IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.3

Service Tax Appeal No.353 of 2010

(Arising out of Order-in-Appeal No.30/ST/B-II/2010 dated 17.08.2010 passed by Commissioner(Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Gimpex Limited
(BDA, HIG-33, Gangadhar Meher Nagar, Jayadev Vihar, Bhubaneswar-751013, Dist: Khurda, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II

.....Respondent

(CR Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha.)

APPEARANCE

Shri Aditya Dutta, Advocate & Ms. Mitali Borpuzari, Consultant for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)

FINAL ORDER NO. 77694/2023

DATE OF HEARING : 18 December 2023
DATE OF DECISION : 18 December 2023

ASHOK JINDAL :

The appellant has filed this appeal against the impugned order, wherein the refund claim filed by the appellant has been rejected as time barred.

2. The facts of the case are that the appellant is an exporter of iron ore and having their registered office at Channai, but their corporate office is situated at Rourkela, from where the export took place.

Initially, the appellant filed refund claim for the period March 2008 on 30.05.2008 before the Chennai Commissionerate under Notification No.41/2007-ST dated 06.10.2007. The Chennai Commissionerate returned their refund claim on 11.07.2008 stating that the refund claim is required to be filed before the Assistant/Deputy Commissioner, Rourkela Division, which was filed by the appellant on 26.11.2008. The Rourkela Commissionerate rejected their refund claim on 11.12.2008 holding that the same is filed beyond the time limit. The appellant again filed refund claim on 15.09.2009 and the same was rejected holding that initially the refund claim was rejected on 11.12.2008, the said order has not been challenged by the appellant, therefore, the said refund is not maintainable. Against the said order, the appellant approached the Hon'ble High Court and the Hon'ble High Court allowed the appellant to file appeal against the rejection of their refund claim dated 11.12.2008. Hence the present appeal.

3. The Ld.Counsel for the appellant submits that initially they filed refund claim in time and Notification No.41/2007-ST dated 06.10.2007 was amended on 12.03.2009, wherein the time limit for filing the refund claim was extended from 60 (sixty) days from the end of quarter to six months and for the said particular period, the appellant was required to file refund claim upto December 2008 and they have filed refund claim on 26.11.2008, therefore, the refund claim filed by them is within time and the same be allowed.

4. The Ld.AR for the department supported the impugned order.

5. Heard the parties.

6. Considering the fact that initially the refund claim was filed by the appellant before the Chennai Commissionerate on 30.05.2008, which is well within the time limit prescribed under Notification No.41/2007-ST dated 06.10.2007, therefore, I hold that the refund claim filed by the appellant, is within time. Further, vide amendment in Notification No.41/2007-ST on 12.03.2009, the time limit for filing the refund claim was also extended.

7. In that circumstances, also I hold that the refund claim filed by the appellant is within time. In that circumstances, the refund claim filed by the appellant cannot be rejected as time barred.

8. In view of this, I set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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