CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 51016 of 2020

[Arising out of Order-in-Appeal No. 67(CRM)CE/JDR/2020 dated 11.02.2020 passed by the Commission of CGST (Appeals), Jodhpur]

M/s. Nirmal Products **...Appellant**
Bagol Road, Malio Ki Badi,
Nathdwara, Rajsamand,
Rajasthan - 313301

VERSUS

Commissioner of Central Excise, Jodhpur **...Respondent**
G-105, New Industrial Area,
Opp Diesel Shed, Basni,
Jodhpur, Rajasthan-302003

APPEARANCE:
Shri Jatina Mahajan, Advocate for the Appellant
Shri V.J. Saharan, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 05.06.2025
DATE OF DECISION: **01.10.2025**

FINAL ORDER NO. 51464/2025

DR. RACHNA GUPTA

Present appeal is filed to assail the Order-in-Appeal No. 67/2020 dated 11.02.2020 vide which the Order-in-Original rejecting the refund claim of the appellant being barred by time, has been upheld.

1.1 The relevant facts giving arise to the said decision, succinctly are that the appellant herein in engaged in manufacture of Chewing tobacco. Refund claim of Rs.5,15,118/- dated 28.02.2019 was filed by the appellant under Section 11B of Central Excise Act, 1944. However the refund claim was proposed to be rejected being barred by time vide Show Cause Notice No.18/19/2019 dated 11.10.2019.

The proposal was initially confirmed vide Order-in-Original No. 21/2019 dated 06.11.2019. Appeal against the said order has been rejected vide the impugned Order-in-Appeal. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Jatin Mahajan, learned Counsel for the appellant and Shri V.J. Saharan, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the amount of duty as has been claimed to be refunded was paid under protest. Section 11B itself provides that the time limit for one year shall not apply where the duty and interest have been paid under protest. Accordingly, the order rejecting the claim on the ground of limitation is liable to be set aside on this ground itself. Appeal is accordingly prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative at the outset has reiterated the findings arrived at by Commissioner (Appeals) in the impugned order. In addition, its is submitted that the refund claim was rejected by the adjudicating authority on the ground that appellant has failed to provide the specific evidence to support their contention that the deposit was under protest. It is submitted that the amount was deposited after Commissioner (Appeals) confirmed the demand against the appellant. Hence, the amount may not be called as the one deposited under protest. With these submissions and impressing upon no infirmity in the order under challenge, appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the entire records, I observe and hold as follows:

6. It is observed that initially Assistant Commissioner of Central Excise Division Udaipur vide Order-in-Original No. 273/2005 dated 01.04.2005 had confirmed the demand of Rs.3,97,800/- along with interest and had imposed penalty of Rs.40,000/- on the appellant. Commissioner (Appeals) vide Order-in-Appeal No. 829/2005 dated 28.11.2005 rejected that appeals filed against the said order by the appellant holding it to be barred by time. It is subsequent to the said order that the appellant deposited the confirmed amount of duty along with interest and the amount of penalty imposed vide Challan No. 12 on 29.11.2005. After the said deposit the Order-in-Appeal dated 28.11.2005 was challenged before this Tribunal. Tribunal remanded the matter back to the Commissioner (Appeals). At the second round of litigation also the impugned duty demand was confirmed by Commissioner (Appeals) vide Order-in-Appeal No. 218/2013 dated 31.12.2013. However, the said Order-in-Appeal stands set aside by this Tribunal vide Final Order No. 56436/2017 dated 04.09.2017, allowing the appeal of the present appellant. The present refund claim has been filed in consequence of the said final order of tribunal in favour of the appellant, however under Section 11B of Central Excise Act, 1944.

7. The above observations are sufficient to hold that the amount in question was not the amount deposited under protest. It was the amount of duty deposited after the proposal of demand was confirmed even by the departmental appellate authority. This observation is sufficient for me to hold that proviso to Section 11B

of Central Excise Act, 1944 is not applicable to the amount in question. Resultantly, it is held that the refund claim which otherwise was filed under Section 11B of the Central Excise Act, 1944, should have been filed within one year from the relevant date.

8. The definition of 'Relevant Dates' is also given in the section itself. The explanation (B) sub-clause (ec) thereof defines the relevant date in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellant authority, appellate tribunal or any court, the date of such judgment, decree, order or direction. According to this sub-clause the date of such judgment, decree, order or direction is the date from which the period of one year has to be calculated. It is observed that the final order of this Tribunal, consequent whereto the impugned refund was filed was passed on 04.09.2017. Apparently and admittedly, the impugned refund claim has been filed on 28.08.2019. It is clear that the refund has been filed after expiry of one year from the impugned relevant date (the date of final order of the tribunal).

9. These observations are sufficient for me to hold that the refund claim has rightly been rejected as barred by time. With these observations, I hereby upheld the order under challenge. Consequent thereto, the appeal stands dimissed.

[Order pronounced in the open court on **01.10.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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