CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 86208 of 2015

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-248-14-15 dated 24.03.2015 passed by Commissioner of Central Excise (Appeals), Pune-I.)

M/s. Emcure Pharmaceuticals Ltd. ....Appellant
P-2, I.T.B.T. Park, Phase-II,
MIDC Hinjewadi, Pune- 411 057

VERSUS

Commissioner of Central Excise, Pune-I ....Respondent
ICE House, 41/A, Sasson Road,
Opp. Wadia College,
Pune- 411 001

APPERANCE:

Shri Narendra Adwadkar, Associate Director for the Appellant

Ms. Anuradha S. Parab, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86651 / 2021

Date of Hearing: 26.07.2021
Date of Decision: 26.07.2021

PER: DR. SUVENDU KUMAR PATI

Refusal of part refund of Rs.66,65,555/- as time barred out of total claim of Rs.79,46,000/- as un-utilised CENVAT credit to the appellant EOU by the Commissioner of Central Excise (Appeals) Pune-I vide his Order-in-Appeal No. PUN-EXCUS-001-APP-248-14-15 dated 24.03.2015 is assailed in this appeal.

2. In the memo of appeal and during the course of hearing of appeal, learned Counsel for the appellant Shri Narendra Adwadkar, with reference to the Larger Bench decision of this Tribunal reported in *MANU/CB/0004/2018* in the case of *Span Infotech (India) Pvt. Ltd.* and subsequent decisions of this Tribunal reported in *MANU/CM/0425/2019* in the case of *Partners Group (India) Pvt. Ltd. Vs. Commissioner of GST & Central Excise, Mumbai, 2019-TIOL-1571-CESTAT-BANG* in the case of *Commissioner of Central Tax, Bengaluru Vs. Huawei Technology India Pvt. Ltd.,* has argued that it has become a settled position of law now that the due date for filing refund claims for unutilised CENVAT credit by the exporters under Rule 5 of the CENVAT Credit Rules, 2004 is one year from the end of the quarter during which payment is received and not from the date of receipt of payment. He, therefore, submitted that export made up to 18th June, 2011 should not be treated as time barred since end of the quarter for that period of export was 30th June, 2012. In view of the above referred settled position of law the appeal is to be allowed as they filed the refund claim on 18th June, 2012 which was much before the due date.

3. In response to such submissions, learned Authorised Representative Ms. Anuradha S. Parab for the respondent-department, with reference to judicial decision reported in *2015 (321) ELT 221 (Mad.)* in the case of *Commissioner of Central Excise Vs. Celebrity Designs India Pvt. Ltd*., has argued that claim for

refund after a period of one year is hit by provisions of Section 11B of the Central Excise Act, 1944 read with Notification No. 11/2002-CE (NT) for which no interference by the Tribunal in the order passed by the Commissioner (Appeals) is called for at the instance of the appellant. She also pointed out that refund of Rs.12,80,445/- which was filed within the due time was promptly granted by the Commissioner (Appeals), for which no irregularities could be inferred from the order of the Commissioner (Appeals).

4. We have heard the submissions from both the sides and perused the case record. It is observe that placing reliance on the order passed by the Hon'ble Madras High Court cited above which had followed its own order passed in the case of *Commissioner of Central Excise, Coimbatore Vs. GTN Engineering (I) Ltd.* reported in *2012 (281) ELT 185 (Mad.),* the Commissioner (Appeals) had arrived at the findings which could be considered as passed on the basis of law prevailing during the relevant period of time i.e. in 2015 but having regard to divergent opinions of different High Courts including a departure from the reasoning given by the Hon'ble Madhya Pradesh High Court in the case of *STI India Ltd. Vs. Commissioner of Customs & Central Excise, Indore reported in 2009 (236) ELT 248 (M.P.),* basing on which *Celebrity Designs India Pvt. Ltd*. order was subsequently passed, the necessity of formation of a Larger Bench of CESTAT was felt after observation of the Bench dealing with *Span Infotech (India) Pvt. Ltd.* matter and ultimately the issue was set at rest with the findings of the Larger Bench that for the purpose of

limitation, due date for filing refund claim for unutilised CENVAT credit by the exporters under Rule 5 of the CENVAT Credit Rules, 2004 is one year from the end of the quarter during which payment is received and not from the date of receipt of payment. In this context it is worth referring here the judgement of this Tribunal passed by another Larger Bench way back in 1987 in the case of *Atma Steels Pvt. Ltd. and Others Vs. Collector of Central Excise, Chandigarh and Others* reported in *RLT (LB-CEGAT) - 87* relevant portion of which reads as here under:-

> *"We also feel that as a Tribunal, working on all-India basis, we have the freedom to consider judgments holding conflicting views given by different High Courts, and then see for ourselves as to which authority, applied more fully and aptly to the facts of a given case, before us. For, in view of the scheme of the Act, under which we are functioning, as brought into focus in paras 59 and 61 above, we are constrained to repel the argument, that we are circumscribed by the view of a particular High Court where the assessee or a particular Collectorate is, because that would inevitably land the Tribunal in a mess, propounding conflicting and contradictory views, vitiating its very existence, and cutting down the wholesome principles, desirability whereof has been highlighted in para 60 above. We, therefore, feel duty-bound to determine ourselves, this issue; namely, continuation of proceedings pending at the time of the respective amendments, and adopting the view of Madhya Pradesh High Court as enunciated in* ***Gwalior Rayon*** *case (supra), we hold that these proceedings can continue, which view a Bench of this Tribunal already expressed, without much controversy having been raised in the case of Carew & Co. Ltd. v. Collector of Central Excise, Allahabad (1983 E.L.T. 1186) (CEGAT) ---"*

In view of the above decisions and in carrying forward the judicial precedent set by this Tribunal, we are of the considered view that the appellant is entitled to get the full refund and accordingly we allow the appeal. Hence the order.

ORDER

4. The appeal is allowed and the order passed by the Commissioner of Central Excise (Appeals), Pune-I in Order-in-Appeal No. PUN-EXCUS-001-APP-248-14-15 dated 24.03.2015 is hereby modified with grant of additional refund amount of Rs.66,65,555/- with applicable interest as per Rule 11BB of the Central Excise Act, 1944. The respondent department is directed to make payment of the same within three months of receipt of this order.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad