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

Ex.Appeal Nos.651,652/09 & 735-738/12
& 72013-72017/13

(Arising out of Orders-in-Appeal Nos.04/GHY/CE(A)/GHY/2009 dated 14.08.2009 & 05/GHY/CE(A)/GHY/2009 dated 17.08.2009 both passed by the Commissioner of Customs & Central Excise (Appeals), Guwahati)

CCEx., Guwahati

Applicant (s)/Appellant (s)

Vs.

M/s SMS Smelters
M/s Satyam Ispat

Respondent (s)

Appearance:

Shri A. Roy, Supdt. (AR) for the Revenue
Shri Devaraj Sahu, Adv. for the Respondent (s)

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 09.01.2019
Date of Decision : 09.01.2019

ORDER NO.FO/75158-75168/2019

Per Bench :

The present appeals are filed by the Revenue against the Orders-in-Appeal Nos.04/GHY/CE(A)/GHY/2009 dated 14.08.2009 & 05/GHY/CE(A)/GHY/2009 dated 17.08.2009.

2. The two respondents had set up manufacturing units in the State of Arunachal Pradesh and were availing the benefit of Area Based Exemption under Notification No.33/99-CE dated 08.07.1999. In

terms of the provision of Notification, the respondent claimed periodical refunds before the jurisdictional Assistant Commissioner and the dispute pertains to the amounts sanctioned by them as refund.

3. The jurisdictional Commissioner passed the Order-in-Review under Section 35E of the Central Excise Act, 1944 and directed the Assistant Commissioner to file the appeal before the Commissioner (Appeals) against the refunds sanctioned in favour of the two respondents. These appeals were decided by the Commissioner (Appeals) by issue of the impugned order, in which, he dismissed them. This issue has been further carried out by the Revenue before the Tribunal by filing the present set of appeals.

4. The only reason cited as grounds for challenging the orders passed by the ld.Commissioner (Appeals) is that the jurisdictional Assistant Commissioner should not have sanctioned the refund claimed under Notification No.33/99-CE dated 08.07.1999, in view of the fact that DGCEI, Kolkata Zonal Unit, had investigated certain allegations against the respondents alleged wrong availment of cenvat credit by the respondent.

5. The Revenue is represented by Shri A.Roy, ld. D.R. and the Respondents are represented by Shri D.Sahu, ld.Advocate.

6. The ld.D.R. for the Revenue, justified the grounds of appeal filed by the Revenue.

7. The ld.Advocate for the respondents, submitted that the refund claims have been sanctioned by the Assistant Commissioner after due scrutiny of documents. At the time of sanction of such refund claims,

show-cause notice dated 24.11.2008 has not been issued by investigating agency. In any case, he submitted that the issue of show-cause notice by the investigating agency, is not a valid reason for reviewing the refund orders passed by the jurisdictional officers.

8. We have heard both sides and perused the records.

9. We find that the respondent's units have been availing the benefit of area based exemption under Notification No.33/99-CE dt. 08.07.1999 and the jurisdictional Assistant Commissioner sanctioned the refund claims under the said Notification from time to time. The refunds granted are sought to be challenged through these appeals. But the only ground cited by the Revenue is that the Assistant Commissioner sanctioned the refunds, which were not proper in view of the subsequent investigation and the show-cause notice issued by DGCEI.

10. The refund claims were sanctioned after due scrutiny of the supporting documents by the jurisdictional Assistant Commissioner. Revenue has not highlighted any irregularities or mistakes in such documentary evidences on the basis of the refund claims have been sanctioned. It is also seen from the record that the show-cause notice issued by DGCEI was on a date subsequent to the date of sanction of the refund claim. Hence, since the jurisdictional Assistant Commissioner did not have any occasion to consider the fact of issue of such show-cause notice. As such, we are of the view that the issue of show-cause notice on a later date cannot be a valid ground for recalling of refund claims already paid.

11. In view of the above discussions, the appeals filed by the Revenue are rejected.

(Dictated and pronounced in the open court)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

mm