CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. 3

Customs Appeal No. 51760 of 2023
(Arising out of order-in-appeal No. 127(RLM)CUS/JPR/2022 dated 07.11.2022 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur).

M/s Synergy Steels Ltd., **Appellant**
Plot No. 2 & 5, Matsya Industrial Area
Alwar -301030.

VERSUS

Commissioner of Customs **Respondent**
NCR Building, Statue Circle,
Jaipur- 302005.

APPEARANCE:

Sh. Mohit Gohlyan, Chartered Accountant for the appellant
Sh. Gopi Raman, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50583/2023

DATE OF HEARING: 28.04.2023
DATE OF DECISION: 02.05.2023

BINU TAMTA:

M/s Synergy Steels Limited has filed this appeal, challenging the Order-in-Appeal No. 127(RLM)CUS/JPR/2022 dated 07.11.2022 passed by the Commissioner (Appeals), Jaipur whereby the order of the adjudicating authority rejecting the refund claim being time barred was upheld and the appeal was rejected.

2. The short issue raised in the present appeal is whether the refund claim of the appellant is barred by limitation under Section 27 of the Customs Act, 1962.

3. The facts of the case are that the appellant filed the Bill of Entry No. 4529018 dated 23.12.2017 for import of 'Heavy Melting Steel Scrap' under CTH 72044900 and paid normal rate of BCD @ 15%. The appellant was eligible for exemption of BCD @ 2.50% in terms of Notification No. 50/2017-Cus. dated 30.06.2017 under Sl. No. 368. The appellant, therefore vide letter dated 23.01.2018 requested the Deputy Commissioner of Customs, Jaipur to reassess the bill of entry and refund the excess duty paid by them. It appears that in terms of the letter the authority vide order dated 24.02.2018 reassessed the bill of entry, however, fail to refund the amount to the appellant which accrued by virtue of the reassessment. The appellant then submitted a reminder letter dated 29.04.2019, once again requesting for processing their claim for refund. Taking the representation dated 29.04.2019 as the refund claim in terms of the reassessment, the Department issued a show cause notice dated 04.05.2019, treating that the refund claim has been filed beyond one year from the date of reassessment dated 24.02.2018 and therefore the same was barred in terms of Section 27 of the Customs Act. In reply thereto the appellant submitted vide communication dated 11.05.2019, inter-alia submitting that refund claim was filed by them on 23.01.2018 but the Department neither processed the refund claim nor issued any deficiency thereto.

4. The adjudicating authority vide order dated 05.09.2019 held that the letter dated 23.01.2018 was submitted prior to reassessment on 24.02.2018, i.e., at that point of time when no money was due to them as no reassessment was done at that stage. The reassessment was done on 24.02.2018 and therefore the refund claim on 29.04.2019

was beyond the period of one year from the date of assessment. The appeal filed by the appellant challenging the said order-in-original was rejected on the ground of delay in filing the appeal, which order was set aside by this Tribunal on 19.08.2021 and the matter was remanded back to the Commissioner (Appeals) to adjudicate the issue on merits. Pursuant thereto, the present impugned order has been passed by the Commissioner (Appeals) on 07.11.2022 affirming the view taken by the adjudicating authority that the refund claim has to be treated as filed on 29.04.2019 whereas the bill of entry was reassessed on 24.02.2018 which was beyond the period of one year from the date of assessment and accordingly rejected the appeal. Hence the appellant has filed the present appeal before this Tribunal.

5. I have heard the learned Counsel for the appellant and also learned Authorised Representative for the Revenue and perused the case records.

6. Learned Counsel for the appellant submitted that they filed the request for reassessment alongwith the refund of excess duty paid by them, as early as on 23.01.2018 and the subsequent letter dated 29.04.2019 was merely a reminder as the authorities have not processed their refund claim nor had pointed out any deficiency. The authority which reassessed the bill of entry on 24.02.2018 did not refer to the claim of refund made by the appellant under the same letter. Learned Counsel referred to the case law and also to the Customs Manual, Chapter 14, para 4.2, dealing with processing of refund claim.

