

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST BLOCK NO. 2, R K PURAM, NEW DELHI-110066  
PRINCIPAL BENCH  
COURT NO. II**

**C/STAY/51082/2018-CUS (DB)  
Appeal No. C/53179/2018-CUS (DB)**

**Arising out of Order-in-Original No. OIA-CC-A-CUS-D-II-ICD-EXPORT-  
TKD-1668-1669-18-2018, Dated: 11.07.2018  
Passed Commissioner of CGST and Central Excise-new Delhi (ICD ITC)**

**Date of Hearing: 21.12.2018  
Date of Decision: 13.03.2019**

**COMMISSIONER OF CUSTOM  
NEW DELHI ICD TKD EXPORT**

**Vs**

**SEL MANUFACTURING COMPANY LTD**

**Appellant Rep by: Shri Sunil Kumar, DR  
Respondent Rep by: Shri S C Jain, Adv.**

**CORAM: Anil Choudhary, Member (J)  
Bijay Kumar, Member (T)**

**Cus - The assessee-company was being investigated by the DRI during the relevant period, whereupon the assessee deposited some amount of duty during the investigation period - Such amount was partly deposited in cash and the rest through surrendering the DEPB/Excise rebate claim - An SCN was issued by the DRI, proposing to appropriate the amount deposited against the duty demand proposed to be raised - On adjudication, the demand was confirmed with interest & equivalent penalty along with personal penalty upon the director of the assessee-company - As the amount deposited during investigation far exceeded the duty finally confirmed, the assessee claimed refund of the balance amount - The same was sanctioned by the jurisdictional Asst. Commr. after adjusting interest & penalty - Thus the Asst. Commr. appropriated all the liabilities arising out of the O-i-O - However, it was mentioned by the Asst. Commr. that the main duty amount can be adjusted from the DEPB/Rebate - Such order was accepted by the Revenue - Thus the assessee filed a second refund claim, which was rejected on grounds that the provisions of the Act did not provide for such refund in cash - Later, the Commr.(A) allowed the assessee's appeal - Hence the Revenue's appeal.**

**Held: The amount surrendered by the assessee through DEPB/Rebate claim has been considered to be an amount deposited during investigation - The Commr.(A) correctly held that refund claim cannot be denied merely on the ground that there is no provision under law - Once it is accepted that the benefits surrendered by the respondents are in the nature of amount**

deposited during investigations, then the refund of the excess amount has to be refunded - Hence the present appeals lack merit: CESTAT (Para 2-8,19,20)

Revenue's appeal dismissed

Case laws cited:

*Commissioner of Central Excise, Indore V/s Midland Plastics Ltd. - 2009-TIOL-560-CESTAT-DEL...Para 10*

*Ratnamani Metals and Tubes Ltd. Vs Union of India - 2016-TIOL-1425-HC-AHM-CUS...Para 14...followed*

*Allen Diesels India (P) Ltd. Vs Union of India - 2016-TIOL-968-HC-DEL-CUS...Para 15...followed*

*Commissioner of Central Excise, Indore V/s Midland Plastics Ltd. - 2009-TIOL-560-CESTAT-DEL...Para 17*

*Ratnamani Metals and Tubes Ltd Vis UOI - 2016-TIOL-1425-HC-AHM-CUS...Para 21...followed*

FINAL ORDER NO. 50354/2019

Per: Anil Choudhary:

1. The present Appeal and stay application has been filed by the Commissioner of Customs (Export), Inland Container Depot, TKD, New Delhi against Order-in-Appeal No. CC(A)/CUS/D-II/ICD/Export/TKD/1668-1669/18/2018 dated 11.07.2018 in the case of M/s SEL Manufacturing Company Ltd. (previously known as M/s Saluja Exim Limited)/ M/s. SEL Exports (Previously known as M/s Saluja Exim). The Commissioner of Customs (Appeals), New Customs House, New Delhi vide the impugned order has allowed the appeal of the respondents with consequential relief. We are disposing of both the stay application and the appeal of the Revenue by this common order. The facts leading to the present appeal are discussed in following paragraphs.

2. The respondents had deposited an amount of Rs. 3,48,24,503/- during the investigation made by DRI in the year 2003. Out of the said amount of Rs. 3,48,24,503/-, an amount of Rs. 2,23,87,195/- was deposited in cash/cheque/DD whereas a further amount of Rs. 1,24,37,308/- was deposited by surrendering the DEPB/Excise rebate claim by the respondents. Later on a Show Cause Notice dated 11-11-2004 was issued by the DRI proposing to appropriate the amount of Rs. 3,48,24,503/- deposited during the investigation against the duty amount proposed in the Show Cause Notice. The said Show Cause Notice was finally adjudicated by the Commissioner of Central Excise (Adjudication), New Delhi vide Order dated 20-06-2014 confirming a duty demand of Rs. 59,23,397/- along with interest and equal amount of penalty. A penalty of Rs. 5,00,000/- was also

