-2020-21 dated 17.09.2020 and 03/20-21 dated 20.03.2021 wherein also the issue decided is "whether the adjudicating authority was right in allowing the refund by way of re-credit or the refund should have been allowed in cash. The Department has accepted the contention of the assessee therein that the duty payment made by using MEIS scripts is same as payment made in cash and accordingly, the

refund in cash has been allowed to the assessees in both those cases.

7. Learned DR though has impressed upon that MEIS scripts and the credit lying there-under is different from the credit lying under DEPB Scheme but that issue also stands decided by this Tribunal only in the case of **CC, ICD, TKD, Export, New Delhi vs. Sel Manufacturing Co. Ltd. reported in 2019 (369) E.L.T. 1287 (Tri.-Del.)** wherein the issue of allowing the cash refund of payment made rather through DEPB Scripts was under consideration. It was held that DEPB Scripts are again the similar scripts under which the money of the assessee stands credited for his future liabilities and once there remains no more liability that amount is to be refunded to the assessee that too in cash. Similar view has earlier being taken by this Tribunal in the case of **Allen Diesels India Pvt. Ltd. reported in 2016 (334) ELT 624 (Del.).** Both these decisions have been relied upon by the Department itself in the appellant's own case for the Bills of Entries as have been submitted for the succeeding periods and the additional duty was deposited post re-assessment of those bills through which the appellant was made entitled for the refund by the Tribunal rejecting the said re-assessment. In view of this observation, I do not find any contention in the submissions put forth by ld. D.R. Commissioner (Appeals) is also observed to be miserably silent about citing any reason for which the DEPB scripts shall be considered as different from any MEIS scripts as far as the issue of refund of amount lying credited vide those scripts to

concerned. To my opinion both scripts are creditable scripts hence there is no difference in the two at least for the nature of money lying credited therein and the utilization else refund thereof is concerned.

8. In view of entire above discussion, the order under challenge is hereby set aside. Appeal consequently stands allowed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita