Charge of the double benefit will sustain only when the assessee claims the refund and utilise the same for payment of duty

The CESTAT, Ahmedabad in the case of ***M/s. Bright Engineering Works v. CCE & ST Daman and Surat [Excise Appeal No. 10493 of 2014 and Excise Appeal No. 12764 of 2019, dated December 15, 2022]***, set aside the order passed by the Revenue Department rejecting the refund application of the assessee. Held that, the refund cannot be denied on the ground of double benefit to the Appellant due to non-transfer of unutilized CENVAT credit. Further, interest was allowed under Section 11BB of the Central Excise Act, 1944 ("**the CE Act**") for delay of refund.

Facts:

M/s. Bright Engineering Works ("**the Appellant**") was registered as Export Oriented Unit ("**EOU**"). The Appellant had accumulated CENVAT credit on account of export for which the Appellant filed 18 refunds applications totally amounting to Rs. 43,35,610/- for the period of July 2006 to December 2009 under Rule 5 of the Cenvat Credit Rules, 2004 ("**the CCR**") read with ***Notification No. 5/2006-CE (NT) dated March 14, 2006*** ("**the Refund Notification**").

Subsequently, the Appellant filed an application for transferring EOU to register as DTA under CE Act, 1944. On July 25, 2013, the Assistant Commissioner vide Order-in-Original ("**OIO**") sanctioned the refund of unutilized CENVAT credit of Rs. 43,35,610/- of the Appellant.

The Revenue Department filed an appeal before the Commissioner (Appeal) ("**the CIT(A)"**) against the OIO alleging that the Appellant took double benefit by availing refund of the accumulated Cenvat credit and by not reversing the Cenvat credit as per ***Notification 27/2012 CE (NT) dated June 18, 2012*** **("NN. 27")**.

On the other hand, the Appellant also filed an appeal before the CIT(A) seeking interest on the sanctioned refund, being sanctioned after prescribed period.

The CIT(A) vide Order in Appeal dated December 30, 2013 ("**OIA**") allowed the appeal of the revenue and rejected the appeal of the Appellant. Subsequently, the Appellant was issued a Protective Show Cause Notice ("**SCN**") on the basis of OIA. The SCN was adjudicated vide Order-in-Original dated October 28, 2015 ("**Second OIO**").

Consequently, the Appellant filed an appeal before the CIT(A). However, the CIT(A) upheld the Second OIO vide Order-in-Appeal dated December 19, 2018 ("**the Impugned Order**").

Being aggrieved, this appeal has been filed by the Appellant.

Issue:

Whether the Appellant is eligible to claim refund as per Refund Notification along with the interest?

Held:

The CESTAT, Ahmedabad in ***Excise Appeal No. 10493 of 2014 and Excise Appeal No. 12764 of 2019*** held as under:

- Noted that, the reliance made upon the provisions of NN. 27 is absurd and illegal since the refund claim was admittedly filed under the provisions of Refund Notification in which, the requirement for debiting the refund claim amount did not exist.

- Observed that, when the Appellant filed the refund claim under the Refund Notification, there was no restriction for reversing the credit. Therefore, the refund was allowed.

- Opined that, the Appellant even though did not carry forward and debit the refund amount in their CENVAT account and such CENVAT credit was never utilised. Thus, the non-transfer of unutilized CENVAT credit is as good as reversal of CENVAT credit. The charge of the double benefit will sustain only when the assessee claim the refund and utilise the same

amount for payment of duty on their clearance of goods, which is not the situation in the present matter.

- Held that, the allegation of double benefit of the same amount does not even exists and the CIT(A) has erred in rejecting the appellant's claim for refund.

- Relied on the judgment of the Hon'ble Supreme Court in ***Ranbaxy Laboratories Ltd. 2011 (273) E.L.T 3 (S.C)*** wherein, the court held that the interest on delayed refund is payable under Section 11BB of CE Act on the expiry of period of 3 months from the date of receipt of refund application.

- Further held that, the Appellant is eligible for interest on the refund amount.

- Set aside the Impugned Order.

Relevant Provisions:

Section 11BB of the Central Excise Act, 1944

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by notification in the official gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months

from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

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