**imposed on Mr. Dheeraj Saluja (Director/Partner of the firm), by the Adjudicating Authority.**

**3. Since the amount deposited by the respondents during investigation was much more than the amount which was finally confirmed against the respondents by way of duty, interest and penalty, the respondents filed a refund claim of Rs. 2,23,87,195/- for the cash proportion of the amount deposited during investigation. The Assistant Commissioner (Refund) sanctioned an amount of Rs. 2,01,78,072/- after adjusting the interest amount of Rs. 2,28,993/-, penalty amount of Rs. 14,80,850/- and penalty on Mr. Dheeraj Saluja amounting to Rs. 5,00,000/- vide its Order dated 29-04-2016. In this manner, the Assistant Commissioner (Refund) vide his Order dated 29-04-2016 appropriated all the liabilities arising out of OIO dated 20.06.2014, against the respondents by way of interest and penalties from the cash portion.**

**4. However, the Assistant Commissioner, (Refund) categorically mentioned in his order dated 29.04.2016 that the duty amount of Rs. 59,23,397/- can be adjusted out of DEPB/Rebate amount of Rs.1,24,37,308/- The said order of the Assistant Commissioner (Refund) has been accepted by the Revenue as no further appeal was filed by the department in this regard.**

**5. Therefore, the respondents filed a second refund claim of Rs. 65,13,911/- (Rs.1,24,37,308/-) amount of duty confirmed Rs. 59,23,397/-). The contention of the respondents was that this amount has been considered as amount deposited during the investigation in the Show Cause Notice at various places and also been considered amount by the Assistant Commissioner (Refund) for appropriating the liability of Customs duty vide his Order dated 29-04-2016, hence they are eligible to get the refund of the said amount.**

**6. The said refund claim of Rs. 65,13,911/- was rejected by the Assistant Commissioner (Refund) on the sole ground that there is no such provision/guidelines in the customs law to provide the refund in these types of situation in cash vide his order dated 31.10.2017.**

**7. The respondents filed the appeal before the Commissioner of Customs (Appeals, New Customs House, New Delhi against Order of the Assistant Commissioner (Appeals) passed the impugned order dated 11-07-2018, allowing appeal of the respondents with consequential relief .**

**8. The present appeal has been filed by the Commissioner of Customs, ICD, TKD, New Delhi against the order of the Commissioner of Customs (Appeals), New Delhi. The Ld. DR Mr Sunil Kumar argued that there are no guidelines issued by the Board or by DEPB authorities regarding refund of the balance DEPB amount in cash to the assessee. The Ld. DR relied upon the decisions in the case of**

**9. Milton Laminate Ltd. V/s Commissioner of Customs, Kandla (Cestat).**

**10. Commissioner of Central Excise, Indore V/s Midland Plastics Ltd. (2009 (240) ELT 251 (Tri.-Del.) = 2009-TIOL-560-CESTAT-DEL.**

**11. In view of the above the Ld. DR prayed for allowing the appeal in the matter.**

**12. On the other hand, Mr. S C Jain, Advocate on behalf of the respondents argued that it is an undisputed fact that the respondents had surrendered the DEPB/Rebate benefits equal to R. 1,24,37,308/- during investigation; that the show cause notice dated 11.11.2004 issued by the DRI has considered the said benefits as amount deposited/surrendered by the respondents; that Show Cause dated 11-11-2004 vide paragraph no. 29 (b) categorically proposes to appropriate the amount of Rs. 3,48,24,503/- (which includes the DEPB amount of Rs 1,24,37,308/-) against proposed duty liability; that the Assistant Commissioner, (Refund) has also categorically considered the said benefit of DEPB/Rebate as an amount deposited during the investigation and has appropriated the duty amount of Rs. 59,23,397/- out of the total amount deposited/surrendered; that the said order of the Assistant Commissioner, (Refund) has also categorically considered the said benefit of DEPB/Rebate as an amount deposited during the investigation and has appropriated the duty amount of Rs. 59,23,397/- out of the total amount deposited/surrendered; that the said order of the Assistant Commissioner, (Refund) dated 29-04-2016 has been accepted, as no further appeal has been filed; that from the above factual background it can be safely concluded that the department throughout, the right from Show Cause Notice stage till passing of refund, has considered benefit surrendered, as an amount deposited during investigation; that it would be totally paradoxical to say that the amount of Rs. 1,24,37,308/- surrendered by way of DEPB/Rebate benefit is an amount for purpose of appropriation of customs duty, but it is not an amount for granting the refund of the balance amount; that once it is accepted that it was an amount, the department has no option but to grant the refund of the excess amount deposited during investigation; that it is not valid ground to say that there is no legal provision to grant the refund in this type of situation particularly in the light of the fact that department regularly grants refund in all cases of the amount deposited during investigation where the matters are finally decided in favour of the assessee; that in the case of respondent himself the department has sanctioned the refund of Rs. 2,01,78,072/- without any demur or excuse; that even in this type of refund there was no provision under the Customs Law; that despite that the refund of amounts deposited during investigation are sanctioned regularly by the department on equitable principles, despite the fact that there is no clear provision to cater to these type of situations; that various High Courts and Tribunals have conferred the benefits to the assessee where the amount was paid by using the DEPB scrips.**

