

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND

THE HON'BLE MR.JUSTICE R.KARUPPIAH

C.M.A.No.133 of 2015

The Commissioner of Central Excise
Chennai IV Commissionerate
692, MHU Complex, Anna Salai,
Nandanam, Chennai - 600 035. ... Appellant

Vs.

1. M/s. Celebrity Designs India Pvt. Ltd.,
No.86, Velachery - Tambaram Main Road,
Pallikaranai, Chennai - 601 302.
2. Customs, Excise and Service Tax Appellate Tribunal
South Zonal Bench,
Sasthri Bhavan Annexe, 1st Floor
No.26, Haddows Road, Chennai - 600 006. ... Respondents

Prayer: Appeal filed under Section 35G of the Central Excise Act, 1944 against the order dated 05.03.2014 made in Final Order No.40209 of 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai.

For Appellant : Mr.P.Mahadevan
Standing Counsel
For Respondents : Mr.Karthikeyan
for 1st respondent
R2-Tribunal

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

This appeal is filed by the Department challenging the Order dated 05.03.2014 made in Final Order No.40209 of 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai raising the

following questions of law:

"1. Whether the decision of the Honourable Tribunal that the refund claim has been filed within the time limit is correct, when the refund was filed beyond one year from the date of export (i.e., the date on which the goods exported left India).

2. Whether the Tribunal's reliance on the decision of Honourable High Court of Madhya Pradesh in the case of M/s. STI India Ltd. is acceptable when a similar issue was decided by Honourable High Court of Madras in the case of M/s.GTN Engineering disagreeing with the decision of Honourable Madhya Pradesh High Court's decision?"

2.1. The brief facts of the case in a nutshell are as follows:

The first respondent/assessee is engaged in the business of manufacturing readymade garments falling under Chapter 62.01 of the Central Excise Tariff Act, 1985. The assessee filed refund claim on 29.3.2005 for Rs.12,76,088/- being the accumulated Cenvat Credit paid on inputs stating that they were availing Cenvat credit of duty paid on inputs allowed under the Cenvat Credit Rules, 2002 for the clearances made during February and March, 2004. On a scrutiny of the application, it was noticed that the claim was hit by limitation under Section 11B of the Central Excise Act. Since the claim for refund is filed after the expiry of one year period as specified under Section 11B of the Central Excise Act, 1944, show cause notice was issued stating why refund claim should not be rejected on the ground that the same is filed after the expiry of one year and the refund was inadmissible if drawback is allowed under Customs and Central Excise Duties Drawback Rules, 1995. The assessee filed a reply stating that the claim was filed on quarterly basis and requested for sanction of refund after deducting the amount on which duty draw back was claimed. The Adjudicating Authority after hearing the assessee and the considering the provisions of law, rejected the refund claim holding as follows:

" The assessee have filed a wrong refund claim knowingly incorporating the invoices on which they have claimed the drawback and thus misled the revenue by mis-declaration. The assessee have already done the same mistake of filing the refund claim based on the invoices on which the drawback were claimed on earlier occasions and subsequently the department disallowed such refund claims. In the instant case, the assessee have repeated the same mis-declaration intentionally which is in contravention of the rule 5 of the Cenvat Credit Rules, 2002. Further in the instant case, the claim is filed after the expiry of the one year period as explained in para 5 above. The claim is hit by time bar under Section 11B of the Central Excise Act, 1944."

2.2. Aggrieved by the order of the Adjudicating Authority, the assessee preferred an appeal before the Commissioner (Appeals), who allowed the appeal, thereby directed the Adjudicating Authority to quantify the actual amount of refund eligible to the assessee after deducting the excise portion of the drawback already availed by them.

2.3 Not satisfied with the order of the Commissioner (Appeals), the Department pursued the matter before the Tribunal.

2.4 The Tribunal, by following the decision of the Madhya Pradesh High court in the case of STI India Ltd. V. CCE reported in 2009 (236) ELT 248 (MP) dismissed the appeal holding that the limitation prescribed under the provisions of Section 11B of the Central Excise Act will not apply to the case.

3. Aggrieved by the said order of the Tribunal, the Department is before this Court raising the questions of law mentioned supra.

4. Heard learned counsel appearing for the assessee and perused the materials placed before this Court.

5. It is not in dispute that the issue involved in this case is with regard to limitation. The short question arises for consideration in this appeal is whether the refund claim is filed within the period prescribed under Section 11B of the Central Excise Act.

6. Since the issue involved in this appeal is with regard to the provisions of Section 11B of the Central Excise Act, it is apposite to refer to the same, which reads as follows:

" SECTION 11B. Claim for refund of duty. –

(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

[Provided further that] the limitation of [one year] shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Commissioner of Central Excise];

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;

(e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

(f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything any judgment, decree, order or direction of the to the contrary contained in Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under proviso to sub-section (2) shall be laid before each clause (f) of the first House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification

in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of any notification issued under clause (f) of doubts, it is hereby declared that the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

[Explanation. – For the purposes of this section, –

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means, –

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, –

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

[(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person; in the case of goods which are exempt from payment of duty

(eb) this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;
(f) in any other case, the date of payment of duty."

