CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50763 of 2020-SM

(Arising out of order-in-appeal No. 06(SM)/CE/JPR/2020 dated 31.01.2020/06.02.2020 passed by the Commissioner (Appeals) Central Excise & CGST, Jaipur)

M/s Rajasthan Transformers & Switchgears **Appellant**

(A unit of RTS Power Corp. Ltd.,)
C-174, Road No. 9J, VKI Area
Jaipur (Rajasthan).

VERSUS

Commissioner, Central Goods and Service Tax, Central Excise **Respondent**

NCRB, Statue Circle, C-Scheme
Jaipur.

APPEARANCE:

None for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50413/2022

DATE OF HEARING/DECISION: 29.04.2022

ANIL CHOUDHARY:

The issue in this appeal is whether the appellant is entitled to refund of Rs.15,90,624/- being Central Excise duty deposited on excisable goods cleared in the month of June, 2017, which were rejected by the buyer and same were finally returned back in January, 2018.

2. Brief facts of the case are that the appellant filed a refund claim of Rs. 15,90,624/- on 30.10.2018 in Form-R, meant for application for refund of Central Excise duty paid by the appellant on the goods cleared by them under Central Excise invoices issued under Rule 11 of the Central Excise Rules, 2002, but the goods so cleared by the appellant under Central Excise invoices were 'returned back' from the unregistered buyer, under Section 142(1) of CGST Act, 2017. It was stated that the said goods were cleared to M/s Technofab Engineers Ltd., New Delhi under Central Excise invoices in the month of June, 2017, on payment of Central Excise duty. It was stated that the buyer absolutely denied accepting the transformers and cancelled purchase orders, therefore after failed negotiation, they lifted the material in the month of January, 2018, and the excise duty paid by them on said goods amounting to Rs. 15,90,624/- at the time of clearance of goods, was also denied by the purchaser. As such they filed refund claim under the provisions of Section 142 of the CGST Act, 2017. Since the refund claim filed on 30.10.2018 pertaining to goods cleared in the month of June, 2017, and said to have been received back in the month of January, 2018 did not appeared to be in conformity with the provisions of the law, show cause notice was issued to the appellant, which was adjudicated vide the order-in-original whereunder the refund claim was rejected by the Adjudicating Authority.

3. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) inter alia on the following grounds:-

i. That the GST law was new and the provisions/ procedures mentioned therein were not clear and in fact are ambiguous. Most of the departmental officers/ consultants are confused in respect of procedural compliances. Accordingly, the appellant could not file any intimation to the department. Further, the learned Adjudicating Authority failed to consider that, the disputed issue in the above said adjudication order, read with the show cause notice is a subject matter of huge controversy. Therefore, in view of the above submission, that the Adjudicating Authority has manifestly erred in not appreciating the contention of entertaining a bonafide belief of the part of appellant.

ii. The appellant accounted for all these receipts of material (finished goods) and used in manufacture of finished goods and later on, cleared on payment of duty. This fact can be verified from the records of the appellant. Further, since there is no dispute about the receipt of the returned defective goods from the buyer i.e. M/s Technofab Engineers Ltd., New Delhi, which were duly recorded in RG-1 register by the appellant, which is statutory record of the appellant.

iii. Further, the material involved was rejected by the buyer in the month of December, 2017 and the goods were lifted immediately after refusal and failed negotiations.

iv. Further, as per Section 142 of the CGST Act, 2017, there is no procedure required to intimate the Jurisdictional officer in respect of returned goods. However, the returned goods of the appellant are identifiable.

v. As there is no dispute regarding the dispatch of excisable goods to the buyer, duty payment thereon, the other requirements which are procedural in nature, cannot be a reason to deny the appellant their legitimate refund claim. Further, in respect of allegation of deemed supply from M/s Technofab Engineers Ltd., it is submitted that the said allegation relates to M/s Technofab Engineers Ltd., accordingly, the proceedings may be initiated against them.

4. However, the Commissioner (Appeals) was pleased to reject the appeal observing that – the contention that appellant accounted for all receipts (returned goods) is of no relevance. In the present case, since the basic condition of return of goods from a person, other than registered person, and return of goods within the period of six months from the appointed date, are not satisfied. Thus, the appellant cannot be eligible for refund of duty under the provisions of Section 142 of the CGST Act.

