CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 89862 of 2018

(Arising out of Order-in-Appeal No. NSK/EXCUSS/000/APPL/283/18-19 dated 23.08.2018 passed by Commissioner of GST and Central Excise (Appeals), Nashik)

M/s Rainbow Weavers and Processors Ltd. .....**Appellant**
Shade No. 6, 7 & 8,
Ajanta Road, MIDC Area,
Jalgaon-425003

VERSUS

Commissioner of Central Excise & Service Tax, Nasik .....**Respondent**
Kendra Rajaswa Bhawan,
Old Agra Road, Gadkari Chowk,
Nasik - 422002

Appearance:

Ms. Ginita Bodani, Advocate for the Appellant
Shri Anil Choudhary, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85677 / 2020

Date of Hearing: 02.03.2020
Date of Decision: 02.03.2020

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 23.08.2018 passed by the Commissioner of GST and Central Excise (Appeals), Nashik.

2. Briefly stated, the facts of the case are that the appellant herein is engaged in the manufacture of textile fabrics, falling under Chapter 55 of the First Schedule to the Central Excise Tariff Act, 1985; during the disputed period, the appellant had opted for exemption from payment of central excise duty on the manufactured goods, in terms of the Notification No. 30/2004-CE dated 09.07.2004 issued by the Central Government. Subsequently, the appellant had reversed the Cenvat credit as per the clarification issued by the Joint Secretary (TRU) vide letter dated 28.07.2004. Consequent upon reversal of such credit, the appellant had filed the refund application in terms of

Section 11B of the Central Excise Act, 1944 in respect of the amount of Cenvat credit reversed by it. The refund application filed by the appellant was sought to be rejected on the ground that the claim is barred by limitation of time inasmuch as the appellant had filed the refund application after almost 13 years from the date of reversal of the Cenvat credit in question. The matter was adjudicated against the appellant in denying the refund benefit, which was upheld by the learned Commissioner (Appeals) vide the impugned order dated 23.08.2018.

3. The learned Advocate appearing for the appellant submits that since the Cenvat credit was reversed as per the instructions issued by the Board, as a consequence of the budget proposal for the relevant period, the amount of reversal should be considered as mere debit in the Cenvat amount, but should not considered as payment of duty of excise. Thus, she submits that the provisions of Section 11B of the Act should not be applicable for claim of refund of the amount of Cenvat credit reversed in the books of accounts. She further submits that since the mechanism for reversal of Cenvat credit was not prescribed in the statute book in 2004 and the same brought into effect in 2007, denial of the refund benefit by the department is without the authority of law and as such, the amount of refund should be available to the appellant.

4. On the other hand, the learned AR appearing for Revenue reiterates the findings recorded in the impugned order. He further submits that since the appellant had filed the refund application under Section 11B of the Act and the same was considered and entertained by the statutory authorities under the relevant provisions of law, in absence of any ambiguity with regard to interpretation of the said statutory provisions, denial of the benefit of refund on the ground of limitation alone is sustainable under the law. He has relied upon the judgment of the Hon’ble Supreme Court in the case of Mafatlal Industries Limited Vs. Union of India – 1997 (89) ELT 247 (S.C.) and Collector of C.E., Chandigarh Vs. Doaba Co-operative sugar Mills – 1988 (37) ELT 478 (S.C.) to state that in case of refund claim filed under 11B of the Act, the statutory provisions have to be strictly complied with by the authorities functioning under the

statute and different interpretation cannot be placed in support of grant of refund benefit.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that the appellant in this case had filed the refund application after almost 13 years from the date of reversal of Cenvat credit. Insofar as the time limit for filing of refund application is concerned, Section 11B *ibid* in clear and unambiguous term provides that the claim application should be filed within 1 year from the relevant date. The refund application filed by the appellant was considered by the original authority under Section 11B *ibid* and denied such benefit to the appellant on the ground of limitation. Since, the Central Excise statute clearly mandates the time limit for filing of the refund application, denial of the refund benefit solely on the ground of limitation by the original authority is inconformity with the statutory provisions inasmuch as the adjudicating as well as the appellate authorities are created under the statute and cannot interpret the provisions of law in a different manner than as provided by the legislature. The Hon'ble Supreme Court in the case of Doaba Co-operative Sugar Mills (supra) have ruled that statutory provisions cannot be interpreted differently by the authorities functioning there under and since the statute has clearly prescribed a time limit for filing of the refund application, the same has to be strictly adhered to by such authority.

7. In view of the fact that the refund application filed by the appellant was rejected under the ground of limitation, as per the provisions of Section 11B *ibid,* I do not find any merits in the appeal filed by the appellant. Accordingly, appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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