HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 9042/2023

M/s Rayban Sun Optics India Pvt. Ltd., Plot No 810/811 RIICO Industrial Area, Bhiwadi District Alwar Through Managing Director Anshu Gupta.

----Petitioner

Versus

1. The Commissioner Of Central Excise And Gst Jaipur I, NCR Building, Statue Circle, C-Scheme, Jaipur Rajasthan - 302005
2. The Deputy Commissioner, Central Goods And Service Tax Division-C, Alwar Bypass Road, Bhiwadi, Dist. Alwar - 302019.

----Respondents

For Petitioner(s)	:	Mr. Priyesh Kasliwal Advocate.
For Respondent(s)	:	Mr. Sandeep Pathak Advocate.

HON'BLE THE CHIEF JUSTICE MR. K.R. SHRIRAM
HON'BLE MR. JUSTICE MANEESH SHARMA

Order

03/09/2025

1. Petitioner has filed present writ petition seeking direction to direct respondents to grant refund of Rs.16,89,669/- along with interest, as well as to pay compensation for withholding of refund for longer period of time.

2. Brief facts of the case are that petitioner is engaged in manufacture of Sunglasses and Spectacle frames falling under Chapter 90 of the First Schedule to the Central Excise Tariff Act, 1985. It appears that petitioner had not reversed/deposited the CENVAT Credit involved in the inputs written off by it in its balance sheet for the A.Y. 2000-2001. Therefore, a show cause notice

dated 18th May 2004 was issued to petitioner demanding amount of Rs.16,89,669/- along with interest and penalty. The said show cause notice culminated in the demand vide Order-in-Original No.67/104 dated 21st October 2004.

3. Being aggrieved of Order-in-Original No.67/104, petitioner filed appeal before Commissioner (Appeals), Jaipur and the same was rejected on 01st March 2005.

4. Being aggrieved of Order-in-Application No.17(MPM)CE/JPR-I/2005 dated 01st March 2005, petitioner preferred an appeal before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short 'the CESTAT') and the CESTAT vide final order No.A/380/2012-EX[BR] dated 31st March 2012 accepted the appeal and set aside the impugned order with consequential relief to petitioner.

5. Being aggrieved of the order passed by CESTAT, respondent-department filed an appeal i.e. D.B. Excise Appeal (EXCIA) No.34/2012 before this Court, and a Co-ordinate Bench of this Court; in the light of Circular dated 17th December 2015 and 01st January 2016 issued by Central Board of Excise & Customs, Ministry of Finance, Department of Revenue whereby, monetary limit was fixed; dismissed the appeal vide order dated 21st April 2017. As a consequence of the said dismissal, petitioner filed a refund claim of Rs. 16,89,669/- on 19th February 2018 pursuant to order passed by CESTAT dated 31st March 2012.

6. Assistant Commissioner, CGST Division-C, Bhiwadi vide order No.99/2018-19 (Refund) dated 11th October 2018 rejected the refund claim filed by petitioner while holding the claim to be time

barred in terms of Section 11B of the Central Excise Act, 1944 (for short 'the Act').

7. Being aggrieved of the said Order-in-Original No.99/2018-19 (Refund) dated 11th October 2018, petitioner had filed an appeal before the Commissioner (Appeals), Jaipur which was rejected again vide order dated 02nd September 2019.

8. Being aggrieved of Order-in-Original No.241(CRM) /CE/JPR/2019 dated 02nd September 2019 passed by Commissioner (Appeals), Jaipur, petitioner preferred an appeal before the CESTAT and the CESTAT vide final order No.51613/2021 dated 29th June 2021 set aside the findings arrived upon by the Commissioner (Appeals), Jaipur and allowed the appeal filed by assessee. The operative portion of the CESTAT order dated 29th June 2021 is re-produced as under:

> *"…..the fact remains that entitlement of the appellant to refund of duty paid got finalised only on 21.04.2017 hence the relevant date under Section 11B (ec) is none but 21.04.2017. Refund claim is filed on 19.02.2018 which, therefore, is very much within one year thereof, hence, wrongly been held to be barred by time. Accordingly, I set aside the findings arrived upon by the Commissioner (Appeals). As a result, appeal stands allowed"*

9. Thereafter, petitioner's request to refund the claim, was turned down again, while citing that claim was filed on 06th October 2022 and the same has not been filed within one year of the date of final order i.e., 29th June 2021, and is thus, time barred as per Section 11B of the Act.

