CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 1774 of 2012

(Arising out of Order-in-Original No. BEL/DN-III/R-V/SBS/AC/615/11-12 dated 09.02.2012 passed by the Asst. Commissioner of Central Excise, Belapur III)

M/s. Repro India Ltd. **.....Appellant**
Plot no.50/2, TTC Indl. Area
Mahape, MIDC,
Navi Mumbai

Vs.

Commissioner of CGST & Central Excise, **.....Respondent**
CGO Complex, 10,
CBD Belapur

APPEARANCE:

Shri Rajesh Ostwal, Advocate along with Ms. Payal Nahar, Adv for the appellant
Shri Amrendra K. Jha, DC (AR) for the respondent

CORAM:

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

FINAL ORDER No: A/85537/2023

DATE OF HEARING : 16.02.2023
DATE OF DECISION : 16.02.2023

Per: Dr. Suvendu Kumar Pati

Rejection of refund claim of ₹42,56,456/- on the ground of limitation and its confirmation by Commissioner (Appeals) vide his above referred order is assailed by the assessee appellant in this appeal.

2. The facts of the case, in a nutshell, is that the appellant is a manufacturer and supplier of printed books which were cleared for both domestic and export purposes on payment of excise duty, wherever applicable. On certain inputs received by it like GTA services, Port services etc. appellant sought for refund of the tax paid on those services in terms of notification no. 41/2007-ST dated 06.10.2007. Original refund claim was for the amount of ₹5,39,175/- that was filed on 29.09.2009 for the quarter January 2009 to March 2009 in respect of Service Tax paid on input services during the period which were for export of goods. There was a defect memo issued for the submission of original invoice copies by the Range Superintendent. On 25.06.2010 the refund application was returned back to the appellant with a direction to resubmit the same along with complete documents. Appellant complied with the direction of Range Superintendent and resubmitted the refund claim on 04.05.2011 with an enhanced amount of ₹42,56,456/- for the same quarter in terms of Circular no. 120/01/2010 dated 19.01.2010. A show-cause notice was issued to the appellant proposing rejection of refund that was contested by it and ultimately rejection order was passed on the ground of filing of refund application after the limitation period prescribed in notification no. 41/2007-ST dated 06.10.2007 was over. Appellant’s unsuccessful attempt made before the Commissioner (Appeals) challenging the legality of the said order is assailed in this forum.

3. During the course of hearing of appeal, Learned Counsel for the appellant Mr. Rajesh Ostwal along with Ms. Payal argued with reference to the order passed by this Tribunal in appellant’s own case reported in 2016 (43) STR 203(T) wherein under similar facts and circumstances appellant was allowed to get refund of the enhanced amount claimed for the period October 2008 to December 2008. Learned Counsel Mr. Ostwal further argued that there was clear finding of this Tribunal that return of

the application for rectification of deficiencies and the refiling thereafter was clear indication that the competent authorities were not unaware of the claims that had been filed on time for which he led his argument that the original application filed on 29.09.2009 is to be accepted as date of application for the purpose of computation of the period of limitation. His further argument is based on the fact that it has been a settled law now and has found approval by the CESTAT in various decisions including that of *Premier Tyres Ltd. v. Collector 1984 (16) ELT 419(T), Hindustan Cocoa Products Ltd. vs. CCE 1987 (32) ELT 747(T), Coromondel Fertilisers Ltd. vs. CC 1987 (30) ELT 1001 (T), Engineering Projects (India) Ltd. vs. CC 1988 (33) ELT 591 (T),* that refund of a larger amount is admissible and not limited to the original refund claim irrespective of the period of limitation, for which the order passed by the Commissioner (Appeals) is unsustainable in law and facts.

4. Learned DR Mr. A.K. Jha argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and took us through the order-in-original to show why the date of filing of refund claim was held to be 04.05.2011 and not 29.09.2009 as appellant had not removed deficiency noted in the deficiency memo and communicated to it, for which the refund application being incomplete was returned back. He further argued that confirmation of such a reasoned order by the Commissioner (Appeals) needs no interference by the Tribunal since not only the application was filed beyond the stipulated period but amount of claim was exorbitantly enhanced.

5. We have heard the submissions from both sides and perused the case records as well as the order passed by this Tribunal in appellant's own case for the period October 2008 to December 2008 as noted above. The astonishing fact of this appeal is that similar *modus operandi* had also been adopted for

that period as for this disputed period from January 2009 to March 2009 including return of refund application to the appellant by the Superintendent without any provision of law supporting such return by the Superintendent or even by the refund sanctioning authority and filing of refund application at a much belated stage claiming a very high amount than that of original claim of refund. In the written note of submission appellant attributes the reason to such claim for enhanced refund to the circular issued on 19.01.2010 vide Circular no. 120/01/2010 containing instructions for filing refund claim for the whole quarter for the entire export made during that quarter and astonishingly both the refund applications were returned by the Range Superintendent on the same date i.e. 25.06.2010 with directions to re-file the same. More importantly, for the period for October 2008 to December 2008 refiling of refund application with enhanced amount was done on 22.02.2011 while refiling of this refund application was done on 04.05.2011. This fact itself indicates that appellant was perhaps in the process of procuring document to finalise its refund claim amount and as the other period was ending in December 2008 it had refiled the said application almost 4 months before the filing of this present application with enhanced claim, though both applications were returned to it on the same date. It may be out of record but it would apparently indicate a connivance between the Range Superintendents and appellant to facilitate remediating the deficiency in filing refund application for a lesser amount by raising the amount, that could have been refunded in the event the said was filed within the period of limitation, which was six months during the relevant period. We have, therefore, got no hesitation to accept the date of filing of refund claim as 29.09.2009 but the amount of refund claim that could be sanctioned through the refund application could only be limited to ₹5,39,175/- with applicable interest as per section 11BB since allowing the enhanced refund amount and applying interest on it would cause gross injustice to the respondent department as the additional claims was made much after the period of limitation was over and the case laws cited by the learned Counsel would not come to the rescue of the appellant since those were on the issue of a larger amount which was due than what was claimed as refund and not related to a case like re-filing of refund claim in seeking a higher amount as refund than what was claimed while treating the refund application date to be the date for which lesser amount was claimed. Hence the order.

Order

6. The appeal is allowed and the order passed by Commissioner (Appeals) is hereby modified to the extent that appellant is entitled to get a refund of ₹5,39,175/- with applicable interest. The respondent department is directed to pay the same within three months of receipt of this order.

(Operative part pronounced in open Court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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