CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 733 of 2011

(Arising out of Order-in-Appeal No. SB/29/Th-I/2011 dated 20.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

M/s Power Grid Corporation of India Ltd. .... Appellant
B-9, Qutab Institutional Area, Katwara Sarai
New Delhi – 110 016

Versus

Commissioner of Central Excise, Thane-I .... Respondent
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri Anil Choudhary, DC, Auth. Representative for the Respondent

WITH

Excise Appeal No. 1533 of 2011

(Arising out of Order-in-Appeal No. 35/BR-35/Th-I/2011 dated 20.07.2011 passed by the Commissioner of Central Excise, Thane-I)

M/s Power Grid Corporation of India Ltd. .... Appellant
B-9, Qutab Institutional Area, Katwara Sarai
New Delhi – 110 016

Versus

Commissioner of Central Excise, Thane-I .... Respondent
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri Anil Choudhary, DC, Auth. Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86762-86763/2019

Date of Hearing: 13.09.2019

Date of Decision: 13.09.2019

Per: Dr. D.M. Misra

These two appeals are filed, one against the rejection of the refund order and the second one against the confirmation of demand of the refund sanctioned.

2. Briefly stated the facts of the case are that the appellants are engaged in the activity of construction and commissioning of transmission line and sub-station for transmission of electricity. The appellant had executed one such project known as 'Talcher Project', which was approved by the Government of India. The appellant approached the World Bank for financing of the said project. The sanction of the loan from the World Bank was delayed. In the meantime, the appellant had received various manufactured goods from one M/s EMI Transmission Ltd. availing exemption from payment of duty under Notification No. 108/95-CE dated 28.8.1995 during the relevant period from Sept, 2000 to July, 2001. The appellants were also entitled to exemption of the terminal excise duty as one of the Deemed Export benefit, under the policy in terms of the Public Notice issued by the Ministry of Commerce dated 01.07.1999. Since the sanction of the World Bank loan got delayed, the appellant had deposited the entire amount of terminal excise duty benefit in October, 2002. Consequently, on receipt of the World Bank loan, the appellant had filed refund claims of the terminal excise duty deposited with the Government of India on 21.07.2004 to the Commissioner of Central Excise, Thane-I and on 25.11.2004

with Dy. Commissioner of Central Excise, Thane after obtaining the necessary No Objection from M/s EMI Transmission Ltd. In the meantime, the Department has issued a show-cause notice on 26.9.2005 to M/s EMI Transmission Ltd. and also to the appellant for recovery of Rs.2,79,47,481/- proposing to deny benefit of Notification No. 108/95-CE dated 28.8.1995 and also to appropriate the amount of Rs.77,95,953/- paid by the appellant with interest and proposal for penalty. The said demand notice was adjudicated and the learned Commissioner dropped the proceedings initiated against M/s EMI Transmission Ltd. and the appellant vide Order-in-Original No. 04/MS-04/Th-I/2009 dated 23.4.2009. Consequent to the said order, the appellant claimed refund of the entire amount of Rs.77,95,953/- paid by them in October, 2002. The said claim was adjudicated and by order dated 19.4.2010. The refund amount was sanctioned to the appellant and it was received by the appellant on 16.6.2010. Later, the Revenue filed an appeal before the learned Commissioner (Appeals) challenging the said sanction of the refund. Learned Commissioner (Appeals), in turn, allowed the Revenue's appeal setting aside the order of refund passed by the adjudicating authority. Also, the show-cause notice was issued to the appellant on 3.3.2011 for recovery of the refund amount of Rs.77,95,953/- sanctioned and paid to them. The said demand notice was adjudicated confirming the demand with interest and penalty. Hence, the present appeals.

