CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 11027 of 2019

[Arising out of OIA-AHM-EXCUS-001-APP-02-2019-20 dated 15/05/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Mahendra Metal Industries **.....Appellant**
A-301 Arihant Tower Shahibaug
Ahmedabad
Gujarat

VERSUS

C.C.E.-Ahmedabad-i **.....Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic,
Ambavadi,Ahmedabad,
Gujarat-380015

APPEARANCE:
Shri. N. K Oza, Advocate for the Appellant
Shri. Dinesh Prithiani, AC (AR) for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

FINAL ORDER NO. A/10243 / 2022

DATE OF HEARING: 02.03.2022
DATE OF DECISION: 02.03.2022

RAMESH NAIR

This appeal is directed against the order in appeal passed by the Commissioner (Appeals) whereby the learned Commissioner (Appeals) has allowed the refund of Rs.15 Lacs. However, the balance of Rs. 20 Lacs, which was deposited as per the direction of Additional Chief Metropolitan Magistrate as a condition of bail was rejected. The brief facts of the case are that the appellant has filed a refund claim of Rs. 35 Lacs. The appellant had paid the said amount at various stages while pending of Central Excise duty evasion case booked against them. Finally the CESTAT has decided the case and remanded the case to the jurisdictional Commissioner to decide the case afresh. Accordingly, the appellant has filed the refund claim considering the payment as pre deposit during pendency of appeal. The Adjudicating Authority has rejected the refund claim vide the OIO, not considering the amount paid as pre deposit but payment made towards duties as per the Hon'ble Additional Chief Metropolitan Magistrate/CESTAT Order. Being aggrieved by the said OIO, appellant filed an appeal before Commissioner (Appeals) who has allowed the refund of Rs. 15 lacs as per the direction of CESTAT, however, rejected of balance amount Rs.20 lacs on the ground that the same was deposited as a condition of bail imposed by the Additional Chief Metropolitan Magistrate, Ahmedabad. Therefore, the present appeal filed by the appellant.

2. Shri N.K Oza, Learned Counsel appeared on behalf of the appellant submits that the tribunal while granting the stay had considered said the amount of Rs. 20 Lacs as deposit and directed further to deposit 15 lacs. Therefore, entire amount of Rs. 35 Lacs became the condition of stay granted by the Tribunal. Therefore, the appellant deserves the refund of Rs.35 Lacs.

3. Shri Dinesh Prithiani, Learned Assistant Commissioner (Authorised Representative) appearing on behalf of the Revenue submits that Rs.20 lacs was deposited as per the condition of bail imposed by the Additional Chief Metropolitan Magistrate, and since that case is still pending, without any order by the Additional Chief Metropolitan Magistrate, this amount of Rs. 20 Lacs cannot be refunded. Therefore, the Learned Commissioner (Appeals) has rightly rejected the claim of Rs. 20 lacs.

5. I have carefully considered the submission made by both the sides and perused the records. I find that the case in which the appellant has

deposited the amount of Rs. 20 lacs and Rs. 15 lacs has been remanded by this Tribunal for denovo adjudication before the adjudicating authority. As regards the refund of Rs. 20 lacs, it is undisputed fact the same was deposited on the directions of Additional Chief Metropolitan Magistrate as a condition of bail of Mr. Mahendra Duggad, proprietor of the appellant firm. Since that arrest case is pending before the Additional Chief Metropolitan Magistrate the condition of bail cannot be disturbed at this stage. Moreover, the adjudication is still pending. The refund of Rs.20 lacs can be given only on the orders of the Additional Chief Metropolitan Magistrate, when the case before him is concluded. Therefore, at this stage the amount of Rs. 20 Lacs cannot be refunded. Hence, I do not find any infirmity in the order of the Commissioner (Appeals) rejecting the refund of Rs. 20 Lacs. Accordingly, the impugned order is upheld, appeal is dismissed.

(Dictated & Pronounced in the open Court)

RAMESH NAIR
MEMBER (JUDICIAL)

Diksha