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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75434 of 2021

(Arising out of Order-in-Appeal No.01/AGT/CE(A)GHY/2021 dated 23.02.2021 passed by Commissioner(Appeals), CGST, Central Excise & Service Tax, Guwahati.)

M/s. Sai Structurals
(Dukli Industrial Estate, Ranir Khamar, Agartala, West Tripura-799003.)

...Appellant

VERSUS

Commissioner of CGST & CX, Agartalla Commissionerate

.....Respondent

(Jackson Gate Building, 3rd Floor, Lenin Sarani, Old Municipality Road, Agartala, West Tripura-799001.)

WITH

(i) Excise Appeal No.75435 of 2021 (M/s. Himalayan Dragon); (ii) Excise Appeal No.75436 of 2021 (M/s. Tripcon); (iii) Excise Appeal No.75437 of 2021 (M/s. Maharishi Udyog);

(i) (Arising out of Order-in-Appeal No.02/AGT/CE(A)GHY/2021 dated 23.02.2021 passed by Commissioner(Appeals), CGST, Central Excise & Service Tax, Guwahati.)

(ii) (Arising out of Order-in-Appeal No.03/AGT/CE(A)GHY/2021 dated 23.02.2021 passed by Commissioner(Appeals), CGST, Central Excise & Service Tax, Guwahati.)

(iii) (Arising out of Order-in-Appeal No.04/AGT/CE(A)GHY/2021 dated 23.02.2021 passed by Commissioner(Appeals), CGST, Central Excise & Service Tax, Guwahati.)

APPEARANCE

Shri Rajesh Chhibber, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75373-75376/2022

DATE OF HEARING : 9 June 2022
DATE OF DECISION : 17 June 2022

P.K.CHOUDHARY :

The present appeals have been filed by the respective Appellants challenging the lesser sanction of refund claim and non-payment of interest by the original authority as upheld by the appellate authority.

2. Since the issue involved in all the Appeals is same, I am taking up all the four Appeals by this common order.

3. The Appellants have their manufacturing units in the State of Tripura and were accordingly registered with Central Excise department. To promote the industries in various parts of the country, Notification No.20/2007-CE dated 25.04.2007 was issued, under which the assessee was entitled to claim exemption in the manner stated therein. According to the procedure prescribed under the said Notification, the duty paid from PLA was eligible for refund to the assessee. This notification was later amended vide notification No.20/2008 dated 27.03.2008 restricting the quantum of refund amount in the manner stated therein. The amendment affected the interest of number of parties some of whom challenged the virus of Notification No.20/2008 which held the amendment to be ultra virus.

4. In the instant case, in the first round of litigation, the original authority rejected the refund claim to be time barred by following the decision of Tribunal in the case of Vernerpur Tea Estate vs. CCE & ST reported in 2016(336) ELT 549(Tri.), which order was upheld by appellate authority. The Appellant filed an Appeal before this Tribunal and in the meantime, the decision of the Tribunal in the case of Vernerpur Tea Estate (supra) was challenged before the Hon'ble Gauhati High Court and set aside by the Hon'ble High Court in C .Ex. Appeal No.11/2016. Following the judgment of Hon'ble High Court, this Tribunal vide a common Final Order No.77290-93/2018 dated 10.08.2018 allowed the Appeals.

5. The respective Appellants approached the department for implementation of the Tribunal's order. Nothing happened for a

substantial period and in the meantime, the Hon'ble Supreme Court vide its judgment dated 06.12.2019 in civil Appeal No.9237 of 2019 upheld the amendment to the notification whereby the quantum of refund claim was reduced.

6. That thereafter the original authority vide order dated 15.04.2020 sanctioned the refund to the respective Appellant on proportionate basis as mentioned in para 9 of the order in original. The Appeals filed with the appellate authority also met with the same fate.

7. The present Appeals have been filed by respective Appellants contesting the part rejection of refund claim and non sanction of interest. The learned counsel has submitted that as per the spirit of the relevant Notifications and the judgment of Hon'ble Supreme Court, it is clear that the amendments were made to check the misuse of the said Notification. However, where the amount paid from PLA was less than the amount determined, the entire duty paid from PLA was to be refunded. In other words, where the amount paid from PLA is more than the percentage fixed in the amending Notification, only the percentage fixed was to be refunded but where it is less than the same, the entire amount paid from PLA was to be refunded.

