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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 08 of 2012

(Arising out of Order-in-Appeal No. AGS(168)119/2011 dated 29.09.2011 passed by Commissioner of Central Excise & Customs (Appeals), Aurangabad)

M/s. Majalgaon SSK Ltd. **....Appellant**
Sundernagar, Telgaon,
Tal. Majalgaon, Beed

VERSUS

Commissioner of Central Excise, Aurangabad **.....Respondent**
Town Centre, N-5, CIDCO,
Aurangbad-431003

Appearance:

None for the Appellant
Shri Sanjay Hasija, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/85997/2021

Date of Hearing: 24.03.2021
Date of Decision: 24.03.2021

Per: S.K. MOHANTY

None appeared for the appellant. Heard learned AR for Revenue.

2. This appeal is directed against the impugned order dated 29.09.2011 passed by the learned Commissioner (Appeals), Central Excise and Customs, Aurangabad. Vide the impugned order, the learned Commissioner (Appeals) has held as under:

> *"I have carefully gone through the appeal files and the documents available on records and the submissions made during the course of personal hearing. I find that the appeal has been filed against OIO No. 08/Refund/DC/2011 dated*

24.06.2011 passed by the Deputy Commissioner, Central Excise and Customs, Nanded.

(a) Basic issue to be decided in short before me is whether appellant is eligible to claim the refund of balances lying I the PLA/ Cenvat Capital goods and Cenvat Service tax, when the agreement between the appellant and M/s. Bageshwari SSK Ltd i.e. leasee has seized to exist. On examination, I find that appellant has taken M/s. Bageshwari SSK Ltd on lease for Six years vide Tripartile agreement between (i) appellant, (ii) MSC Bank (the liquidator) and (ii) M/s. Bageshwari SSK Ltd. (Leasee). The agreement was entered into on 26.12.2006. As per Clause 36 of the agreement it was agreed upon to refer the matter to Sugar Commissioner as Arbitrator in case of any dispute. Accordingly, due to some dispute between the appellant and M/s. Bageshwari SSK Ltd. the dispute was referred to Sugar Commissioner, who in turn vide his Order dated 08.02.2010 has terminated the Tripartite agreement dated 26.12.2006. Since, the agreement is terminated appellant do not have any locus-standi with the assets of M/s Bageshwari SSK Ltd. Similarly, the appellant is not eligible to claim the refund of amount lying in Balance either in PLA or in CENVAT as the factory was operational under the registration certificate issued to M/s Bageshwari SSK Ltd. On scrutiny of the copy of PAN card of M/s. Bageshwari SSK Ltd. it is seen that the PAN no. is AAAAB0725A. The Central Excise Registration no. is AAAAB0725AXM001. These two documents show that Central Excise Registration was issued to M/s Bageshwari SSK Ltd. Therefore, appellant is not eligible to claim the refund after termination of lease agreement.

(b) In view of the above discussion, without going into the other grounds raised by either appellant or the respondent, the refund claims said to have been filed on 28.02.2001 are liable to be rejected. Therefore, I do not find any reason to interfere with the impugned OIO."

3. On perusal of the above findings, it transpires that the tripartite agreement involving the parties, including the appellant

was terminated and as a result, the appellant had no legal right over the property of some other party involved in the dispute. Thus, the appellant cannot be considered as the beneficiary of the credit balance available in the books of some other entity. Hence, I am of the view that rejection of refund application in the impugned order cannot be interfered with at this juncture.

4. Further, I find that an identical issue came before the Tribunal in the case of Shri Vitthalsai SSK Ltd. Vs. CCE Nagpur. The Tribunal vide order dated 27.09.2019 has held that refund is not permissible under Section 11B of the Central Excise Act, 1944 and Section 11B(2) *ibid*, where Cenvat credit could not be utilized due to closer of manufacturing activities. With the said observations, the Tribunal has upheld the order of the lower authority and dismissed the appeal filed by the appellant. The said order has relied upon the judgment of Hon'ble Bombay High Court in the case of M/s. Gauri Plasticulture Pvt Ltd Vs. Commissioner of Cenral Excise reported in 2019-TIOL-1806-HC-MUM-CX. Since the issue arising out of present dispute is no more open for any debate, I do not find any merits in the appeal filed by the appellant. Accordingly, the same is dismissed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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