CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86624 OF 2013

[Arising out of Order-in-Appeal No: PVR/09/NGP/2013 dated 11th January 2013 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Maharashtra State Power Generation Company Ltd
Urjanagar, Dist: Chandrapur – 442 404 … ***Appellant***

versus

Commissioner of Central Excise & Customs
Utpad Shulk Bhavan, Civil Lines, Telengkhedi Road
Nagpur 440001 ***…Respondent***

APPEARANCE:

Shri Neerav R Mainkar, Advocate for the appellant

Shri Xavier R Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87206/2023

DATE OF HEARING: 04/07/2023
DATE OF DECISION: 06/12/2023

PER: C J MATHEW

The short point in this appeal of M/s Maharashtra State Power

Generation Company Ltd, challenging denial of refund claim of ₹ 36,70,325/-, is the requirement of furnishing TR-6 challan in original as evidence of discharge of duty liability for being sanctioned with their entitled reimbursement of taxes. The appellant had been directed to pay the said duty of ₹ 36,70,325/- on the allegation of having manufactured excisable goods and it was consequent to settlement of disputes in their favour that the refund claim was filed.

2. The original authority rejected claim for refund solely on the ground that the TR6 challan, evincing payment of duty, had not been furnished. The first appellate authority upheld the finding of original authority to dismiss the appeal of M/s Maharashtra State Power Generation Company Ltd.

3. We have heard Learned Counsel for appellant and Learned Authorised Representative.

4. We find that the issue of documentation prescribed under section 11B of Central Excise Act, 1944 for claiming of refunds came before the Tribunal in *Maharashtra State Electricity Board v. Commissioner of Central Excise, Nagpur [2004 (170) ELT 541 (Tri.-Mumbai)]* and it was held therein that

> *'5. I have perused the letter dated 25-4-94 of the Central Excise Superintendent, Amravati, referred to by the ld. Counsel. The second paragraph of this letter indicates that*

the relevant gate passes, original PLA books, original TR-6 challans relating to the payment of duty of Rs. 6,11,966.71 had been transmitted to the Assistant Collector of Central Excise Division-II, Nagpur for necessary action. The letter further indicates that, xerox copies of RT-12, PLA, GP-1 and TR-6 challans in respect of duty of Rs. 1,86,222/- had also been supplied to the Assistant Commissioner of Central Excise Division-II, Nagpur from the Divisional office Amravati. These documents related to the period May 1981 to September 1989. The Commissioner (Appeals) has however noted that, for the period January 86 to September 87, no documents were available for verification. These findings are contrary to the above factual position borne on letter dated 25-4-94. Ld. Commissioner (Appeals) apparently did not apply his mind to the relevant contents of the letter. The letter is an intra-departmental correspondence and the same reads in favour of the assessee. I am therefore, of the view that, without looking into the case law cited by the Counsel, it is possible to allow the refund claims in question lawfully on the strength of the facts borne on the departmental correspondence. It is unjust to burden the assessee with production of further evidence of payment of duty. Proof of payment of duty is well reflected in the department's records. The respondent has no case that the appellants have claimed refund of duty unduly or with any oblique purpose. The appellant is a public body and it can have no oblique motives. The orders of the lower authorities are set aside in so far as the refund claims in question are concerned. The claims are allowed. The proper officer shall implement this order within a period of two months from the date of receipt of a certified copy of this order.'

5. The issue is the same as that in the dispute of the appellant for

similar refund. It would appear that the lower authorities had erred in insisting upon the original document as proof of discharge of duty liability even though available with the central excise authorities. In view of this, the impugned order is set aside and the application restored to the original authority for fresh determination of the application for sanction in consequence of judicial determination of non-excisability.

6. Accordingly, the appeal is allowed by way of remand.

(Order pronounced in the open court on 06/12/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*