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

Excise Appeal No. 85616 of 2013

(Arising out of Order-in-Appeal No. BR/275/Th-I/2012 dated 09.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. Power Grid Corpn. of India Ltd. **Appellant**
Eastern Region Transmission
System-II, J-I-15 Block-EP, Sector-V,
Salt Lake City, Kolkata 700 091.

Vs.

Commissioner of Central Excise, Thane-I **Respondent**
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

Appearance:

Shri Rajesh Ostwal, Advocate with Ms. Hanisha Jatania, Chartered Accountant, for the Appellant
Shri Amrendra Kumar Jha, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 02.03.2023
Date of Decision: 02.03.2023

FINAL ORDER NO. 85823/2023

PER: SANJIV SRIVASTAVA

Appellant have filed a refund claim claiming refund of Rs 37,96,214/- for period July 2000 to January 2002 which was rejected by the original authority and the order of rejection has been upheld by the Commissioner (Appeals) vide order in appeal No BR/275/Th-1/2012 dated 9.11.2012. Hence this appeal.

2.1 The appellants (government of India enterprise) are, inter alia, engaged in transmission of electricity to various State Electricity Boards throughout the country.

2.2 Notification No. 108/95-CE dated 28.8.1995 exempts goods from whole of excise duty, provided the said goods are supplied to the project financed by international finance institutions like World Bank etc. However, one of the condition under Notification is that the manufacturer, before clearing the goods, has to produce before the Assistant Commissioner of

Central Excise having jurisdiction over his factory, a certificate that the goods are intended for the projects duly approved by Government of India. The project authority certificate (PAC) has to be issued by the head of the Project implementing authority and countersigned by the Specified officer from the concerned ministry.

2.3 Due to environmental clearances and other factors, the World Bank sanction to the project was delayed. Meanwhile, the DGFT issued a public notice dated 1.7.1999, wherein it was made clear that whether or not the Talcher Project is financed by the World Bank, the supplies made to the project, shall be treated as deemed export. However, condition was imposed in the public notice that in the event of not obtaining the sanction from the World Bank, the appellants have to reimburse to the Government the deemed export benefit availed by its suppliers.

2.4 On the strength of PAC issued by the appellants, M/s. Smita Conductors Ltd. (supplier) cleared goods without payment of duty in terms of Notification No. 108/95-CE dated 28.8.1995, after necessary intimation to the excise department.

2.5 Since the funding of the Talcher Project seemed uncertain, the appellants made cash payment of Rs.37,96,214/- on 26.12.2002 provisionally (under protest) towards excise duty payable on the goods cleared by M/s. Smita Conductors Ltd. to the Talcher Project during the period in dispute. The same was intimated to the Deputy Commissioner having jurisdiction over the factory of M/s. Smita Conductors Ltd. vide letter dated 18.12.2002.

2.6 Subsequently, the World Bank finally agreed to extend the loan/ fund to the Talchar project vide letter dated 18.3.2004. Consequently, the appellants filed refund application of Rs.37,96,214/- on 5.11.2004 in respect of the amount paid by them in respect of the receipt of the goods from M/s. Smita Conductors Ltd. (i.e., supplier) in relation to the Talchar Project.

2.7 The appellants filed refund claim claiming refund of the duty paid, in view of the above Final Order dated 10.8.2006. A Show Cause Notice dated 8.2.2007 proposing to reject the refund claim on the grounds that

(i) The refund of amount paid by the appellants on 26.12.2022 is after the date of clearance and thereafter, the amount paid is not duty and hence, not covered by Section 11B of the Central Excise Act, 1944;

(ii) There is no provision for refund of terminal excise duty under Section 11B of CEA, 1944;

(iii) The claim had not arisen out of order passed by the Tribunal;

(iv) Refund claim is barred by limitation.

2.8 The said Show Cause Notice was adjudicated denying the refund vide Order-in-Original dated 30.3.2017.

2.9 The Commissioner (Appeals) in the impugned Order-in-Appeal dated 5.11.2012 upheld the Order-in-Original dated 30.3.2017 based on the finding that the refund claim is barred by limitation in terms of Section 11B of Central Excise Act, 1944.

