Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 12240 of 2019

(Arising out of OIA-BHV-EXCUS-000-APP-214-215-2019 dated 22/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Tamboli Castings Ltd **........Appellant**
Sidsar Road, Village: Vartej, At Below Mentioned Address Of Our Excise Consultant
Bhavnagar, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar **...Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat - 364001

WITH

Excise Appeal No. 12242 of 2019

(Arising out of OIA-BHV-EXCUS-000-APP-214-215-2019 dated 22/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Tamboli Castings Ltd **........Appellant**
Sidsar Road, Village: Vartej, At Below Mentioned Address Of Our Excise Consultant
Bhavnagar, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar **...Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat - 364001

APPEARANCE:
Shri Rahul Gajera, Advocate appeared for the Appellant
Shri Tara Prakash, Assistant Commissioner(AR) for the Respondent

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

Final Order No. A/ 11161- 11162 /2022

DATE OF HEARING:15.09.2022
DATE OF DECISION: 15.09.2022

RAMESH NAIR

The brief facts of the case are that the appellant was sanctioned refund claim by the Adjudicating Authority thereafter the Revenue has challenged the sanctioned order of the Adjudicating Authority before the Commissioner (Appeals) who vide Order-in- Appeal No. BHV-EXCUS-000-APP-222 to 224-16-17 dated 13.12.2016 allowed the appeal of the Revenue. Consequent to the allowance of the appeal by the Commissioner (Appeals), the appellants have paid back the amount along with interest. However, they have also debited some excess amount. Later, the appellant challenged the order of the Commissioner (Appeals) before this Tribunal. This Tribunal vide order dated 13.02.2018 allowed the appeal of the Appellant. Thereafter, they filed a refund claim for the amount involved in the above Tribunal order as well as the excess amount debited by them. The Adjudicating Authority sanctioned the refund of the amount which was involved in the Tribunal's order but rejected the amount of debit made in excess suo moto by the appellant. Against this Adjudication order dated 27.06.2018 the appellant filed appeal before the Commissioner (Appeal) which was rejected on the ground of time bar and the same was upheld by the Commissioner (Appeals). Therefore, the present appeal.

2. Shri Rahul Gajera, Learned counsel appearing on behalf the appellant submits that even though the amount involved in the present case was debited in excess of the amount involved in the case before the Commissioner (Appeals) but the same was also debited under protest. Therefore, the limitation should not apply. Accordingly, the appellant is entitled for the refund.

3. Shri Tara Prakash, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He pointed out that the appellant have not raised the issue of payment of this amount under protest before the lower authorities. Therefore, no finding was given by the lower authority.

4. I have carefully considered the submission made by both sides and perused the records. I find that the appellant as per the letter dated

17.01.2017 stated that the payment was made under protest however, this aspect of payment under protest has neither been raised by the appellant nor been considered by the lower authority. Therefore, in my considered view the entire case needs to be reconsidered in the light of the claim made by the appellant that the payment was made under protest in terms of letter dated 17.01.2017 of the appellant.

5. Accordingly, I set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order.

(Dictated and pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

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