

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.77554 of 2018

(Arising out of Order-in-Appeal No.134/KA-1/2018 dated 27.03.2018 passed by Commissioner of CGST & Central Excise, Kolkata-Audit-I Commissionerate, Kolkata.)

M/s. Global Castings Private Limited

(Palitpur Road, Dewandighi, P.O.Mirjapur, Bardhaman-713102.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bolpur Commissionerate

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

Shri S.P.Siddhanta, Consultant for the Appellant (s)

Shri K.Chowdhury, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75486/2022

DATE OF HEARING : 11 July 2022
DATE OF DECISION : 23 August 2022

P.K.CHOUDHARY :

Being aggrieved by the order passed by the Commissioner of Central Tax, Kolkata Audit-I CGST & CX Commissionerate, Kolkata, the Appellant has preferred the instant Appeal under Section 86 of the Finance Act, 1994.

2. Brief facts of the case are that the original refund claim was filed on 22.07.2015 (in actual 21.07.2015) for the period 2014-15 (w.e.f.

<https://www.taxrealtime.in/>

August, 2014). Under clause (g) to proviso appended to Notification No.41/2012-S.T. dated 29.06.2012, it has been provided that the claim for rebate of Service Tax paid on the specified services used for export of goods filed on 21.07.2015 covered the period from April, 2014 and so as advised by the Department, the Appellant requested to return the claim. The Superintendent (Tech) vide his letter dated 24.08.2015 returned the claim papers. Thereafter after several correspondences, the claim was filed. The adjudicating authority rejected the claim on the ground of limitation and such order passed by the adjudicating authority was upheld by the Commissioner(Appeals) without considering the submission of initial claim on 21.07.2015.

The instant Appeal has been filed against the Order-in-Appeal No.134/KA-1/2018 dated 27.03.2018 passed by Ld.Commissioner of Central Tax, Kolkata Audit-I CGST & CX Commissionerate, Kolkata, who rejected the Appeal filed by the Appellant while upholding the order passed by the adjudicating authority.

3. That the Appellant being a manufacturer exporter submitted a refund application on 22.07.2015 amounting to Rs.3,83,555/- in the prescribed Form A-1 along with the relevant documents covering the period 2014-15 as per Service Tax Notification No.41/2012 S.T. dated 29.06.2012 in respect of Service Tax paid on services used for Export of Goods manufactured by them to the Assistant Commissioner, Central Excise, Bardhaman Division, Bolpur Commissionerate. The Refund application was duly received by the said divisional Office, Bardhaman Division on 22.07.2015. After filing the said refund application by the Appellant, several correspondences for submission/re-submission of several additional documents, as sought for by the jurisdictional Divisional and Range office were exchanged. Finally, Superintendent (Tech), Central Excise, Bardhaman Division vide his letter C.No.V(18)06/ST/Tech/Global Casting/BDN/2015/817 dated 22.03.2016 intimated as follows:- "In view of the above, you are once again requested to re-submit the claim of refund along with all relevant documents for further proceedings." The Appellant submitted the

relevant documents as asked for by the department from time to time. In the same page of the Order-in-Original, in para 4, it has been stated that as informed by the Range Superintendent, all documents were filed on 23.06.2016. The Range Superintendent in his report, as stated in last para in page 53 and 54, submitted that out of the claim of Rs.3,83,555/-, Rs.51,849/- was not related to present claim, Rs.1,12,968/- was deducted as barred by limitation, the bill amount of Rs.8,686/- was revised to Rs.4,686/- and also bill for Rs.646/- was revised to Rs.346/-. Therefore, the final claim came down to Rs.2,14,438/-. The Ld.Assistant Commissioner, Central Excise, Bardhaman Division vide Order-in-Original No.21/AC/BDN/ST/2016-17 (R) dated 19.08.2016 rejected the refund claim on the ground of limitation for the period 2014-15 (w.e.f. August, 2014) since filed on 22.07.2015.

