IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Appeal No. E/2184, 2185/2011-EX(SM)

[Arising out of Order-in-Appeal No.184-185(DKV)CE/JPR-I/2011 dated 07.06.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur-I].

M/s. Instrumentation Ltd. ....Applicants

Vs.

C.C.E. Jaipur-I ....Respondent

Appearance:

Ms. Rinki Arora, Advocate for the Applicants
Shri M.R. Sharma, DR for the Respondent

CORAM:
Hon'ble Shri S.K. Mohanty, Member (Judicial)

Date of Hearing: 27.12.2016

FINAL ORDER NO. 56495-56496/2016-EX(SM)

Per S.K. Mohanty:

Brief facts of the case are that the appellant had filed two numbers of refund applications, claiming refund of excess central excise duty paid by them. The refund applications were rejected by the authorities below on the ground that duty was not paid under protest and accordingly, the applications are barred by limitation of time in terms of section 11B of the Central Excise Act 1944.

2. The ld. Advocate appearing for the appellant submits that the duty in question in both the cases were paid by the appellant under protest. In terms of the second proviso to Section 11B of the Act, the limitation of one year shall not apply for claiming the refund. To support such stand, the Ld. Advocate has relied on the final order

no. ***A/54765/20166-SM(BR)*** dated 21.10.2016 of this Tribunal in the case of ***DCM Shriram Ltd. Vs. CCE Jaipur-I.***

3. On the other hand, the Ld. AR appearing for the Revenue submits that the Central Excise duty was not deposited by the appellant under protest, and that the requirements provided under Rule 233(B) of the erstwhile Central Excise Rules ,1944 have not been complied with by the appellant. Thus, he submits that the rejection of refund claim on the ground of limitation is proper and justified. He further submits that duty paid under protest in the year 2001 cannot be considered as payment under protest, for the reason that the provisional assessment was finalized on 14.10.2003. Thus, filing of refund application after 7 years from the relevant date, is clearly barred by limitation of time.

4. Heard both the sides and perused the records.

5. The purchase orders placed by BSNL on the appellant for supply of C-DOT MAX XL Exchange equipments, contained price revision clause. The supplies effected during the period 2001, were finalized on 14.10.2003 at a lower price. Since the appellant had paid the duty on the higher assessable value, the amount of excess duty is liable for refund.

6. However, in the present case, the appellant had filed refund application after a lapse almost 7 years, from the date of making payment of such higher amount of duty. The protest letter lodged by the appellant, is not continued after finalization of the price revision clause and consequent determination of final price on 14.10.2003. Thereafter, there was no scope for continuance of such

protest letter. In other words, the refund claim is to be filed within one year from the date of finalization of the provisional price i.e. 14.10.2003. In this case, since the refund claim has been filed on 20.07.2010, the same is clearly barred by limitation of time in terms of section 11B ibid and the protest letter filed by the appellant having lost its significance after final assessment, the benefit of the proviso contained in section 11B, is not available to the appellant.

7. Therefore, I do not find any infirmity in the impugned orders and accordingly, dismiss the appeals filed by the appellant.

[Dictated and Pronounced in the open Court]

(S.K. Mohanty)
Member (Judicial)

Bhanu