

**2014 (4) ECS (132) (Tri. - Ahd.)**

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

**M/s. MAHINDRA GUJARAT TRACTORS LTD.**

V/s.

**C.C.E., VADODARA-I**

**Date of Hearing/Decision: 12.09.2014**

Appeal No. E/35/2008-SM

[Arising out of OIA No. Commr (A)/205/VDR-I/2007, dt.28.09.2007 Passed by: C.C.E. & Customs (Appeals), Vadodara]

Appearance:

None

For the Appellant

Shri S.K. Shukla, Superintendent (A.R.)

For the Respondent

**CORAM:**

Mr. H.K. Thakur, Hon'ble Member (Technical)

*(Order No. A/11627/2014, dt.12.09.2014)*

**"Filed the refund claim beyond the prescribed period under Section 11B of Central Excise Act, 1944 and, therefore, Commissioner (Appeals) has correctly rejected appeal filed by the appellant on the grounds of limitation." (para 3)**

**"In the present proceedings, the judgment of the Larger Bench in the case of CC Rajkot Vs Ashoka Iron & Steel Fabricators Pvt. Ltd. (supra) was available when the amounts were paid by the appellant and appellant cannot claim a mistake on his part.." (para 5)**

**Per: H.K. Thakur:**

1. This appeal has been filed by the appellant with respect to OIA No. Commr.(A)/205/VDR-I/2007 dt.28.09.2007 issued on 16.10.2007 under which appeal filed by the appellant was rejected by the first appellate authority.
2. The facts of the case are that the appellant M/s Mahindra Gujarat Tractor Ltd Vadodara were manufacturing tractors which got exempted as per Notification No.23/2004-CE, dt.09.07.2004. Appellant stopped availing benefit of CENVAT Credit on the inputs received w.e.f. 09.07.2004 for the manufacture of exempted tractors. Appellant on their own calculated the CENVAT Credit attributable to the inputs lying in stock as well as in the finished

goods on 08.07.2004 and reversed an amount of Rs.9,28,813/- on 08.07.2004, Rs.28,09,000/- on 11.07.2005, and a further sum of Rs.3,79,312/- was paid on 05.12.2005 through PLA on account of interest. Subsequently, appellant realized that CENVAT Credit with respect to the goods lying in stock, as well as those contained in the finished goods, on the date of exemption was not required to be reversed/paid in view of the Larger Bench decision in the case of CC Rajkot Vs Ashok Iron & Steel Fabricators Pvt. Ltd [2002 (140) ELT 227 (Tri-LB)] and accordingly filed refund claim. Refund claim of the appellant was rejected as per OIO No. REFUND/13/53/2007-08, dt.24.04.2007 which was upheld by the first appellate authority under the impugned OIA dt.28.09.2007 issued on 16.10.2007 against which the present appeal has been filed by the appellant.

3. When this case was called for hearing, none appeared on behalf of the appellant. Shri S.K. Shukla (AR) appearing on behalf of the Revenue argued that the appellant has filed the refund claim beyond the prescribed period under Section 11B of Central Excise Act, 1944 and, therefore, Commissioner (Appeals) has correctly rejected appeal filed by the appellant on the grounds of limitation.
4. Heard Id. A.R. on behalf of the Revenue and perused the case records. Appellant did not appear for hearing today when the case was called for hearing. It is also observed from the case records that when the case was earlier fixed for hearing on 04.08.2014, none appeared on behalf of the appellant. The conduct shown by the appellant indicates that he is not interested in pursuing his appeal.
5. On merits, it is observed that the duty self-assessed by the appellant with respect to inputs lying in stock, as well as those lying in the finished goods, was paid in the month of July 2004 and the interest was paid on 05.12.2005 through PLA. It is also observed from the case records that the adjudicating authority vide OIO dt.24.04.2007 has sanctioned refund of interest amount of Rs.3,79,312/- as the same was paid on 05.12.2005 and the refund application was made on 17.11.2006. So far as the remaining refund claim amount of Rs.38,22,813/- is concerned, the same represent the duty self-calculated by the appellant and paid suo-moto. At the time of payment/reversal of CENVAT Credit, Larger Bench decision in the case of CC Rajkot Vs Ashok Iron & Steel Fabricators Pvt. Ltd. (supra) was available. As per the provisions of Section 11B of the Central Excise Act, 1944, all the refund claims are required to be filed within the stipulated time limit prescribed. In the judgment of the Indo-Nippon Chemicals Co. Ltd Vs UOI [2005 (185) ELT 19 (Guj.)], relied upon by the appellant in their grounds of appeal, the issue before High Court was refund claim under Rule 5 of CENVAT Credit Rules,

2004 when there was a mistake on the part of the appellant in that case. In the present proceedings, the judgment of the Larger Bench in the case of CC Rajkot Vs Ashoka Iron & Steel Fabricators Pvt. Ltd. (supra) was available when the amounts were paid by the appellant and appellant cannot claim a mistake on his part. Therefore, the case of the Gujarat High Court on facts was different than the facts of the present appeal. As such, the first appellate authority has correctly rejected the appeal filed by the appellant on merit.

6. Based on the above observations, appeal filed by the appellant is rejected on merits as well as for non-prosecution.

(Operative portion of the order pronounced in Court)