4. Being aggrieved with the Order, the Appellant preferred Appeal before the First Appellate Authority on the following grounds:-

(i) That in terms of CBEC's Central Excise manual chapter 9 para 3.2, it has been mentioned as follows – "The Divisional office will scrutinize the claim, in consultation with Range, where necessary, and check that the refund application is complete and is covered by all the requisite documents. This should be done at the time of receipt of refund claim and in case of any deficiency, the same should be pointed out to the Appellant with a copy to the Range Officer within 15 days of receipt." In respect of the present refund claim submitted by the Appellant on 22.07.2015, the above principle/procedures fixed by the CBEC, have not been followed by the department. No deficiency memo in respect of the said refund claim submitted by the Appellant has been issued by the department. Instead, the Appellant was verbally instructed from time to submit/re-submit some additional documents in respect of the said refund application submitted as per Notification No.41/2012-ST dated 29.06.2012. The Appellant submitted/re-submitted the additional documents to the

department from time to time as per instructions from Divisional and Range office.

(ii) That in terms of CBEC's letter F.No.341/15/2007-TRU dated 17.07.2008, which is applicable in respect of refund of Service Tax paid on taxable services used by exporters, it has been clarified that such refund claim applications should be finalized within a maximum period of 30 days from the date of filing of refund claim. In the present case refund application was filed on 22.07.2015 but the claim has been rejected on 19.08.2016 i.e. after a lapse of more than one year from the date of submission of the refund claim.

(iii) That the Central Excise Act also provides for payment of interest on delayed payment of refund. As per Section 11BB, if any duty ordered to be refunded under Section 11B has not been refunded within three months from the date of receipt of the refund applications, interest at the rate notified by the Central Government shall have to be paid after the expiry of three months from the date of receipt of the application till the date of refund of such duty.

(iv) That the Ld.Assistant Commissioner, Central Excise, Bardhaman Division, in his order dated 19.08.2016 has mentioned that "in the light of the above backdrop, the refund claim application has attained finality on 22.07.2016. Therefore, in my considered opinion, the date of refund application should be 22.07.2016." The Ld.Assistant Commissioner, Central Excise, Bardhaman Division rejected the claim of refund of Service Tax amounting to Rs.2,14,438/- (Original claim was Rs.3,83,555/-) on the ground of limitation of time of one year.

(v) That the original refund claim for the period 2014-15 (w.e.f. August 2014) has been submitted by the on 22.07.2015, i.e. within the prescribed time limit of one year. Additional documents were submitted/re-submitted as per verbal instructions of the departmental officers from time to time. Hence the contention of

the Ld.Assistant Commissioner, Central Excise, Bardhaman Division that the refund claim application has attained finality on 22.07.2016 is not acceptable in the facts and circumstances of this case. In this regard the Appellant relied on the decision of this Tribunal in the case of Duraline India Pvt.Ltd. Vs. CCE [2009 237) ELT 689 (Tri.Mumbai)], wherein it has been observed as follows –

"Refund-Limitation, Re-submission of refund claim-refund filed initially returned on being incomplete or without proper ground, filed subsequently with proper documentary evidence after a lapse of more than one year, rejected on limitation Re-submission of refund claim to be considered from date of filing of claim as held by Delhi High Court in case of Arya Exports [2005 (192) ELT 89 (Del)] – Appellant eligible for refund claim as followed by adjudicating authority on the ground that there is no question of limit nor there is unjust enrichment – Impugned order set aside. The facts of the case are squarely covered by the above decisions.

5. Heard both sides and perused the appeal records.

6. In this regard, it is observed that in para 2.4 of Chapter 9 of Central Excise Manual, the following lines are also mentioned:

"In case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period."

The instant case falls in this category. Accordingly, it is observed that the initial date of filing of the rebate claim i.e. 22.07.2015 is the relevant date as per Section 11B of the Central Excise Act, 1944. Hence, the rebate claims are not barred by limitation. It is observed that technical deviations or procedural lapses are to be condoned, if there is sufficient evidence regarding the export of the duty paid goods.

7. It is my considered view that the refund claim is within the prescribed time limit and the same requires to be disposed of in accordance with law. Accordingly, the matter is remanded to the

adjudicating authority to consider and dispose the refund claim in accordance with law.

(Order pronounced in the open court on 23 August 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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