

**CUSTOMS EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,**

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 20.07.2017

Date of Pronouncement: 07.08.2017

Appeal No. E/2127/2011-EX[DB]

[Arising out of the Order-in-Original No. 135(CB)CECE/JPR-II/2011 dated 01.07.2011, passed by the Commissioner of Central Excise, Jaipur]

M/s. Nirmal Products (Unit-I) ... Appellant

Vs.

C.C.E. Jaipur ... Respondent

Appearance:

Present Ms. Rinki Arora, Advocate for the appellant
Present Shri Shravan Bansal, DR for the respondent

**Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
 Hon'ble Mr. V. Padmanabhan, Technical Member**

FINAL ORDER No. 55749 /2017

Per V. Padmanabhan:

The appeal is against the order in appeal no. 135/2011 dated 13.06.2011.

2. The appellant is in the manufacturing of chewing tobacco falling under chapter 24 of the Schedule to the Central Excise Tariff Act. The appellant filed the refund claim for Rs.22,52,419/- regarding the excise duty paid in advance on chewing tobacco under the compound levy scheme. The refund was sanctioned by the jurisdictional authorities but instead of refunding the said amount in cash, the Jurisdictional Deputy Commissioner vide his order dated 04.11.2010, asked for payment of the amount of

Rs.8,72,591/- by cheque to the appellant. Further, he ordered for adjustment of rest of refund amounting to Rs.10,47,328/- by way of recovery of pending demands against the appellant under section 11 of the Central Excise Act 1944. When the order in original was challenged before the Commissioner (A) the same was upheld. Hence the present appeal.

3. With the above background, we have heard Ms. Rinki Arora, Advocate for the appellant and Shri Shravan Bansal, DR for the respondent.

4. The Ld. Counsel for the appellant submitted that the original authority should not have adjusted the refund amount towards pending demand under section 11. She submitted that the demand towards which the refund was adjusted have not reached finality as appeal was pending against the said demand. For the purpose, she relied upon the decision in the case of ***Voltas Ltd. Vs. CCE Hyderabad 2006 (201) ELT 615 (Tri-Bang)*** and argued that the full amount of refund may be ordered to be paid without any adjustment.

5. Ld. DR supported the impugned order.

6. After hearing both the parties and on perusal of the record, it appears that an identical issue has come up before the Tribunal in the case of ***Voltas Ltd. (Supra)*** in which the Tribunal has observed as follows:

"8. We have gone through the records of the case carefully. The learned Advocate for the appellants has cited a number of decisions wherein it is held that the refund amount due to the party cannot be adjusted against demands which are under challenge in the appellate fora. In the present case,

even though the refund order for an amount of Rs. 15,73,149/- was passed on 16-11-1998. The same was not actually paid to the appellants and adjusted against some pending demands under Section 11 of the Central Excise Act 1944. Section 11 is reproduced below.

"SECTION 11. Recovery of sums due to Government. - In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made there under (including the amount required to be paid to the credit of the Central Government under Section 11D), the officer empowered by the [Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the District in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue."

9. Section 11 is actually a provision for recovery of sums due to Government. There are some assessee's who do not pay promptly the Government dues. In order to deal with such recalcitrant assessee's, the above provision is made and it enables the proper officer to deduct the amount payable from any money owing to the assessee. In this case, the refund is actually due to the appellant. But the appellants by virtue of certain Orders-in-Original owed money to the Government. The important thing to be noted is that these amounts decided by the Orders-in-originals were not final.

Every Order-in-Original can be appealed. Therefore, at the first stage of confirmation of a demand, no finality has been reached. To put in other words, those demands cannot be called as arrears. There is a possibility that these demands could be set aside by the Commissioner (A) or the Tribunal or any other judicial forum. That is why large number of decisions hold that refund cannot be adjusted against the demands which are sub-judice. In the present case, the action of the authorities in adjusting the refund is against the legal provisions. Section 11 should be involved only when the demands have reached finality and should not be invoked even at the initial stage. Section 11BB provides interest for delayed refunds. This is squarely applicable to the present case. The Commissioner (A) has not at all given any reason as to why the said section is not applicable. In view of the above findings, we allow the appeal with consequential relief."

6. By following the decision of the co-ordinate bench, the impugned order is set aside and appeal is allowed with consequential benefit to the appellant.

[Order Pronounced in the open court on 07.08.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu