IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/88073/2017

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-407-2017-18 dated 05/10/2017 passed by the Commissioner of Central Tax (Appeals – I), Pune.]

Panacea Alloys Pvt Ltd …*Appellant*

versus

Commissioner of Central Tax & Service Tax
Pune – I ***…Respondent***

Appearance:

Shri Parag Phanse, Company Secretary for the appellant

Shri S Hasija, Superintendent (AR) for the respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 14/03/2018
Date of decision: 14/03/2018

ORDER NO: A/85676 / 2018

This appeal is directed against Order-in-Appeal No: PUN-EXCUS-001-APP-407-2017-18 dated 05/10/2017 passed by the Commissioner of Central Tax (Appeals – I), Pune.

2. Heard both the sides and perused the records.

3. The appellant herein is a merchant exporter and purchased batteries from Union Batteries Pvt Ltd and exported the same. Since the appellant herein had procured/purchased the batteries on which Central Excise duty has been discharged, as a merchant supplier they applied for rebate of the Central Excise duty paid by M/s Union Batteries Pvt. Ltd. The adjudicating authority sanctioned the refund claim filed by the appellant and appropriated the amount towards service tax dues of M/s Union Batteries Pvt Ltd. Aggrieved of such an order an appeal was preferred before the first appellate authority. The first appellate authority has also upheld the order-in-original on a finding that the service tax dues of Union Batteries Pvt Ltd needs to be appropriate d against the rebate sanctioned to the appellant herein.

4. The Learned Company Secretary draws my attention to the provisions of Section 11 of the Central Excise Act, 1944 and submits that the said section will not apply to the case in hand as the appellant is a different entity as also Union Batteries Pvt Ltd. It is his submission that both the units are different entities and there is no relation between them and as merchant exporter, having exported the goods, they are entitled for the rebate of the amount which is due to them in cash.

5. Learned Authorised Representative reiterates the findings of the lower authorities.

6. On a careful consideration of the submissions made, on the application of provisions of Section 11 as it exists in the statute, needs consideration and I reproduce the same.

"Section 11. Recovery of sums due to Government. -

In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder including the amount required to be paid to the credit of the Central Government under Section 11D, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to levy such duty or require the payment of such sums [may deduct or require any other Central Excise officer or a proper officer referred to in section 142 of the customs act, 1962 (52 of 1962) to deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such other officer, or may recover the amount] by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Principal Commissioner of Central Excise or Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.

(2) (i) The Central Excise Officer may, by a notice in writing, require any other person from whom money is due to such person, or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

> (iii) in a case where the person to whom a notice under this sub-section has been issued, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be a person from whom duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or the rules made thereunder have become due, in respect of the amount specified in the notice and all the consequences under this Act shall follow."

7. It can be seen from the above reproduced Section 11 of the Central Excise Act, 1944, the same contemplates about recovery/ adjustment/appropriation of the amounts which are due to the Government from the person against whom duty liability is confirmed and due to government. In the case in hand it is undisputed that the appellant herein is a merchant exporter and purchased batteries from M/s Union Batteries Pvt Ltd and claimed rebate of the Central Excise duty paid by Union Batteries Pvt Ltd; that there are no dues to government from the appellant herein.

8. Both the lower authorities have misconstrued the provisions of Section 11 of the Central Excise Act, 1944, as there is nothing on record to show that the appellant had not paid M/s Union Batteries Pvt Ltd, consideration for the purchase of batteries nor is anything brought on record of any recovery pending from appellant. In my view the amount of rebate which is sanctioned to appellant cannot be appropriated by the authorities by invoking the provisions of Section 11, more specifically when the dues are from totally a different entity

M/s Union Batteries Pvt Ltd. In view of the foregoing I hold that the impugned order is unsustainable and liable to be set aside. The impugned order is set aside with a direction to the lower authorities to refund the amount in cash to the appellant.

9. Appeal is allowed as indicated herein above.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

**/as*