CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. II

Date of hearing/decision: 28.05.2018

S. T. Appeal Nos. 50752 - 50753 of 2018
(Arising out of order-in-appeal No. IND-EXCUS-000-APP-191-192-17-18 dated 29.09.2017 passed by the Commissioner (Appeals), Central Goods & Service Tax & Central Excise, Indore).

M/s Sri Ambika Solvex Limited   Appellant

Vs.

CGST&CCE, Indore   Respondent

Appearance:

Sh. Gokul Sharma, Advocate for the appellant
Sh. S. Nunthuk, AR for the Respondent

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Final Order Nos. 52036 – 52037/2018

Per: **Archana Wadhwa**:

After hearing both sides duly represented by Sh. Gokul Sharma, Co. Rep. and Sh. S. Nunthuk, ld. AR for the Revenue, I find that the appellant, who are engaged in the manufacture and export of D.O.K. claimed rebate claim before their jurisdictional proper Central Excise Officers for the excise duty paid on the packing material and Hexane used in the manufacture of the said product and exported under the claim of rebate. The same was rejected by the lower authorities on the ground that the exports have been made under ARE-I whereas they should have been made under ARE-2 and the requisite documents should have been produced. The said order was upheld by the Commissioner (Appeals).

2. The same was appealed against by the assessee before the Government of India, Ministry of Finance as a review petition. The Joint Secretary vide his order dated 28.11.2013 held that the exports were required to be made against ARE-I, which the appellant have produced. As the exports were not required to be made against ARE-2, the production of the same, as called for by the original adjudicating authority, was not required. Accordingly, matter was remanded to the original adjudicating authority for considering the rebate claim afresh.

3. In the remand proceedings, the original adjudicating authority sanctioned the rebate claims but denied the assessee's claim of interest by observing that though the original applicable was filed in 2010 but the same was incomplete and subsequently the refund stands sanctioned within a period of three months from the fully complete application.

4. On appeal Commissioner (Appeals) agreed with the original authority on the ground that the refund stands sanctioned within a period of three months from the date of filing of rebate claim and the earlier claim was incomplete in many respects and cannot be considered to be refund application. On the other hand, appellant submits that the first application filed in 2010 was complete application as all the papers were annexed to the same. The refund rebate claim was rejected on the sole ground that ARE-2 was not filed, which according to the Joint Secretary is not required to be filed at all. He clarifies that even now the rebate claim stands sanctioned on the basis of ARE-1 only and no further documents has been asked for. This fact itself shows that all the documents were filed alongwith first application and

the observations of the authorities below that the initial application was incomplete is factually incorrect.

5. The said stand of the appellant is required to be verified which can be done only by the original adjudicating authority. The lower authorities nowhere referred to any of the documents which were not originally given by the assessee and has to be collected for second time. The assessee statement that while processing their rebate claim in terms of the order of Joint Secretary, no further documents were called for and submitted by them thus establishing beyond doubt that the first application itself was complete in all respects, requires verification and reconsideration. Accordingly, I set aside the impugned order and remand the matter to the original adjudicating authority for denovo decision. Needless to say that the appellant would be given an opportunity of hearing to putforth their case.

6. In the result, appeals are allowed by way of remand.

(Dictated and pronounced in the open Court).

(Archana Wadhwa)
Member (Judicial)

Pant