**13. Sh. S.C. Jain relied upon the following cases to support his view.**

**14. *Ratnamani Metals and Tubes Ltd. Vs Union of India, 2016 (339) ELT 509 (Guj.) = 2016-TIOL-1425-HC-AHM-CUS***

**15. *Allen Diesels India (P) Ltd. Vs Union of India, 2016 (334) ELT 624 (Del.) = 2016-TIOL-968-HC-DEL-CUS.***

**16. In all the said cases, the duty was paid by using the DEPB and later on the assessee claimed the duty drawback or refund in terms of Notification No. 102/2007-Cus Which was disallowed by the department on the ground that there is no provision in law to grant the refund in cash where the duty was paid by using the DEPB. But the Hon'ble High Courts in all the cases, allowed the appeal of the assessee.**

**17. Mr. S C Jain further argued that the case law of M/s Milton Laminatre Ltd. V/s Commissioner of Customs, Kandla and *Commissioner of Central Excise, Indore V/s Midland Plastics Ltd. (2009 (240) ELT 251 (Tri.- Del.) = 2009-TIOL-560-CESTAT-DEL* relied upon by the Revenue is not applicable to the facts of the present case. In both the cases, the assessee has paid the customs duty by using the DEPB scripts and then claiming the refund of the excess duty paid by using the DEPB scripts. The said refund claims were under Section 27 of the Customs Act whereas in the case of the respondents the refund does not pertain to Section 27 of the Customs Act, rather it is the refund of amount deposited during investigation; that the case laws relied upon by the respondents will prevail as in the said cases the orders were passed by the High Courts and the refunds were not filed under Section 27 of the Customs Act. Therefore, the case laws relied upon by the appellant is misconceived and not applicable to the facts of the present case.**

**18. In view of the above Mr. S C Jain prayed for dismissal of the appeal of the department.**

**19. Heard both sides. From the perusal of the impugned order, it is clear that the amount of Rs. 1,24,37,308/- has been considered as the amount deposited during investigation by the department in the Show Cause Notice dated 11.11.2004. It is also undisputed that the Assistant Commissioner (Refund) vide his Order dated 29.04.2016 has appropriated the duty amount of Rs. 59,23,397/- out of the said amount of Rs. 1,24,37,308/-. Thus we have no hesitation in holding that the amount of Rs. 1,24,37,308/- surrendered by the respondents by way of DEPB/Rebate claim has been considered as an amount deposited during investigation by the department itself and there is no dispute over this fact.**

**20. Further, we also agree with the observations made in the impugned order dated 11.7.2018 of the Commissioner of Customs (Appeals) that refund claim cannot be denied merely on the ground that there is no provision under law. Once it is accepted that the benefits surrendered by the respondents are in the nature of amount deposited during investigations, then the refund of the excess amount has to be paid/refunded.**

**21. In the case of *Allen Diesels India Pvt. Ltd. 2016(334)ELT-624 (Delhi HC) = 2016-TIOL-968-HC-DEL-CUS*, the assessee had claimed refund of the Special Additional Duty in terms of Notification No. 102/2007-Cus which was denied by the department on the ground that duty was paid by using DEPB and hence refund cannot be sanctioned in cash. Hon'ble Delhi High Court allowed the appeal of the assessee on the ground that there is no such bar in law to disallow the refund on the ground that there is no such provision. Likewise, in the case of *Ratnamani Metals and Tubes Ltd Vis UOI reported in 2016 (339) ELT 509 (Guj) = 2016-TIOL-1425-HC-AHM-CUS*, the assessee had claimed the duty drawback against the goods exported by him but the same was denied on the ground that the duty was paid by using DEPB and hence refund cannot be sanctioned in cash. Hon'ble Delhi High Court allowed the appeal of the assessee on the ground that there is no such bar in law to disallow the refund on the ground that there is no such provision. Likewise, in the case of *Ratnamani Metals and Tubes Ltd Vis UOI reported in 2016 (339) ELT 509(Guj) = 2016-TIOL-1425-HC-AHM-CUS*, the assessee had claimed the duty drawback against the goods exported by him but the same was denied on the ground that the duty was paid by using the DEPB so that drawback amount cannot be given in cash as there is no such provision in law. Hon'ble High Court categorically held that the drawback has to be given in cash irrespective of the mode of payment of customs duty. We also agree with the contention of Mr. S C Jain that the case laws relied upon by the department is not applicable to facts of the present case.**

**22. In view of the above discussions the stay application and appeal filed by the Commissioner of Customs (Appeals), ICD, TKD have no merit and accordingly are hereby dismissed. The respondent is entitled to consequential benefits.**

**(Order pronounced in the open court on 13.03.2019)**