CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No.50947 of 2021 (SM)

(Arising out of Order-in-Appeal No.RPR-EXCUS-000-APPL-090-20-21 dated 19.03.2021 passed by the Commissioner (Appeals), Central Goods and Service Tax and Central Excise & Customs, Raipur]

M/s. Sindh Ispat **Appellant**
Industrial Area, Rawabhata,
Raipur, Chattisgarh.

VERSUS

Commissioner of Central Goods and Service Tax and Central Excise, **Respondent**
GST Bhawan, Tikrapara,
Raipur (C.G.).

APPEARANCE:

Shri Jitin Singhal, Advocate for the appellant.
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO.50520/2022

DATE OF HEARING/DECISION: 02.06.2022

ANIL CHOUDHARY:

The brief facts are that during the course of investigation/verification of the stock, the appellant deposited an amount of Rs.6,18,198/- on 4.7.2012. Thereafter, show cause notice was issued and vide order-in-original dated 29.03.2016, the demand (on shortage of stock) was confirmed for amount of Rs.31,82,894/-, and the amount of Rs.6,18,198/- deposited during investigation was appropriated, with imposition of equal amount of penalty and interest. Thereafter, the appellant was successful in appeal before this Tribunal and vide Final Order No.A-51676-51678/2018- (SM) dated 4.5.2018, this Tribunal had allowed the appeal. Thereafter, the appellant filed an application for refund on 27.05.2020.

2. The Adjudicating Authority rejected the refund claims holding that the same has been filed after one year from the relevant date i.e. date of the final order of this Tribunal and accordingly, held that the claim is barred by limitation under Section 11B of the Central Excise Act.

3. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals).

4. Vide the impugned order, the Commissioner (Appeals) was pleased to uphold the impugned order.

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

6. Ld. Counsel for the appellant urges that in view of repeal of the Central Excise Act, Section 174 of the CGST Act read with the Saving Clause therein, and read with Section 143 of the CGST Act, it has been provided that all claims and liabilities, assessment etc. for the period prior to 30.06.2017 has been saved. Further, Transitory Provisions under Section 142 (3) & (5) provides that, any refund arising on or after 1.7.2017 under the repealed Act, the refund shall be allowed in cash and the Limitation Provisions under Section 11 B shall not be applicable, Save and Accept the provisions of the unjust enrichment. Accordingly, he prays for allowing their appeal with consequential benefits.

7. Ld. Authorised Representative relies on the impungned order.

8. Having considered the rival contentions, I find that the Court Below has erred in rejecting the refund claim on ground of limitation, as evidently, the court below has failed to take notice of the transitory provisions under the CGST Act, as mentined hereinabove.

9. Accordingly, I hold that the refund claim is not barred by limitation. Accordingly, this appeal is allowed and the impunged order is set aside. I further direct the Adjudicating Authority to grant the refund within 45 days from the date of receipt of this order along with interest under Section 35 FF, @ 12% p.a., as held by the Division Bench of this Tribunal in the case of **Parle Agro Ltd.**

(Order dictated & pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Ckp