CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 784 OF 2006

[Arising out of Order-in-Appeal No: P III/433/05 dated 6th December 2005 passed by the Commissioner of Central Excise (Appeals), Pune – III.]

Dhariwal Industries Ltd
Saradwadi, Shirur – 411 001 … ***Appellant***

versus

Commissioner of Central Excise
Pune – III
41A ICE House, Sassoon Road, Pune – 411 001 ***…Respondent***

APPEARANCE:

Shri Mayur Shroff, Advocate for the appellant

Shri Anil Choudhary, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85866 / 2020

DATE OF HEARING:	31/01/2020
DATE OF DECISION:	31/01/2020

PER: C J MATHEW

This appeal of M/s Dhariwal Industries Ltd challenges the rejection of their claim for refund of ₹ 75,00,000, deposited during investigations into evasion of duties of central excise, by the original, and first appellate authority, as being premature in view of proceedings pending before the adjudicating authority. A brief narration of the background may serve to clarify matters for appropriate disposal.

2. The show cause notice issued to the appellant herein, on conclusion of the investigations referred to *supra*, culminated in adjudication order that confirmed part of the demand while dropping the remaining against which appeals were filed by the assessee as well as by Revenue before the Tribunal. The appeal of Revenue was dismissed and the appeal of the assessee was remanded back for consideration of imposition of penalties in connection with violation of the MODVAT scheme while holding that the credit itself could not be denied. Revenue filed appeal against this decision before the Hon'ble High Court even as the assessee sought refund of the amount deposited during the investigations.

3. While the original authority issued notice dated 4th February 2005 for, and confirmed thereafter, rejection of the claim as the dispute was yet pending for *de novo* adjudication, the appeal of assessee was rejected in order in-appeal no. P III/433/05 dated 6th December 2005 of Commissioner of Central Excise (Appeals), Pune on the ground that the issue relating to reversal of MODVAT credit was pending with the adjudicating authority and that deposit would have to be retained for adjusting, in the event of confirmation, against the amount that may

become due. The rejection of the claim as premature in the impugned order is now challenged before us.

4. Learned Counsel for appellant submits that it is learnt that the appeal of Revenue before the Hon'ble High Court of Bombay has since been dismissed. It is further contended that even if the dispute is, as yet, not adjudicated afresh, the setting aside of the order of original adjudication eliminates rationale for retention against pending dues.

5. We have heard Learned Authorised Representative.

6. We find that the disposal of application for refund itself has been premature. The appellant has sought refund of the amounts deposited during investigation. Whether such amount is available for disposition by the central excise authorities or not, any confirmation of recovery under section 11A of Central Excise Act, 1944, along with interest and penalty, is recoverable under appropriate provisions of Central Excise Act, 1944. The amount deposited is not a limiting factor nor the only source of such recovery.

7. Even if it was considered essential to retain the amount in deposit till conclusion of adjudication proceedings, it would have been appropriate for the competent authority to have withheld any decision on the application for refund till completion of the process. Under section 11B of Central Excise Act, 1944, rejection of refund claim can

arise only on ineligibility in accordance with the provisions wherein. There is no reference to 'premature' claim as ground for rejection.

8. Accordingly, we set aside the impugned order and restore the application to the original authority for disposal on merit.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*