CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III

E-Hearing

Excise Appeal No.51206 of 2025

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-311-2024-25 ated 13.03.2025 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

M/s. H. D. Wires (P) Ltd.,
Plot No.17-20, Sector-E, Industrial Area, **....APPELLANT**
Sanwer Road, Indore (M.P.).

Versus

Commissioner of Central Excise & CGST,
142-B, Sector-11, Hiran Magri, **.....RESPONDENT**
Indore (M.P.).

Appearance:
Present for the Appellant : Shri R.K. Ambwani, Consultant
Present for the Respondent: Shri Vishwa Jeet Saharan, Authorised Representative.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

Final Order No. 50836/2026

Date of Hearing/Decision:23.04.2026

BINU TAMTA:

The appellant has challenged the Order-in-Appeal[1] dated 13.03.2025 rejecting the refund application on the ground of limitation.

2. The appellant is a manufacturer exporter of alloy steel coated wires net content of wire rod of steel grade and had obtained advance authorization no5610004883 dated 31.03.2016 for import of wire rod. Due to non-fulfilment of mandatory export obligation, had deposited customs duty including CVD and SAD on the non-utilized quantity of import on 05.04.2022 for closure of advance authorization. Since the customs duty

[1] IND-EXCUS-000-APP-311-2024-25

along with CVD and SAD were paid by the appellant after the roll out of GST, at the time of closure of advance license, they could not avail the Cenvat credit and carry forward the said Cenvat credit through TRAN-1. The appellant believed that their case falls under the purview of Section 142(3) of the CGST Act, 2017, which allows for refund of amounts paid under the erstwhile law (though this was a claim for CENVAT credit). They submitted a refund application to the Deputy Commissioner of Customs (Import-II), Mumbai Customs Zone-1, Central Refund and Receipt Section (CRARS), 5th Floor, New Customs House, Ballard Estate, Mumbai-400001 on 30.09.2023.

3. The application for refund was rejected for want of jurisdiction as refund pertained to cenvat credit and not for the customs duty or interest. The appeal against the order-in-original dated 24.11.2023 was also rejected by the Commissioner (Appeals) vide order-in-appeal dated 15.05.2024 on the ground of lack of jurisdiction.

4. The appellant then filed fresh refund application before jurisdiction of CGST, Indore on 12.07.2024. Show cause notice dated 06.08.2024 was issued proposing rejection of refund claim as being time barred in view of the limitation provided under Section 11B of Central Excise Act, 1944. The Adjudicating Authority considered the issue as to whether the refund claim is barred by limitation and whether the appellant is entitled to refund of CVD and additional duty. On limitation, the Adjudicating authority observed that the appellant had deposited the customs duty including CVD and additional duty on 05.04.2022 and the claim made by the appellant that they had filed refund claim on 21.11.2022, which is well within the prescribed period of one year is not supported by any entry of receipt of submission of refund claim dated 1.9.2022 and the date of initial filing on 30.09.2023 was hit by

limitation. The refund claim was, therefore, held to be time barred and the issue on merits was, therefore, not discussed. The appeal filed against the said order has been dismissed by the impugned order. Hence, the present appeal.

5. Heard Shri R.K. Ambwani, Learned Counsel for the appellant and Shri Vishwa Jeet Saharan, Authoried Representative for the Department and perused the case records.

6. Learned Counsel for the appellant has brought to my notice that the refund application dated 1.9.2022 bears the receipt of Customs Department dated 21.11.2022 and according to him, the said application, therefore, stands duly received with the seal of the Customs Department thereon. From the order of the Adjudicating Authority, we find that he has merely considered that the refund application has been sent by speed post and the appellant has not supported the same by filing the receipt thereof. The submission now made before us, however, seems to be made for the first time and, therefore, the proper course would be to remand the matter to the Adjudicating Authority to consider the same in the light of the submissions now made by the appellant.

7. Learned Authorised Representative has reiterated the findings of the authorities below and has referred to the decision of this Tribunal in the case of **M/s.Rhea Inc. Vs. the Commissioner, CGST, Alwar**[2]**,** where the learned Single Member had considered the refund claim, which was rejected on the ground that the appellant has not complied with the export obligation and also on the ground of limitation. The Bench noticed that the imports were made by the appellant in the year 2010 and due to non-compliance of the export obligation, the appellant paid BCD and CVD in 2019. Taking note

[2] Excise Appeal No.54899 of 2023 –Final Order No.55478/2024 dated 4.4.2024

of the provisions of Section 140 and 142 of CGST Act, being the transitional provisions permitting for tax or duty or refund of an amount or credit lying in stock on the appointed day (01.07.2012), denied the benefit to the appellant on the ground that duty was paid by the appellant after the appointed day and hence, there was no question of impugned credit being available to the appellant under the existing law. In other words, the appellant was not eligible for cenvat credit which has been prayed to be refunded under transitional provisions. The observations of the Bench has been referred as made in para 11 relied upon, which reads as under:-

> **"11. With these observations, I have no reason to differ from the findings of this Tribunal in the case of M/s Servo Packaging Ltd. vs. Commissioner of CGST, Central Excise-Pondicherry, CESTAT Chennai as decided by Final Order NO. 40098 of 2020 dated 05.02.2020** as has also been relied upon by the adjudicating Authority. We accordingly conclude that the amount in question since has been paid after introduction of CGST, Act 2017 but for the Bill of Entry of the year 2010 (dated 10.09.2010) on account of failure of compliance with the export obligation under advance authorization license, the cenvat credit of such duty which is paid under the present CGST Law, cannot be made available to the assessee in the light of the transitional provisions of new CGST, Act."

8. Learned Authorised Representative for the Department has also referred to the miscellaneous order of the Supreme Court in the case of **Principal Commissioner of Customs, Hyderabad Vs. Granules India Ltd.**[3] where the issue of refund has arisen by virtue of duty being paid due to non-compliance of the customs obligations and the Apex Court has directed that the refund order shall not be acted upon. Since the issue on merits directly touches upon the controversy in the present case on which

[3] Special Leave Petition (Civil) Diary No.(s)17834/2025 dated 2.5.2025.

orders have been passed by this Tribunal and cognizance has been taken by the Apex Court, it is necessary that the Adjudicating Authority may consider and record findings in that regard. I am of the view that the Adjudicating Authority may consider both the issues afresh considering the submissions made by the appellant as well as by the Revenue and pass an appropriate order. The impugned order is, therefore, set aside and the matter is remanded back to the Original Authority in terms of the observations made above. The appeal is accordingly allowed by way of remand.

[Operative portion of the order already pronounced in open court]

(Binu Tamta)
Member (Judicial)

Ckp.