7. Learned Authorised Representative relied on the finding by the authorities below that the refund claim could have been made after the reassessment order was passed on 24.02.2018 and so it is only on 29.04.2019 that they made the refund claim which was barred by limitation under Section 27 of the Customs Act. He also referred to the provisions of Section 27(1A) whereunder the application for refund under sub-section (1) was required to be accompanied by documentary or other evidence and the appellant has not made the application alongwith the supporting documents on 23.01.2018 and hence the same cannot be treated as an application for refund claim.

8. From the contents of the letter dated 23.01.2018 made by the appellant, it is evident that the same was made for reassessment of bill of entry and also for refund of excess duty paid by them for the reasons, which is quoted below:-

> "The bill of entry was filed under CTH 72042190 which is for scrap of other than stainless steel for the purpose of melting after claiming the benefit of Not. No. 050/2017 Sl. No. 368 which attracts the BCD @ 2.5% ad valoram however during the course of assessment the CTH has been changed from 72042190 to 72044900 which is for Heavy Melting scrap.
>
> While changing the CTH at the time of assessment the Notification as mentioned above was deleted by the system due to improper serial number with the corresponding CTH. It results the BCD has been charged @ 15% instead of 2.5% and we have deposited the duty as per the assessment.
>
> In view of above facts we request before you to please re-assess the bill of entry after incorporating the Notification Number as 050/2017(CUS.) dated 30.06.2017 Sl. No. 368 and refund the excess amount paid by us. (A calculation chart is being enclosed for your ready reference)."

9. I find that on the basis of the aforesaid letter the authorities actually reassessed the bill of entry on 24.02.2018 and found that the appellant had paid excess duty of Rs. 3,84,921/-, it was therefore obligatory on the part of the authority to refund the said excess amount

recovered from the appellant in terms of the prayer made by them for reassessment as well as refund of excess duty amount.

10. The judgement cited by the learned Counsel for the appellant in **Wolkem India Ltd.,** vs. **Commissioner of Customs, Tuticorin - 2019 (638) ELT 1090 (Tri. Chennai)** wherein on similar facts a contention was raised that in view of deletion of words "in pursuance of an order of assessment" in Section 27 of the Customs Act, 1962 with effect from 08.04.2011, the production of assessment order was not necessary, the Tribunal upheld the contention observing that nowhere in Section 27 it has been prescribed that the claimant should obtain either an order of assessment or reassessment as a condition precedent for claiming refund, particularly post 2011 amendment, that condition having been done away with. Learned Counsel also referred to a short order of the Tribunal in **E.I. Dupont India Ltd.,** vs. **Commissioner of Customs (Import), Mumbai -2015 (330) ELT 405 (Tri. Mumbai)** inter-alia observing as:

> "4. We find that the request for refund was already made in their letter dated 18.12.2000. Treating this as the refund claim, it is well within the time limit of six months from the date of payment of duty. Therefore, the excess amount of duty is paid by the appellant is ordered to be refunded."

11. On an analysis of the precedent cited at the bar and also on perusal of the record, I am of the view that the letter dated 23.01.2018 whereby the prayer for reassessment and refund of excess duty paid was made has to be treated as the date on which the refund claim has been made and therefore the same is within the period of limitation of one year as prescribed under Section 27 of the Customs Act. After the amendment in 2011, it is no longer necessary for an assessment or reassessment order to be made and the refund can be considered under

the provisions of Section 27 of the Act. Here, the appellant has paid the excess amount because of an error in EDI system whereby the benefit of Notification No. 50/2017-Cus., was not appended and the same was brought to the notice of the authorities concerned vide letter dated 23.01.2018 alongwith the claim for refund of the amount wrongly paid. In the facts of the case, the authority is duty bound to refund such amount as was ascertained by virtue of the reassessment. Reference is invited to the decision of the Apex court in **Union of India** vs. **ITC Limited - 1993 (67) ELT 3**, wherein it has been observed "just as an assessee cannot be permitted to evade payment of rightful tax, the authority which recovers tax without any authority of law cannot be permitted to retain the amount merely because the tax payer was not aware at that time". I, therefore, conclude that the authorities below have wrongly arrived at the decision that the refund claim was made by the appellant on 29.04.2019 and the same was barred by time, being beyond the period of one year from the date of reassessment on 24.02.2018, for the reasons set out herein above.

12. I, therefore, set aside the impugned order and allow the appeal.

(Order pronounced on 2nd May 2023).

(Binu Tamta)
Member (Judicial)

Pant