8. In so far as the sanctity of amendment to Notification No.20/2007 by Notification No.20/2008 and 38/2008 is concerned, the learned counsel has fairly conceded that the issue now remains settled by the Hon'ble Supreme Court in Civil Appeal No.9237 of 2019. He however submitted that the said judgment of Hon'ble Supreme Court was rendered much after the decision of their Appeal by this Tribunal on 10.08.2018 when there was no decision contrary to the stand of the Appellant. He emphasized that the Tribunal vide Final Order No.77290-93/2018 dated 10.08.2018 allowed their Appeals and, therefore, the department was required to merely sanction the refund claim. He also submitted that the said order of the Tribunal was accepted by the department on 25.10.2019 much before passing of the judgment on 06.12.2019 but still the department delayed in

issuing the refund amount. The learned counsel has referred to the judgment of the Hon'ble Supreme Court in the case of Union of India vs. VVF Ltd. reported in 2020(372)ELT495(SC), wherein upholding the validity of relevant notifications, Hon'ble Supreme Court in para 16 of its judgment held as under:

> ***"16.*** *Under the circumstances, the respective High Courts have committed a grave error in quashing and setting aside the subsequent notifications/industrial policies impugned before the respective High Courts on the ground that they are hit by the doctrine of promissory estoppel and that they are retrospective and not retroactive. Consequently, all these appeals are ALLOWED. The impugned Judgments and Orders passed by the respective High Courts, which are impugned in the present appeals, quashing and setting aside the subsequent notifications/industrial policies impugned in the respective writ petitions before the respective High Courts, are hereby quashed and set aside. Consequently, the original writ petitions filed by the respective original writ petitioners before the respective High Courts challenging the respective subsequent notifications/industrial policies stand dismissed and for the reasons stated hereinabove, the challenge to the respective subsequent notifications/industrial policies impugned before the respective High Courts FAIL. However, it is CLARIFIED that the present judgment shall not affect the amount of excise duty already refunded, meaning thereby, the cases in which the excise duty is already refunded prior to the subsequent notifications/industrial policies impugned before the respective High Court, they are not to be reopened. However, it is further CLARIFIED that the pending refund applications shall be decided as per the subsequent notifications/industrial policies which were impugned before the respective High Courts and they shall be decided in accordance with the law and on merits and as per the subsequent notifications/industrial policies impugned before the respective High Courts. All these appeals stand disposed of accordingly. NO COSTS."*

It is submitted that in terms of Hon'ble Supreme Court's judgment, only the pending refund applications were to be decided as per the amended notifications. However, in the present case, the refund application could not be considered as pending as the refund application rejected by the original authority was set aside and the Appeal was allowed by the Tribunal. Had the department acted upon the decision of Tribunal, the Appellant would have got the amount long back and it was only the department which delayed in refunding the amount. In other words, when no refund application was pending with the department, refunding of amount on proportionate basis was contrary to the decision of the Tribunal. Once the department chose to accept the order of the Tribunal, which had allowed the appeal, the department had no option but to sanction the full amount of refund.

9. As regards interest, it is submitted that the original authority rejected the refund application and it was not the case here that the refund arose due to the decision of the Tribunal. It is a settled legal position that where refund application is rejected by original authority and ultimately refund is held payable by any higher authority, the department is required to sanction interest after three months from the date of refund application. The Appellant relies upon the judgment of Hon’ble Supreme Court in the case of Ranbaxy Laboratories Ltd. vs. UOI reported in 2011(273)ELT3(SC) which has been followed by Hon’ble Calcutta High Court in the case of Haldia Petrochemicals Ltd. vs. Joint Secretary Ministry of Finance reported in 2017 (345) ELT619 (Cal.) and the decision of the Tribunal in the case of Lekhraj Narinder Kumar vs. CCE& ST reported in 2021(54) GSTL32(Tri. Chan.). Therefore, the department was required to sanction interest after three months from the date of filing of the refund claim till the claim was sanctioned.

10. In view of the above discussion, I hold that the department was required to sanction the amount as claimed in the original refund application, which was rejected by the original authority, but the Appeal of the Appellant was ultimately allowed by the Tribunal. The department is directed to refund the amount, as claimed in the original refund application filed by the respective Appellants. As regards

interest, I find that it is not the case here that the Appellants sought refund and/or filed refund applications after passing of the Tribunal's order since originally the refund claim itself was under challenge before the refund sanctioning authority. I find that the issue is no more *res integra* in view of the decision in the case of Ranbaxy Laboratories Ltd. (supra), which has been followed by the Hon'ble High Court at Calcutta in the case of Haldia Petrochemicals Ltd. (supra) and also the decision of the Tribunal in the case of Lekhraj Narinder Kumar (supra). On facts as stated above and under the circumstances of the case I find that the Appellants are entitled to interest after 3(three) months from the date of filing of the original refund claim till the sanction of the refund amount.

Thus, all the four Appeals are allowed in the above terms with consequential relief, as per law.

(Order pronounced in the open Court on 17 June 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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