CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.

Excise Appeal No.50262 of 2019

[Arising out of Order-in-Appeal No.1281(CRM)CE/JDR/2018 dated 19.11.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

M/s. J.K. Cement Works **Appellant**
Unit: J.K. Cement Ltd.,
Kailash Nagar, Nimbahera,
Chittorgarh,
Rajasthan.

Versus

Commissioner of Central Goods & Service Tax, **Respondent**
142-B, Hiran Magri, Sector No.11,
Udaipur (Rajasthan).

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the appellant.
Shri Ravi Kapoor, Authorised Representative for the respondent/Department.

CORAM:

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

FINAL ORDER NO.51896 /2021

DATE OF HEARING/DECISION:14.10.2021

ANIL CHOUDHARY:

The issue involved in this appeal is whether the Commissioner (Appeals) has rejected the refund claim in accordance with law.

2. The brief facts are that the appellant is a manufacturer of cement. In the normal course of business, they took cenvat credit on input, input services, capital goods etc. The Revenue had raised objection vide show cause notice dated 16.09.2005 relating to the period October, 2004 to March, 2005 for availing the cenvat credit taken of Rs.16,91,290/- on the items like sheet steam jointing and sheet cork and lining plate, HRCS and

cast items. Pending adjudication, the appellant reversed the cenvat credit of Rs.16,91,290/- vide reverse entry no.925 dated 29.10.2005.

3. The Adjudicating Authority vide Order-in-Original dated 30.11.2005, allowed the cenvat credit in dispute.

4. Being aggrieved, the Revenue challenged the order-in-original before the Commissioner (Appeals) for an amount of Rs.16,80,290/-. The Commissioner (Appeals) vide order-in-appeal dated 14.03.2017 was pleased to reject the appeal of Revenue and upheld the allowability of the credit in dispute.

5. Accordingly, the appellant on being successful in appeal applied for refund of the cenvat credit reversed earlier of Rs.16,91,290/-, on 11.05.2017.

6. The said refund claim was rejected vide order-in-original dated 9.8.2017 passed by the Asstt. Commissioner, observing that the demand was dropped vide order-in-original dated 30.11.2005. It is observed that the appellant should have filed refund claim within one year from the date of issue of the order-in-original. The appellant relied on Section 11 B, clause (ec), sub-section (5), wherein it is provided that when the duty becomes refundable as a consequence of the order of the Adjudicating or Appellate Authority, the refund has to be filed within a period of one year from the said date (the date of issue of Order-in-Original). The Adjudicating Authority observed that the refund claim should have been filed within one year from the date of issue of order-in-original and accordingly, rejected the refund claim as time barred. Being aggrieved, the appellant preferred appeal before

the ld. Commissioner (Appeals), who vide impugned order-in-appeal has been pleased to reject the appeal, upholding the rejection of refund claim.

7. Assailing the impugned order-in-appeal, ld. Counsel states that under the facts and circumstances, the Department being in appeal before the Commissioner (Appeals), the refund claim would have been pre-mature, as first appeal in Revenue matters is as an extension of the adjudicating proceedings, as the powers of the Commissioner (Appeals) are co-terminous with that of the adjudicating authority. Accordingly, refund application filed within two months from the date of the order-in-appeal, is well within time. Further, it is evident from the facts on record that the amount of cenvat credit under dispute was reversed under protest, as the said reversal was during the pendency of the adjudicating proceedings and appellant had contested the show cause notice.

8. Ld. Departmental Representative relies on the impugned order.

9. Having considered the rival contentions, I find that the reversal of cenvat credit on 29.10.2005 was under protest, *ifso facto,* as the same was reversed during the pendency of the adjudication proceedings and the appellant had contested the amount in dispute. I find that the refund claim is within time as the same is filed within 2 months from the date of order-in-appeal.

10. Accordingly, this appeal is allowed and the impugned order is set aside. The adjudicating authority is directed to grant refund of the said amount in cash, as required under the Transitional Provisions of CGST Act, and is further directed to pay interest @ 12 p.a. from the date of reversal of

the cenvat credit amount till the date of payment, (as per Section 35 FF, which provide for interest from the date of deposit till the date of refund).

11. Further, litigation cost of Rs.10,000/- is also directed to be paid by the department to the appellant. Accordingly, the appeal is allowed.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.