CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No.50537 of 2022 –SM

(Arising out of Order-in-Appeal No.143(SM)/CE/JPR/2021 dated 10.12.2021 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur]

M/s. Rishabh Transformers, **Appellant**
G-833, Road No.14, VKI Area,
Jaipur, Rajasthan.

VERSUS

Commissioner of Goods & Service Tax, **Respondent**
NCRB, Statue Circle,
Jaipur-302 005.

APPEARANCE:

Shri Alok Yadav, Advocate for the appellant
Shri Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER No.50496/2022

DATE OF HEARING/DECISION: 30.05.2022

ANIL CHOUDHARY:

This appeal has been filed by the appellant, M/s Rishabh Transformers against Order-in-Appeal No. 143(SM)/CE/JPR/2021 dated 10.12.2021 passed by Commissioner (Appeals), Central Excise & CGST, Jaipur, whereby the appeal filed by the appellant has been dismissed and the Order-in-Original No. 12/Ref/2020 dated 22.05.2020, upheld.

2. Appellant is engaged in the business of manufacture and supply of transformers. Appellant is a small scale unit and availed the benefit of small scale notification no. 8/2003-CE.

3. The brief facts of the case are that during the period 1.4.2009 to 29.11.2011, appellant got a tender to supply transformers to Ajmer Vidyut Vitran Nigam. Since the Appellant did not have the required capacity to manufacture, it got the same manufactured from Rajasthan Transformers Electrical Ltd. (RTE) and received back the same into its factory. Thereafter the same goods were sold on payment of duty under the cover of invoice. Department officers visited the appellant's unit and conducted search. Department was of the view that appellant was selling the transformers without payment of duty. Appellant cooperated with the department and during the investigation deposited an amount of Rs. 10 lakhs on 30.4.2014. Thereafter department issued a show cause notice dated 25.3.2015 to the appellant alleging clandestine manufacture and removal of transformers and demanded duty of Rs. 1,04,23,303/- and also proposed to levy penalty. This demand was contested by the appellant on merits. This Tribunal vide its final order no. A/52000/2018-EX(DB) dated 23.5.2018 allowed the appeal filed by the appellant and set aside the entire demand of duty and imposition of penalty.

4. Thereafter, appellant visited the department on several occasions and sought for refund of the amount of Rs. 10 lakhs paid during investigation, since appellant's appeal had been allowed by this Tribunal, and filed an application for refund of Rs. 10 lakhs. Instead of granting refund to the appellant, department issued a fresh show cause notice dated 21.2.2020 to the appellant that the refund claim of Rs 10 lakhs being the amount paid during investigation be not rejected on the ground of time bar, since it was in the nature of duty. The Deputy Commissioner passed the order in original rejecting the refund on the ground of time bar as per Section 11B of the Central Excise Act, 1944 which has been upheld by the impugned Order in Appeal Dated 10.12.2021.

5. It is urged by the appellant that the amount of Rs. 10 lakhs was deposited at the time of investigation and the same does not have character of duty, and therefore, the same cannot be rejected on the ground of time bar under Section 11B of the Central Excise Act, 1944.

6. Heard the learned counsel for the appellant. The learned counsel for the appellant has submitted that the amount of Rs. 10 lakhs was deposited at the time of investigation and the same does not have character of duty and therefore the same cannot be rejected on the ground of time bar under Section 11B of the Central Excise Act, 1944. It was further argued that the appellant is entitled to interest on this pre deposit amount after three (3) months of the Tribunal's final order no. A/52000/2018-EX(DB) dated 23.5.2018. In support of the same, appellant relied upon the judgments passed in the case of **Principal Commissioner of Customs Vs. H.V Ceramics reported at 2019 (365) ELT 390 (Guj.), LSE Securities Ltd. Vs. Assistant Commissioner reported at 2015 (320) ELT 350 (P&H), Parle AgroPvt. Ltd. Vs. CCE, Noida 2018 (360) ELT 1005 (Trb.),** wherein it has been held that if the amount was deposited pending investigation and culminated in the final order setting aside the demand, then department is duty bound to refund the same, failing which it is also liable to pay interest after 3 months of the date of passing of final order.

7. The learned counsel for the appellant further contended that refund of amount deposited during the investigation cannot be denied on the ground of time bar even if the words 'under protest' are not mentioned while making the deposit. He also stated that it was only an amount deposited, while the issue was subjudice before the department authorities. Even if the order has been passed by any department authority and the same results in a confirmed demand and has been challenged by the assessee before the Appellate Authority, the amount has to be construed as 'under protest' deposit, because the assessee has chosen

not to accept the order confirming the demand but chosen to contest it in appeal. In support of the same, he relied upon the following judgments in the case of **CC, Chennai Vs. Ucal Fuel Systems Ltd. reported at 2014 (306) 26 (Mad), Nissan Copper Ltd. Vs. CCE & ST, Vapi reported at 2015 (329) ELT 843 (Trb) and CCE, Gurgaon Vs. Alcatel Modi Network System Ltd. reported at 2008 (221) ELT 358 (P&H)** wherein it has been consistently held that if the assessee has been contesting the matter challenging the imposition of duty upto Tribunal, then the amount deposited during investigation has be treated as "under protest" deposit only, and accordingly refund of the same can not be rejected on the ground, application not being filed in time i.e 1 year.

8. The Ld. DR for revenue has supported the impugned Order-in-Appeal.

9. Having considered the rival contentions, I find that the amount of Rs.10 lakhs was deposited by the appellant during the pendency of investigation and proceedings, is not duty, fine or penalty, but is to be treated as 'revenue deposit' and the provisions of refund of duty as per Section 11B shall not be applicable to the same. I hold that, the appellant is entitled to refund with interest under Section 35 FF, for which no limitation is applicable. The revenue department cannot retain such amount of Rs. 10 lakhs (in the nature of pre-deposit). Therefore, I direct the original authority to refund Rs. 10 lakhs to the appellant alongwith interest of 12% on the same for the period starting from the date of deposit, till the date of refund. Appeal is allowed as held hereinabove.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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