3.1 We have heard Shri Rajesh Ostwal, Advocate and Ms. Hanisha Jatania, Chartered Accountant, for the Appellant and Shri Amrendra Kumar Jha, Deputy Commissioner, Authorized Representative for the revenue.

4.1 We have considered the impugned order along with the submissions made in appeal.

4.2 The issue involved in the present case is no longer res integra.

a. In the appellants own case tribunal has vide order reported at [2019 (12) TMI 333 – CESTAT MUMBAI] held as follows:

"5. We have carefully considered the submissions made by both sides. We find that this Tribunal in the case of Power Grid Corporation of India Ltd. Vs. CCE – 2017 (5) TMI - CESTAT Ahmd, after taking into account the various judgments delivered by the Tribunal in the appellant's own case observed as follows:-

"6. After going through the submissions, it appears that the matter is covered by the following decisions of CESTAT:

a) CCE Ghaziabad Vs Power Grid Corpn India Ltd - 2013(4) TMI. 707 (Cestat ND) *b) Power Grid Corpn of India Vs CC(EP) Mumbai Order No.A/93735- 93742/16/CB dt 8.11.2016 in Appeal No.C/433 to 440/06.*

c) Power Grid Corpn of India Ltd Vs CC, Chennai 2009(234)ELT.138 (Tri-Chennai)

6.1 The CESTAT, Chennai in the case of Power Grid Corpn of India Vs CC Chennai (supra) inter alia observes as follows:

7. It has also been argued that the appellants case is also supported by the view taken by senior representatives of the ministries concerned to the effect that the time-bar provisions should be relaxed in respect of refund claims filed by parties associated with execution of power projects with assistance from World Bank. We have found a valid point with the counsel. What was paid by the appellants was the cash equivalent of the duty of customs forgone by the Department as deemed export benefits. This payment was required by the Department and made by the appellants in anticipation of delay of financial assistance from

World Bank. Ultimately, when the World Bank assistance came through, the appellants wanted to get back their money. As regards the party who imported the materials required for the projects, they continued to enjoy exemption all throughout, i.e. both prior to and subsequent to World Bank assistance. In this scenario, the cash payment made by the appellants was rightly to be treated as a deposit and claim for its refund was rightly to be entertained without reference to the time-bar provisions of Section 27 of the Customs Act. We have come across 2 Orders-in-Appeal, wherein similar payment of cash was considered to have been made under protest and accordingly the claim for its refund was allowed without reference to any time-bar provision. Admittedly, the view stands accepted by the Revenue.

[Emphasis supplied]

6.2 CESTAT, Delhi in the case of CCE Ghaziabad Vs Power Grid Corpn of India (supra) observes as follows:

"We find that an identical issue was the subject matter of the Tribunal's order in the same assessee's case reported as M/s. Power Grid Corpn. of India Ltd. Vs. CC, Chennai [2009 (234) ELT

138 (Tri-Chennai)]. While considering all the aspects in detail, including the meetings between the representatives of various Ministries as also the fact of late sanction of world bank loan, the Tribunal arrived at a finding that the issue of time bar will not apply to sanction of refund claim by the Revenue. By following the said order, we do not find any infirmity in the impugned order of Commissioner (Appeals). Accordingly, the Revenue's appeals are rejected.

6. We do not find any reason in not accepting the aforesaid observations of this Tribunal. Consequently, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law."

4.3 Same view has been expressed by tribunal in following decisions in case of appellant:

(i) Power Grid Corporation of India Ltd. [2017 (5) TMI 1194 – CESTAT AHMEDABAD]

(ii) Power Grid Corporation of India Ltd. [2016 (11) TMI 1397 - CESTAT, Mumbai]

(iii) Power Grid Corporation of India Ltd. [2015 (6) TMI 742 – CESTAT MUMBAI]

(iv) Power Grid Corporation of India Ltd. 2013 (4) TMI 707 - CESTAT NEW DELHI

(v) Power Grid Corporation of India Ltd. [2009 (234) ELT 138 (T)]

4.4 In view of the above decisions we do not find any merits in the impugned order rejecting the refund claim.

5.1 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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