3. At the outset, the learned Advocate Shri Rajesh Ostwal for the appellant submits that the issue of admissibility of refund is no more *res integra*. In the appellant's own case for different projects, this Tribunal allowed their appeals reported as *Power Grid Corporation of India Ltd. Vs. CCE – 2009 (234) ELT 138 (Tri-Chennai); CCE Vs. Power Grid Corporation of India Ltd. – 2013 (4) TMI 707- CESTAT New Delhi; Power Grid Corporation of India Ltd. Vs. CCE – 2015 (6) TMI 742 – CESTAT Mumbai;* and *Power Grid Corporation of India Ltd. Vs. CCE – 2017 (5) TMI – CESTAT Ahmd.* It is his contention that due to delay in receiving World Bank loan, the appellant had deposited the entire amount of terminal excise duty benefit with the Department, which otherwise admissible. Hence, after receiving the World Bank loan, they filed the refund claim but could not be pursued, due to pending demand notice issued to M/s EMI Transmission Ltd. After the order of the learned Commissioner dropping the demand, the appellant pursued the refund, which was sanctioned to them. Therefore, the demand is unsustainable.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. We have carefully considered the submissions made by both sides. We find that this Tribunal in the case of *Power Grid Corporation of India Ltd. Vs. CCE – 2017 (5) TMI – CESTAT Ahmd*, after taking into account the various judgments

delivered by the Tribunal in the appellant's own case observed as follows: -

"6. After going through the submissions, it appears that the matter is covered by the following decisions of CESTAT:

a) CCE Ghaziabad Vs Power Grid Corpn India Ltd - 2013(4) TMI. 707 (Cestat ND)

b) Power Grid Corpn of India Vs CC(EP) Mumbai Order No.A/93735-93742/16/CB dt 8.11.2016 in Appeal No.C/433 to 440/06.

c) Power Grid Corpn of India Ltd Vs CC, Chennai 2009(234)ELT.138 (Tri-Chennai)

6.1 The CESTAT, Chennai in the case of ***Power Grid Corpn of India Vs CC Chennai (supra)*** *inter alia observes as follows:*

7. It has also been argued that the appellants case is also supported by the view taken by senior representatives of the ministries concerned to the effect that the time-bar provisions should be relaxed in respect of refund claims filed by parties associated with execution of power projects with assistance from World Bank. We have found a valid point with the counsel. What was paid by the appellants was the cash equivalent of the duty of customs forgone by the Department as deemed export benefits. This payment was required by the Department and made by the appellants in anticipation of delay of financial assistance from World Bank. Ultimately, when the World Bank assistance came through, the appellants wanted to get back their money. As regards the party who imported the materials required for the projects, they continued to enjoy exemption all throughout, i.e. both prior to and subsequent to World Bank assistance. In this scenario, ***the cash payment made by the appellants was rightly to be treated as a deposit and claim for its refund was rightly to be entertained without reference to the time-bar provisions of Section 27 of the Customs Act. We have come across 2 Orders-in-Appeal, wherein similar payment of cash was considered to have been made under protest and accordingly the claim for its refund was allowed without reference to any time-bar provision. Admittedly, the view stands accepted by the Revenue.***

[Emphasis supplied]

6.2 CESTAT, Delhi in the case of ***CCE Ghaziabad Vs Power Grid Corpn of India (supra)*** *observes as follows:*

"We find that an identical issue was the subject matter of the Tribunal's order in the same assessee's case reported as ***M/s. Power Grid Corpn. of India Ltd. Vs. CC, Chennai [2009 (234) ELT 138 (Tri-Chennai)].*** *While considering all the aspects in detail, including the meetings between the representatives of various Ministries as also the fact of late sanction of world bank loan, the Tribunal arrived at a finding that the issue of time bar will not apply to sanction of refund claim by the Revenue. By following the said order, we do not find any infirmity in the impugned*

order of Commissioner (Appeals). Accordingly, the Revenue's appeals are rejected."

6. We do not find any reason in not accepting the aforesaid observations of this Tribunal. Consequently, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative portion of the order pronounced in court)

(Dr. D.M. Misra)
Member (Judicial)

(S. Srivastava)
Member (Technical)

Sinha