10. Counsel for petitioner submits that concerned authority seriously erred in dismissing the refund claim on the premise that the same is time barred in terms of Section 11B of the Act. Counsel further submits that in view of order passed by the CESTAT dated 29th June 2021, petitioner would be entitled for refund. Counsel further states that initial refund claim was filed on

19th February 2018 and the CESTAT, while allowing the appeal filed by petitioner, directed the respondent-department to refund money in terms of claim filed on 19th February 2018, therefore, the reasons recorded in the impugned order are perverse and suffer from legal infirmity. Counsel further submits that once order dated 29th June 2021 attained finality, the dismissal of refund claim vide order dated 04th January 2023 is *per se* illegal.

11. Per-contra, counsel for respondents-department raises preliminary objection *qua* maintainability of this writ petition and submits that alternative remedy of appeal is available to petitioner before the Commissioner (Appeals), Jaipur under the provisions of Section 35 of the Act. He further submits that petitioner has not filed claim within one year from 29th June 2021 (order passed by CESTAT) and has filed claim on 06th October 2022, therefore, same cannot be held to be within a period of one year, he accordingly, supported the order dated 04th January 2023.

12. This Court, while dealing with the preliminary objection qua maintainability of the writ petition, finds that the same is not sustainable, since petitioner's contention was upheld after a chequered history of litigation in terms of table detailed herein below:

S.No.	*Action*	*Date*
1	*Amount Paid 16,18,669*	*08.02.2003*
2	*Show Cause Notice*	*18.05.2004*
3	*Order in Original*	*21.10.2004*
4	*Comm (A) Order*	*01.03.2005*
5	*CESTAT Order*	*31.03.2012*
6	*High Court Order*	*21.04.2017*
7	*Refund Application*	*19.02.2018*
8	*SCN*	*13.04.2018*
9	*Reply to SCN*	*25.04.2018*
10	*Order-in-Original (refund)*	*11.11.2018*
11	*Commissioner (A)*	*02.09.2019*

12	*CESTAT Order*	*29.06.2021*
13	*Second Claim for Refund*	*06.10.2022*
14	*Order in Original*	*04.01.2023*

13. As is evident from the table above, after numerous rounds of litigation, petitioner finally succeeded on 29th June 2021 and again, its prayer for refund is declined under the teeth of limitation. This is despite the fact that the objection of limitation has already been turned down by the CESTAT. Therefore, relegating petitioner to the windmill of statutory appeals by filing an appeal before the Commissioner (Appeals), GST/CGST will merely add on to the hardship already suffered by petitioner, who has been litigating for more than two decades for its legal rights. Therefore, argument of counsel for respondent-department that petitioner should avail alternative statutory remedy cannot be deemed efficacious. Thus, in order to settle the controversy at hand, present writ petition is heard on merits.

14. It is an undisputed fact that petitioner's contention was finally upheld in its favour, as per the order passed by the CESTAT vide final order No.51613/2021 dated 29th June 2021.

15. It is pertinent to mention here that in first round of litigation, petitioner’s application/claim for refund filed on 19th February 2018, was wrongly rejected, as being time barred. Subsequently the CESTAT held that refund claim was not time barred, and was thus wrongly rejected. It is an admitted position on record that order of the CESTAT has not been assailed by respondent-department. Therefore, findings recorded by CESTAT in order dated 29th June 2021 have attained finality.

16. In view of the above facts, rejection of refund on the ground that petitioner had filed instant refund claim on 06th October 2022 after expiry of one year from 29th June 2021 is wholly perverse, especially when petitioner had filed the refund claim on 19th February 2018 itself and objection of limitation has already been rejected vide order dated 29th June 2021. Therefore, the aforesaid approach adopted by respondent-department clearly reflects that they are time and again harassing petitioner on the same ground, which has already been adjudged as unsustainable by the CESTAT and has attained legal quietus.

17. From the above facts, it is evident that respondent-department is under a statutory obligation to refund the said amount with interest.

18. Therefore, rejection of claim of refund vide order dated 04th January 2023, is unsustainable in the eye of law.

19. From a bare perusal of the records, it is evident that respondent-department has retained and enjoyed the benefits of petitioner's money for an extended period of time and petitioner had to run from pillar to post to get its refund. Therefore, in order to compensate petitioner for unjust hardship suffered at the hands of arbitrary action by respondents-department, we are also inclined to award and we hereby do, interest @ 12% p.a. on the refund amount, i.e., Rs.16,89,669/-. Interest shall be calculated from the date of the first refund application, i.e., 19th February 2018 until the date of payment/realisation of refund. Respondents are directed to make payment of the refund amount along with interest as mentioned above, within a period of six weeks from today.

20. Resultantly, the present writ petition stands allowed. Order dated 04th January 2023 passed by respondent-department is hereby quashed and set aside.

21. All other pending application(s), if any, stand disposed.

(MANEESH SHARMA),J (K.R. SHRIRAM),CJ

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