7. In an identical circumstance, this Court considered the above-said issue in the case of Commissioner of Central Excise, Coimbatore V. GTN Engineering (I) Ltd. reported in 2012 (281) ELT 185 (Mad), wherein, this Court, after considering the provisions of Section 11B of the Central Excise Act, disagreed with the view of the Madhya Pradesh High Court and held as under:

"17. The learned counsel would also rely upon a judgment of Madhya Pradesh High Court at Indore reported in 2009 (236) ELT 248 (MP) (STI India Ltd. V. Commissioner of Customs and Central Excise, Indore). In that case, though the Court has held that Clause 6 of Appendix read with Section 11B of Central Excise Act, 1944 cannot be made applicable insofar as the period of limitation is concerned when a claim for CENVAT credit is made, a reading of the said provision shows that there is no reference to Rule 5. With great respect, we are not in agreement with the said judgment as the judgment was rendered based on the rules and the notification which are procedural in nature. As we have found that but for the provision of Rule 5 r/w notification, the respondent could not have filed the application for refund, he has to satisfy the limitation clause as provided under Section 11B of the Act."

8. In the above-said decision, this Court took note of Notification No.5/2006-C.E. (N.T.) dated 14.3.2006 and came to the conclusion that the limitation as prescribed under Section 11B of the Act is applicable in respect of such a claim.

9. In the present case also, similar notification, viz., Notification No.11/2002-C.E.(N.T.) dated 1.3.2002, was in vogue in respect of the period in question. The relevant portion of the said notification reads as follows:

" Refund of Cenvat credit under Rule 5 of Cenvat Credit Rules - Procedure

In exercise of the powers conferred by rule 5 of CENVAT Credit Rules, 2002 (hereinafter referred to as the said rules), the Central Government hereby directs that refund of CENVAT credit of specified duty allowed in respect of inputs used in or in relation to the manufacture of final products which are cleared for export under bond may be allowed subject to the safeguards, conditions and limitations, set out in the Appendix to this notification.

APPENDIX

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6. The application in Form A along with the proof of due exportation and the relevant extracts of the records maintained under the said rules or the deemed credit register maintained in respect of textile fabrics, as the case may be, in original are lodged with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944)."

10. In view of the specific provision, Section 11B, which prescribes the limitation date and the Notification 11 of 2002 dated 1.3.2002, which the Department failed to enclose in the typed set of papers and in all fairness produced before this Court by the counsel for the first respondent, it is clear that refund application should be filed before the expiry of the period specified in Section 11B of the Central Excise Act.

11. Here is a case, where the claim for refund is filed after a period of one year and hence, the same is clearly hit by the provisions of Section 11B of the Central Excise Act read with Notification No.11 of 2002 dated 01.03.2002. Accordingly, the issue involved in this appeal is answered in favour of the Department and against the assessee.

12. In the result, this Civil Miscellaneous Appeal is allowed. No costs.

13. We appreciate the valuable assistance rendered by Mr.Karthikeyan, learned counsel appearing for the first respondent/assessee in putting forward the correct facts before this Court whereby the appeal filed by the Department came to be allowed despite reluctance of the counsel for the appellant to put forward the case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sl

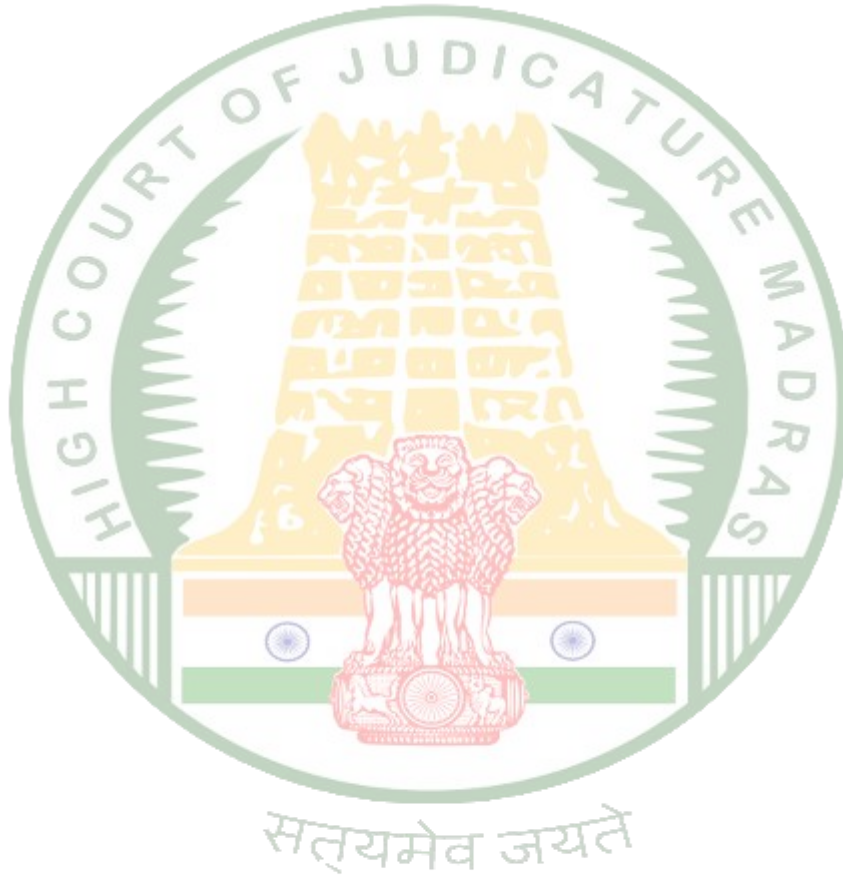
To
The Assistant Registrar
Customs, Excise and Service Tax Appellate Tribunal

South Zone Bench, Sasthri Bhavan Avenue
1st Floor, Haddows Road, Chennai - 600 006.

+1 CC to Mr. P.MAHADEVAN, Advocate, SR.No.12670.
+1 CC to Mr. S.JAIKUMAR, Advocate, SR.No.12194.

C.M.A.No.133 of 2015
& M.P.No.1 of 2015
05.03.2015

RRI (27/03/2015)



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