CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 85963 of 2019

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-477-478/18-19 dated 01.12.2018 passed by Commissioner of Central Excise (Appeals-I), Pune)

M/s. Unitech Precision Pvt. Ltd. **Appellant**
31/37, New Industrial Estate,
Ichalkaranji 416 115.

Vs.

Commissioner of CGST, Kolhapur **Respondent**
Vasant Plaza, Commercial Complex,
Rajaram Road, Bagal Chowk,
Kolhapur 416 001.

Appearance:

None for the Appellant
Shri N.N. Prabhudesai, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/87410/2021**

Date of Hearing: 24.12.2021
Date of Decision: 24.12.2021

This appeal is directed against Order-in-Appeal No. PUN-EXCUS-001-APP-477-478/18-19 dated 01.12.2018 passed by Commissioner of Central Excise (Appeals-I), Pune. By the impugned order, the Commissioner (Appeals) has upheld two orders-in-original both dated 13.06.2018 rejecting the rebate claim filed by the appellant.

1.2 By order-in-original No. 13/Refund/CGST/Div-II/KOP/2018-19 dated 13.06.2018, the Assistant Commissioner, CGST, Division-II, Kolhapur, has held as follows:-

"***ORDER***

I hereby reject the rebate claim of Rs.2,40,365/- filed by M/s. Unitech Precision Pvt. Ltd., 31/37, New Industrial Estate, Ichalkaranji, Dist. – Kolhapur-416 115 under Section 11B of the

Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002. This order is protected under Section 174 of the Central Goods and Services Act, 2017."

1.3 By order-in-original No. 14/Refund/CGST/Div-II/KOP/2018-19 dated 13.06.2018, the Assistant Commissioner, CGST, Division-II, Kolhapur, has held as follows:-

*"**ORDER***

I hereby reject the rebate claim of Rs.77,981/- (Rupees Seventy Seven Thousand, Nine Hundred, Eighty One Only) filed by M/s. Unitech Precision Pvt. Ltd., 31/37, New Industrial Estate, Ichalkaranji, Dist. – Kolhapur-416 115 under Section 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002. This order is protected under Section 174 of the Central Goods and Services Act, 2017."

1.4 Being aggrieved, the appellant has preferred this appeal.

2.1 When the matter was listed for hearing, none appeared for the appellant and a written request for adjournment was made.

2.2 I have heard Shri N.N. Prabhudesai, Superintendent (Authorised Representative) for the Revenue.

3.1 I have considered the impugned appeal along with the submissions made by the learned Authorized representative.

3.2 From perusal of the records it is evident that this appeal has been filed by the appellant against the order of the Commissioner (Appeal) in case of rebate claim.

3.3 Section 35B of the Central Excise Act, 1944 and Section 129A of the Customs Act, 1962 deal with filing of appeals before the Appellate Tribunal. Relevant parts of said statutory provisions are extracted below:-

Central Excise Act, 1944

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*"**Section 35B. Appeals to the Appellate Tribunal. -** (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -*

(a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under Section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Central Excise, either before or after the appointed day, under Section 35A, as it stood immediately before that day :

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the

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Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No. 2) Act, 1998 :

Provided further that………………………………………………..”

3.4 Section 129 A of the Customs Act, 1962 deal with filing of appeals before the Appellate Tribunal provides as follows:

Customs Act, 1962

*“**Section 129A. Appeals to the Appellate Tribunal. -** (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -*

(a) a decision or order passed by the [Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority;

(b) an order passed by the [Commissioner (Appeals)] under Section 128A;

(c) an order passed by the Board or the [Appellate Commissioner of Customs] under Section 128, as it stood immediately before the appointed day;

(d) an order passed by the Board or the [Principal Commissioner of Customs or Commissioner of Customs], either before or after the appointed day, under Section 130, as it stood immediately before that day :

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

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(c) payment of drawback as provided in Chapter X, and the rules made thereunder:

Provided further that……………………………………………….”

3.5 As per these sections, no appeal lies to this Tribunal against an order of the Commissioner (Appeals) in the matter relating to rebate claims. Accordingly the appeal is not maintainable before this Tribunal.

3.6 Same view has been expressed by the larger bench of CESTAT in the case of Alembic Ltd. [2017 (350) ELT 253 (Tri.-LB)] relied upon by the learned authorized representative.

4. The appeal is therefore rejected as not maintainable.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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