CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 88080 of 2018

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APPL-416-17-18 dated 28.03.2018 passed by Commissioner of CGST & Central Excise (Appeals), Nashik)

M/s. ISMT Ltd. **Appellant**
Plot No. C-1, MIDC Area,
Ahmednagar 414 111.

Vs.

Commissioner of C.Ex. & ST, Nasik **Respondent**
Kendra Rajaswa Bhawan,
Old Agra Road,
Gadkari Chowk,
Nasik 422 002.

Appearance:

Ms. Padmavati Patil, Advocate for the Appellant
Ms. Anuradha Parab, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER NO. **A/86467/2019**

Date of Hearing: 26.02.2019
Date of Decision: 26.08.2019

This appeal is directed against the impugned order dated 28.03.2018 passed by the learned Commissioner (Appeals), CGST & Central Excise, Nasik.

2. Briefly stated, the facts of the case are that the appellants are engaged in manufacture of seamless pipes and tubes, falling under Chapter 7304 of the Central Excise Tariff Act, 1985. During the period 2013-14 and 2014-15, the appellants had exported the finished goods without payment of central excise duty, by executing the letter of undertaking. The proof of export in respect of the goods were not received within a period of six months and accordingly, the appellants had paid central excise duty

involved on the goods cleared for export. Subsequently, the proof of export was received by them in the year 2016 and was submitted before the jurisdictional central excise office. Thereafter, the appellants had filed the refund applications, claiming refund of central excise duty paid on the exported goods. The applications were filed under Section 11B of the Central Excise Act, 1944. Vide order dated 18.01.2017, the original authority had rejected the refund applications on the ground that the same were filed beyond the period of one year from the relevant date and as such, are barred by limitation of time as per the provisions of Section 11B *ibid*. The impugned order has upheld the adjudication order, so far as it rejected the refund applications filed by the appellants. The learned Commissioner (Appeals) has held that relevant date in the case of the refund applications should be considered as the date of payment of duty and since the applications were filed beyond one year from such relevant date, the claim is clearly barred by limitation of time. Further, he has also held that the appellants did not deposit the duty amount under protest and not opted for the provisional assessment. Feeling aggrieved with the impugned order, the present appeal is preferred before this Tribunal.

3. The learned Advocate appearing for the appellants submitted that the goods in question were duly exported by the appellants and due to non-availability of proof of export within the prescribed time frame, the central excise duty amount was deposited by the appellants. Thus, she submitted that upon receipt of proof of export, since the refund claim applications were filed within one year from the date of such receipt, the refund claim will not be barred by limitation of time. In other words, it was stated that submission of proof of export should be considered as the "relevant date" for filing of the refund application under Section 11B *ibid*. The learned Advocate further submitted that the amount in question deposited by the

appellants into the Government exchequer should be considered as 'deposit of amount' and not as 'payment of duty' and thus, the time limit prescribed under Section 11B would not be applicable.

4. On the other hand, the learned AR appearing for Revenue reiterated the findings recorded in the impugned order and further submitted that since the appellants had paid the duty amount voluntarily and filed the refund applications beyond the prescribed period of one year from the date of such payment, the claim applications are clearly barred by limitation of time. She further submitted that since the refund applications were filed by the appellants and considered by the authorities under the provisions of Section 11B *ibid*, the time limit prescribed there under has to be strictly adhered to and different interpretation cannot be placed to decide the matter in another way. She has relied upon the judgment of Hon'ble Supreme Court in the case of Miles India Limited Vs. Assistant Collector of Customs-1987 (30) E.L.T. 641 (S.C.), Collector of C.E., Chandigarh Vs. Doaba Co-operative Sugar Mills-1988 (37) E.L.T. 478 (S.C.) and Assistant Collr. of Cus. Vs. Anam Electrical Manufacturing Co.-1997 (90) E.L.T. 260 (S.C.) to justify such stand.

5. Heard both sides and perused the records.

6. Section 11B *ibid* provides the mechanism for filing of refund application and consideration of the same by the statutory authorities. The statutory provision *inter alia*, mandates that the refund application should be filed by the claimant before the expiry of one year from the relevant date. The phrase 'relevant date' has been explained in Section 11B *ibid* as under:-

> *"(B) "relevant date" means,--*
>
> *(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods*

themselves or, as the case may be, the excisable materials used in the manufacture of such goods,-

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;

(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the rdate of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;

(f) in any other case, the date of payment of duty."

7. As per the explanation contained in Section 11B *ibid*, the term 'relevant date' for consideration of the present dispute can be itemized either under clauses (eb) or (f) of the above reproduced explanation. In this case, it is an admitted fact on record that the appellants did not

resort to the provisional assessment for payment of duty in question on removal of final product from the factory. Thus, the case of the appellants will not be governed under clause (eb) above for consideration of the relevant date differently. On the contrary, the case of the appellant squarely falls under purview of clause (f), whereunder the relevant date should be construed as "the date of payment of duty". Admittedly, in this case, the appellants had filed the refund applications beyond the period of one year from the date of payment of duty attributable to exportation of goods. Since the provisions of Section 11B *ibid* have not prescribed any specific relevant date for consideration of filing of refund claim after obtaining the proof of export of goods, the relevant date for such purpose should be governed only under clause (f) contained in the explanation appended to Section 11B *ibid*.

8. In this case, the appellants had deposited the central excise duty on removal of excisable goods from the factory premises. Such amount of duty was deposited into the Central Government account under proper accounting code. Thus, under the circumstances, it cannot be pleaded that the duty amount deposited by them should be construed as 'mere deposit' in the hands of the Government and for grant of the said refund amount, the provisions of Section 11B *ibid* would not be applicable. Since, statute clearly mandates that refund claim has to be lodged within a period of one year from the relevant date; such prescribed time limit has to be strictly adhered to by the authorities functioning under the statute. In this context, the Hon'ble Supreme Court in the case of Doaba Co-operative Sugar Mills (supra), have ruled that in making claims for refund before the departmental authorities, an assessee is bound within the four corners of the statute and the period of limitation

prescribed there under must be adhered to and that the authorities functioning under the statute cannot place different interpretations and are bound to follow the provisions of the statute alone. Further, in the case of Anam Electrical Manufacturing Co. (supra), the Hon'ble Apex Court have also held that statutory time limit not extendable by any authority or court in case of claim of refund filed under the central excise statute. The Hon'ble Apex Court in the case of Miles India Ltd. (supra), in a Customs refund case have also ruled that the authorities acting under the Act are justified in disallowing the claim for refund, as they were bound by the period of limitation provided under the statute. Though, the said judgment was delivered by the Hon'ble Apex Court in context with the Customs statute, but the ratio of the said judgment is squarely applicable to the facts of the present case inasmuch as both the Customs as well as Central Excise statutes prescribe the time limit for filing of refund application.

9. In view of the above discussions and analysis, I do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals) and uphold the same. Accordingly, appeal filed by the appellant is dismissed.

(Pronounced in the open court on 26.08.2019)

(S.K. Mohanty)
Member (Judicial)

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