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Time Limit of One year to claim refund does not apply to duty paid under protest

Dear Professional Colleague,

We are sharing with you an important judgment of Hon'ble CESTAT-Ahmedabad in the case of **Shri Natraj Ceramic & Chemical Industries Ltd. Versus Commissioner of Central Excise, Rajkot [2012 (27) S.T.R. 350 (Tri. - Ahmd.)]** on the following issue:-

Whether time Limit of One year to claim refund applies to duty paid under protest?

Facts

The appellant had made payment of Service tax and interest by debiting Cenvat credit account but payment of interest through Cenvat credit account was objected. Therefore, the appellant had made subsequent payment of interest in cash.

The appellant had also submitted a letter to the Superintendent of Central Excise, Jamnagar specifically stating that the debits in the Cenvat account were made under protest and therefore the time limit under Section 11B of Central Excise Act, 1944 is not applicable.

Then the appellant filed a refund claim for the excess amount paid by them and the original adjudicating authority vide order dated 28.10.10 allowed the refund of Rs. 59,299/- by way of credit in the Cenvat account.

Revenue filed an appeal against this order and the Commissioner (Appeals) allowed the appeal filed by the Revenue and rejected the refund claim. The refund claim was rejected on the ground that the refund claim was submitted beyond the period of limitation under Section 11B of Central Excise Act, 1944.

Thereafter, the appeal was filed before the Hon'ble CESTAT- Ahmedabad.

Held

The Hon'ble CESTAT held that original debit in the Cenvat account was under protest and the second payment was made since, the department objected to debiting of interest in the Cenvat account. The second payment had to be taken as part of the payment made originally and it cannot be said that there was no protest as regards the second payment when it was rectification of an error committed in debiting the interest amount in the Cenvat account. Further, it was held that as the payments made by the appellant were under protest and therefore the time limit under Section 11B would not be applicable. Henceforth, the original adjudicating authority's decision to allow the refund by way of credit in the Cenvat account was upheld.

Important to Note

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1. Provisions U/S 11B of the Central Excise Act, 1944

Section 11B. Claim for refund of duty.-

“(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on 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 and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person:

Provided further that the ***limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.***”

2. The provisions U/S 11B of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, ***shall apply, so far as may be, in relation to service tax*** as they apply in relation to a duty of excise.

Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards.

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