IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 21/06/2018.
DATE OF DECISION: 29/06/2018.

Excise Appeal No. 51167 of 2018 (SM)

[Arising out of the Order-in-Appeal No. 30 (SJ) CE/JPR/2018 dated 02/02/2018 passed by The Commissioner (Appeals), Central CGST and Central Excise Commissionerate, Jaipur.]

M/s Incopac Parts Pvt. Ltd. Appellant

Versus

CCE, Jaipur Respondent

Appearance

Shri Somesh Arora, Advocate – for the appellant.

Shri H.C. Saini, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ajay Sharma, Member (Judicial)**

Final Order No. 52358/2018 Dated : 29/06/2018

Per. Ajay Sharma :-

The instant Appeal has been filed from the impugned order dated 02/02/2018 passed by the Commissioner (Appeals). The short issue involved in this appeal is whether the refund claims filed by the appellant in respect of accumulated unutilised Cenvat credit of Rs. 14,39,094/- for the period April, 2012 to March, 2013 for which refund claim was filed on 24.6.2015 can be said to be within limitation as per Section 11B of the Central Excise Act, 1944.

2. In order to appreciate the issue involved in the instant appeal it's better to have a look at Section 11B of the Central Excise Act, 1944 and relevant clause of Notification No. 27/2012-CX. (N.T.) dated June 18, 2012 which are extracted as under:-

> **"SECTION 11B – Claim for refund of duty and interest, if any, paid on such duty**. — (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :
>
> **Provided** that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :]

[**Provided** further that] the limitation of [one year] shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest".

XXX **XXX** **XXX**

"Cenvat credit — Procedure for Refund — Notification No. 27/2012-C.E. (N.T.) dated June 18, 2012

In exercise of the powers conferred by rule 5 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the "said rules"), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 5/2006-Central Excise (N.T.), dated the 14th March, 2006, published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 156(E), dated the 14th March, 2006, the Central Board of Excise and Customs hereby directs that refund of CENVAT credit shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely :-.

2. Safeguards, conditions and limitations. - Refund of CENVAT Credit under rule 5 of the said rules, shall be subjected to the following safeguards, conditions and limitations, namely :-

(a) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter :

Provided that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.

(b) in this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(c) the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.

(d) the total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.

(e) in respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.

(f) for the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.

(g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

(h) the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.

(i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned".

3. The appellant before this Tribunal, for the first time took the plea that for the earlier periods till the year 2010 they were filing their refund claims with the Office of Development Commissioner, which were duly getting sanctioned. But later on for the subsequent period 2010-2011 and 2011-2012 their claims were refused to be entertained by the Development Commissioner Office vide order dated 15/03/2013 and when they filed appeals before the DGFT, the DGFT vide its order dated 10/06/2013 directed them to approach the Central Excise Authority. He further submitted that when they filed their claim for the period 2010-2011 and 2011-2012 before the department, the same was treated as barred by limitation under Section 11 B of the Central Excise Act, 1944. Thereafter on appeal filed by the appellant, the learned Commissioner (Appeals) allowed the said appeal vide Order No. 302 (SLM) CE/ JPR 2015 dated 08/05/2015. According to the learned Advocate for the appellant, the learned Commissioner (Appeals) in that order took note of

the fact that it was the Development Commissioner Office which had directed vide his order dated 15/03/2013 to approach Central Excise Authority and the appellant thereafter filed the refund claim for the period 2010-2011 and 2011-2012 on 15/07/2013 which is within the prescribed time limit if the period for which refund was filed with the wrong authority is excluded.

4. The learned Advocate further submitted that subsequent upon order dated 08/05/2015 having been received by them on 25/05/2015 which cleared the confusion involved in the matter, the appellant had filed the claims pertaining to the period April, 2012 to March, 2013 *(which is subject matter of present Appeal)* on 24/06/2015 i.e. within one year of receipt of the order from the Central Excise Authorities for the earlier period. Therefore the refund claims filed by the appellant is within limitation prescribed under Section 11B of the Central Excise Act, 1944, if the period spent in pursuing remedies before wrongful authorities is excluded. The learned Advocate for the appellant further submitted that the disallowance by the learned Commissioner (Appeals) also on the ground that the condition No.2(g) of para 2.0 of notification No.27/2012-CE(NT) dated 18/06/2012 was improper because clause 2(g) of the notification is only a restricting clause which only limits the amount of refund claim but does not give authority to disallow it altogether.

5. The learned AR appearing for the department reiterated the findings recorded by the learned Commissioner (Appeals) in the

impugned order. He further stated that the plea about the filing of claims by the appellant before the wrong authority, have been brought on record by the appellant for the first time before this Tribunal and none of the authorities below had the occasion to deal with these new facts and submissions raised by the learned Advocate for the appellant. And that the appellant has approached this Tribunal with completely new facts/plea.

6. Since the appellant has raised new grounds before this Tribunal for the first time which needs verification and determination and for that matter the appeal has to be remanded back to the original authority for denovo adjudication of the issues raised in the light of new facts. Since I find this as a fit case to send back for de novo adjudication, I refrain from giving any finding on merits on the points urged before me in these appeals and leave the same open to be urged before the Adjudicating Authority in the remand proceedings. Accordingly, I set aside the order of the Commissioner (Appeals) and remand the matter to the original authority for fresh adjudication/ assessment. It goes without saying that the authority shall give due opportunity of hearing to the parties including opportunity to produce evidence.

7. The appeal is thus allowed by way of remand.

(Order pronounced in open court on 29/06/2018.)

(Ajay Sharma)
Member (Judicial)

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