5. Being aggrieved, the appellant is before this Tribunal.

6. The appellant is absent on call and was also absent on the previous 4 to 5 occasions inspite of service of notice. From the

record, I find that there is a letter dated 22.09.2021 filed by Sh. Arvind Sharma, Advocate, wherein it has been intimated that supporting documents mainly RG-1 register for the relevant period, are lying with the Department, which were resumed in audit proceedings. In the circumstances, the appeal is taken up for hearing and disposal with the assistance of learned Authorised Representative for the Revenue.

7. Heard Ms. Tamanna Alam, learned Authorised Representative for the Revenue and perused the record. She relies on the impugned order.

8. Perused the statement of facts and grounds of appeal. As the goods were admittedly cleared in the month of June, 2017 when the provisions of Central Excise law was applicable, I examined the provisions under the existing law also, for the sake of reference.

9. Rule 16 of Central Excise Rules, 2002 provides-

> (1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.
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> (2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule

(1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.

Explanation.- The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods".

9. Further, Section 142(1) of CGST Act provides as follows:-

"(3) 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 11B of the Central Excise Act, 1944.

PROVIDED that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse."

10. Thus, it is evident that as per the CGST Act, which is applicable w.e.f. 01.07.2017, provides the following conditions for refund:-

Sl. No.	Condition	How satisfied
1	Goods must have been cleared within a period of six months prior to appointed day.	Yes satisfied, as goods are cleared in June, 2017.
2	The goods are returned to any place of business on or after the appointed day.	Yes. No dispute.
3	The goods are returned by a person other than a registered person.	The buyer of the goods M/s Technofab Engineers Ltd., were not registered under the Central Excise law. However, they are registered under the provisions

		of GST. Hence situation is ambiguous.
4	The goods are returned within a period of six months from the appointed day.	The dispute arose soon after the supply between the parties and correspondence started as early as on 10.07.2017. The buyer has rejected the goods not being as per quality and also damaged in transit. The appellant supplier was insisting on accepting, subject to repairs to be carried on by them. Finally, after series of correspondence in the last week of December, the appellant accepted to take the goods back and thereafter lifted the goods from the premises of the buyer. Request was also made to the buyer to issue invoice for return of the goods consignmentwise, but denied. Thus, there is a delay of a few days, as the six months period ended on 31.12.2017.
5	Returned to the registered premises.	Not disputed under the facts.
6	Identity of the goods.	Not disputed. As in the show cause notice the Revenue has admittedly taken notice of the return of the goods, in the table produced in para 3 of the show cause notice, mentions details like invoice no., date of clearance, description of goods, identification Sl. No. of transformer, quantity and duty paid. Such goods were entered in the RG-1 register (statutory stock register) upon return, which is not disputed. There is no allegation that the goods were not received back or any misgiving on the part of the appellant.
7	In case of goods being returned by registered person will be considered as deemed supply.	The buyer was not registered under the Central Excise provisions, so the appellant have treated the same as goods returned by unregistered dealer.

11. I further find that Section 142(3) of CGST Act provides – 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 Section 11B(2) (unjust enrichment).

12. Thus, from the aforementioned provisions and requirement for refund, I find that the appellant has satisfied all the conditions as required under Section 142(1) read with Rule 16 of Central Excise Rules. Further, there is only some confusion with regard to the status of the buyer returning the goods, whether the registered or not registered. Under the facts and circumstances that the buyer was not a registered dealer under the provisions of Central Excise Act but was registered under the provisions of the GST Act, I hold that the Court below have erred in holding that the goods has been returned by a registered dealer, and hence there should have been proper invoice for return, and in such circumstances, there is no time limit applicable. In such circumstances, the selling dealer/ manufacturer is entitled to cenvat credit under the provisions of GST, on the strength of the invoice for return of goods. I hold that for such deemed lapse in procedure, the substantial benefit of refund of duty paid at the time of clearance cannot be denied to the appellant, as

the appellant have fulfilled all the conditions precedent for being entitled to refund.

13. Accordingly, I allow this appeal and set aside the impugned order. The Adjudicating Authority is directed to grant refund within a period of 45 days from the date of receipt of a copy of this order alongwith interest under Section 11BB of the Central Excise Act. Thus, the appeal is allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

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