CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH

CHENNAI

Appeal No. E/45/2006

[Arising out of Order-in-Appeal No.97 & 98/2005 (M-I) both dt. 18.10.2005 passed by the Commissioner of Central Excise (Appeals), Chennai]

Senior Terminal Manager,

Indian Oil Corporation Ltd. Appellant

Versus

Commissioner of Central Excise,

Chennai-I Respondent

Appearance:

Shri Akil Suresh, Advocate

For the Appellant

Shri A. Cletus, ADC (AR)

For the Respondent

CORAM :

Honble Ms. Sulekha Beevi C.S. Member (Judicial)

Honble Shri V. Padmanabhan, Member (Technical)

Date of hearing : 12.06.2017

Date of Pronouncement : 22.06.2017

FINAL ORDER No. 41066 / 2017

The brief facts of the case are that appellant had paid predeposit of Rs.1,43,67,000/- and Rs.99,53,000/- respectively for the issues relating to non-inclusion of RPO surcharge, RPO charge, State surcharge and Railway siding and shunting charges. The Tribunal vide Final Order No.177 to 180/2003 dt. 20.03.2003 held that all charges except the Railway siding and shunting charges need not be included in the assessable value. The department filed a civil appeal against this order before the Hon'ble Supreme Court which was dismissed. Based on the Apex Court's order, the appellant filed a refund claim for refund of pre-deposit of Rs.1,42,91,848/-, after adjusting the excise duty of Rs.75,152/-towards the siding and shunting charges for the relevant period. Another refund claim of Rs.93,88,085/- was filed after adjusting Rs.5,64,315/- towards the siding and shunting charges. After due process of the refund claim, the original authority sanctioned refund of Rs.30,45,352/- after adjusting Rs.15,442/- towards interest on the siding/shunting charges and balance amount against various other arrears /payments in respect of other dues alleged to be pending from the appellant. In respect of the second refund claim as stated above, an amount of Rs.92,62,673/- was sanctioned after adjusting the duty and interest amount on the siding and shunting charges. Aggrieved by the said order of adjusting refund claims towards pending recovery alleged to be due from the appellant, they filed appeals before the Commissioner (Appeals). Vide the order impugned herein, the Commissioner (Appeals) dismissed the appeals and hence the appellant are now before the Tribunal.

2. On behalf of appellant, ld.counsel Shri Akil Suresh submitted that the refund of predeposit is not adjustable with demand of duty of other issues. It is submitted by him that such payments have not attained finality and therefore adjustment of the refund claim towards such dues which have not attained finality is illegal. He relies on the Board's circular No.13/92-CX-6 dt. 4.11.92, 16/92-CX.6 dt.12.11.92 and also circular dt. 2.6.98 and 14.12.95 to contend that the Board has issued instructions that predeposit shall not be adjusted towards other dues.

3. Against this ld. A.R reiterated the findings in the impugned order. He submits that the adjustment has been made towards arrears pending recovery against other adjudication orders including the orders of Joint Commissioner, Additional Commissioner and Commissioner. Section 11 of the Central Excise Act contains provision for recovery of sums due to the government. This section provides that in respect of duty and any other sum of any kind payable to the Central Government, the officers may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control. Since as per the orders of adjudication, amount was payable by the appellant, the same has been correctly adjusted by the adjudicating authority while sanction of the refund.

4. We have heard the submissions of both sides. The appellant has furnished the table of predeposit made as well as details of adjustments made by the department which is shown in the table below :-

Predeposit paid by appellant Rs.1,43,67,000/- Amount to be adjusted against siding charges as per Final Order 177 to 185 of 2003 dated 20.03.2003 Rs.75,152/- Balance to be refunded Rs.1,42,91,848 Amount refunded vide Order-in-Original Rs.30,45,352/- Amount appropriated against various pending demands Rs.1,12,46,496/- Amount of Rs.1,12,46,496/- appropriated as follows :

Interest on siding charges Rs.15,442/- Duty, interest and penalty pertaining to proceedings in OIO No.01/2004 dt. 3105.2004 Rs.98,78,845 It is submitted that the proceedings pertaining to Order in Original No.01/2004 have attained finality vide Order in Appeal No.83/2012 dated 22.12.2012 and refund granted vide Order in Original No.41/2014 (R) d. 18.08.2014 Duty interest and penalty pertaining to Order-In-Original No.14/2004 dt. 30.09.2004 RS.12,71,673/- and interest Rs.75,603.

It is submitted that the issue therein is pending before this Tribunal and listed as Appeal No.E/668/2005 Order-in-Original No.24-29/2004 dated 18.11.2004 Rs.4,495/- Order in Original No.30-38/2004 dated 31.12.2004 Rs.438/-

5. At the time of hearing, ld. counsel submitted that with regard to the amount adjusted to the tune of Rs.98,78,845/-, the Order-in-Original No.1/2004 has attained finality vide OIA No.83/92 and the appellant has been given refund vide Order No.41/2014 dt. 18.8.2014. It is seen that the Appeal E/668/05 in respect of amount of Rs.12,71,673/- and interest Rs.75,603/- has been disposed by Tribunal vide order dated 14.6.2017.

6. The ld. counsel has relied upon the following judgments in which it has been held that refund of predeposit cannot be adjusted towards pending arrears :

(1) CCE Indore Vs Giridharilal Sugar Allied Industries Ltd.

2004 (168) ELT 350 (Tri.-Del.)

(2) KEC International Ltd. Vs CCE Jaipur

2017 (347) ELT 302 (Tri.-Del.)

(3) Kisan Irrigations & Infrastructures Ltd. Vs CCE & ST Indore

2016 (339) ELT 583 (Tri.-Del.)

(4) Voltas Ltd. Vs CCE Hyderabad

2008 (9) STR 591 (Tri.-Mum.)

The Board circular referred to by the appellant has also clarified the same position. The Hon'ble High Court of Karnataka in the case of CCE Bangalore Vs Stella Rubber Works (Unit-II) 2012 (275) EL 404 (Kar.) has held that Section 11 of the Central Excise Act does not contemplate adjustment of monies due to the assessee towards the amount due to the Revenue.

7. Following the decision of the Hon'ble High Court as stated above and the Tribunal decision relied by the appellant, we are of the considered opinion that adjustment of pre-deposit is unjustified. The department may take recourse to Section 11 of the Central Excise Act by initiating recovery proceedings, in case the demands have attained finality. Since Section 11 of the Central excise Act does not grant any powers of such adjustment, the same cannot be allowed. The impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in court on 22.06.2017)

(V.Padmanabhan) (Sulekha Beevi C.S)

Member (Technical) Member (Judicial)

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