CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 50832 of 2020 [SM]

[Arising out of Order-in-Appeal No. 04/CI/DLH/2020 dated 16.03.2020 passed by the Commissioner (Appeals-I) CGST, New Delhi]

M/s.Nikhil Thermoplast Ltd. **...Appellant**
M-15, Badli Industrial Area,
Phase-I, New Delhi-110042.

VERSUS

Commissioner of CGST, New Delhi **...Respondent**
Central Goods and Service Tax, Delhi North
CR Building, IP Estate, New Delhi

APPEARANCE:

Ms.Vibha Narange, Advocate for the Appellant
Mr. Mahesh Bhardwaj, Authorised Representative for the Respondent

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

DATE OF HEARING:19/08/2021
PRONOUNCED ON:28/10/2021

FINAL ORDER No. 51909/2021

RACHNA GUPTA

The present appeal has been filed to assail the order in appeal No. 04/CI/DLH/2020 dated 16.03.2020. The relevant facts for the adjudication are as follows:-

2. The appellants are engaged in the manufacture of TPR compound. A massive fire accident occurred in their factory premises on 28.04.2008 destroying the entire stocks, plant &

machinery and records. An amount of Rs.33,02,559/- was proposed to be recovered vide Show Cause Notice dated 03.02.2012 as an amount of excise duty on the goods destroyed in the fire. The said demand was initially confirmed and the confirmation was upheld vide Order-in Appeal dated 20.12.2013. An appeal was preferred against this order before CESTAT, New Delhi was allowed vide order No. A/50733 dated 19.02.2018. Pursuant to the said order that an application for refund of Rs.13,96,738/- was filed by the appellant on 06.04.2018. The said application was though initially rejected by the order dated 17.12.2018 but the said order was set aside by Commissioner (Appeals) vide order dated 01.04.2019. The said refund of Rs.13,96,738/- was finally sanctioned in favour of the appellants vide Order No. 04/2019-20 dated 3rd June, 2019. The appellant, however has filed an application for grant of interest on the said sanctioned amount from the date of payment of the amount i.e.24.05.2012 till the date of order for the payment i.e. 03.06.2019. The said request was initially rejected vide Order-in-Original No.05/2019-20 dated 06.08.2019. The appeal thereof has been rejected vide the order under challenge. Being aggrieved, the appellant is before this Tribunal.

3. I have heared Ms. Vibha Narange, learned Counsel for the appellant and Mr. Mahesh bhardwj, learned Authorised Representative for the Department.

4. It is submitted on behalf of the appellants that interest claim has wrongly been rejected in terms of provisions of Section 11BB

of Central Excise Act, 1944 (CEA). It is submitted that the said section is applicable only in those cases where refund is claimed against the payment of duty and not against the deposit made under protest. The deposit by the appellant in the present case was under protest. The order under challenge is prayed to be set aside and appeal is prayed to be allowed.

5. Per-contra, it is submitted by learned D.R. that the deposit in the present case was not made under protest. Hence, the arguments of the appellants are not applicable to the facts and circumstances of the present case. It is impressed upon that the refund has been sanctioned within the period of three months as is mentioned in Section 11B/11BB of CEA. There is no infirmity in the order. Appeal is accordingly prayed to be dismissed.

6. After hearing the parties and perusing the entire records, I found that in the present case initially a demand of Rs.33,02,559/- as an amount of Central Excise Duty on the goods destroyed in the fire accident in the premises of the appellant was confirmed. During the pendency of the adjudication of the said demand, the accounts of the appellant for the period 2008-09 to 2010-11 were audited. Pursuant to the directions of the Audit that the appellants reversed the Cenvat Credit of Rs.13,96,738/- vide RG-23 A on 24.05.2012 which was an amount attributed to the inputs for the finished goods lost in the fire accident. I find nothing on record to hold that the said amount was paid under protest by the appellant. Since, there is no protest for the demand of Excise Duty on the goods destroyed, for this reason

also, there is no reason to hold that the impugned amount of Rs.13,96,738/- which was an amount for the inputs for the goods lost in the said fire, was not the amount of duty paid. This observation is sufficient to falsify the submissions of the appellant. No doubt, the said reversal of Cenvat Credit was set aside by this Tribunal vide its order dated 19.02.2018 but the fact remains that the application to claim the said refund of Rs.13,96,738/-, as is required under Section 11B of CEA was filed by the appellant on 06.04.2018 and the refund was sanctioned on 03.06.2019. This perusal is sufficient to hold that the refund was sanctioned within three years of the application seeking the said refund. These facts, to my opinion, are sufficient to hold that appellant is not at all entitled for the interest that too, from the date of payment of the amount i.e. 24.05.2012. The interest from the date of application also is not required to be paid for the reason that the refund was sectioned within three months as already held above.

7. In view of this discussion, I do not find any infirmity in the findings given by Commissioner (Appeals). Order, accordingly, is upheld. Appeal resultantly, is dismissed.

[Order pronounced in the open Court on 28.10.2021]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita