IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/86253/17
E/CO/91112/17

(Arising out of Order-in-Appeal No. PK/54/RGD/2017 dated 24.2.2017 passed by Commissioner of Central Excise (Appeals), Mumbai-II)

Deepak Fertilisers & Petrochemicals Corpn. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Raigad **Respondent**

Appearance:

Ms. Anjali Hirawat, Advocate, for appellant
Shri Sanjay Hasija, Superintendent (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 15.2.2018
Date of Decision: 15.2.2018

ORDER No. A/85282/2018

The refund claim of the appellant was sanctioned by the adjudicating authority in respect of the excess amount debited by the appellant in terms of Commissioner's adjudication order No. Raigad/ADC/90(MRM)/15-16 dated 31.12.2015. The appellant had reversed the cenvat credit of Rs.22 lakhs along with payment of interest before issuance of show cause notice. On pointing out by the audit, subsequently show cause notice was issued for denial of credit of Rs.48 lakhs approximately. The Additional Commissioner adjudicated the show cause notice confirming the demand of Rs.5,72,217/- and demanded interest of Rs.21,634/-. Therefore, there was an excess debit of cenvat credit as well as interest attributed to the said excess amount for which the refund claim was filed. The adjudicating authority has sanctioned the refund. The Revenue filed appeal before the Commissioner (Appeals) who allowed the appeal of the Revenue on the ground of time bar for the reason that the refund was filed on 17.2.2016 i.e. after one year from the reversal of credit made on 1.1.2014 and 24.1.2014. Therefore the appellant is before me.

2. Ms. Anjali Hirawat, learned counsel appearing on behalf of the appellant, submits that the appellant filed refund claim on 17.2.2016, as the refund is consequent to the order of the Additional Commissioner which was issued on 31.12.2015. Therefore the refund was filed well within the time of one year as prescribed under Section 11B. She submits that since the matter was pending for adjudication, there was no reason for refund filing within one year from the date of cenvat credit reversed, and the period should be reckoned from the date of adjudication order by which the part demand was confirmed against the total reversal of credit. She placed reliance on the following judgments:-

(i) *Opel Alloys Pvt. Ltd. – 2010 (249) ELT 408 (Tri.-Del.)*;

(ii) *Auxichem – 2015 (330) ELT 721 (Tri.-Mum)*;

(iii) *Gujarat Engg. Works – 2013 (292) ELT 547 (Tri.-Ahmd.)*;

(iv) *Electro Steel Castings Ltd. – 2014 (299) ELT 305 (Mad.)*;

(v) *ITEL Industries Ltd. – 2014 (301) ELT 288 (Ker.)*;

(vi) *BCL Forgings Ltd. 2005 (192) ELT 922 (Tri.-Mum.)* affirmed by Hon'ble Bombay High Court;

(vii) *Shree Ram Food Industries – 2003 (152) ELT 285*;

(viii) *Dena Snuff P. Ltd. – 2003 (157) ELT 500 (SC)*;

(ix) *Clariant (I) Ltd. – 2015 (319) ELT 646 (Bom.)*.

3. Shri Sanjay Hasija, learned Superintendent (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order. He submits that the only exclusion is provided under clause (ec) of Section 11B(5)(B), according to which the refund is maintainable if it becomes refundable consequent the judgment, decree, order or direction of appellate authority, appellate tribunal or any court. In such case, the date of judgment, decree, order or direction should be the relevant date. He submits that in the present case, the refund is consequent to the order-in-original passed by the Additional Commissioner who does not fall under any authority such as appellate authority, appellate tribunal or any court. Therefore, the present refund has not become payable in terms of clause (ec) of Section 11B(5)(B). He placed reliance on the following judgments:-

(i) *Thiru Arooran Sugars Ltd. – 2005 (191) ELT 549 (Tri.-Chennai)*;

(ii) *USV Ltd. – 2011 (267) ELT 128 (Tri.-Mumbai)*.

4. I have carefully considered the submissions made by both the sides. The limited issue to be decided is whether the appellant's refund is hit by limitation or otherwise. As per the undisputed fact, the appellant has debited cenvat account along with payment of interest due to the observation made by audit officers. Subsequently a show cause notice was issued and the matter was adjudicated by the Additional Commissioner vide order dated 31.12.2015. Thereafter the appellant filed refund claim on 17.2.2016. In this fact, I observe that the refund is in respect of the amount which was debited and involved in the litigation which was pending before the adjudicating authority. Therefore, before the adjudication of the demand of cenvat credit, no refund could have arisen. The refund has arisen only after the adjudication order was passed on 31.12.2015. Therefore, in my considered view, the period of one year provided under Section 11B should be reckoned from the date of such adjudication order, from the said date, the appellant has filed refund within one year. I also observe that as argued by learned AR, clause (ec) is also applicable in the present case for the reason that clause (ec) deals with any order. In this case the refund becomes payable consequent to the order

passed by the Additional Commissioner. The objective of clause (ec) is that whenever the matter is pending, obviously no refund can arise unless until the dispute is settled. Therefore, irrespective of any authority, the matter is pending and subsequently the dispute is settled and refund has arisen, It will be covered by clause (ec). As regards the judgment relied upon by the learned AR in the case of *USV Ltd.* (supra), I find that the facts of that case is entirely different from the facts of the present case as in the present case refund arises from the adjudication order whereas in the *USV Ltd.*'s case, there was no lis in regard to the amount paid in excess by the assessee. Therefore, the ratio of this judgment is not applicable. The decision of *Thiru Arooran Sugars Ltd.* (supra) is also not applicable for the reason that the facts in the said case are that the duty was not paid under protest and there is no show cause notice or adjudication.

5. As per my above discussion, the impugned order is set aside and the appeal is allowed with consequential relief. The cross objection is also disposed of.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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