CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60336 of 2024

[Arising out of Order-in-Appeal No.-LUD-EXCUS-001-APP-411-2023 dated 09.06.2023 passed by the Commissioner (Appeals), CGST, Ludhiana]

Commissioner of Customs, Ludhiana ......**Appellant**
Customs House, ICD-GRFL Complex, G.T. Road,
Sahnewal, Ludhiana, Punjab-141120

VERSUS

M/s Shree Grace Creations ......**Respondent**
Nishant Bagh Colony, Ludhiana, Punjab

APPEARANCE:

Shri Anurag Kumar, Authorized Representative for the Appellant

Shri Sudeep Singh Bhangoo, Advocate for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO.60626/2024

DATE OF HEARING: 28.11.2024
DATE OF DECISION: 28.11.2024

The present appeal filed by the Revenue is against the impugned order dated 09.06.2023 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has allowed the appeal of the respondent and set aside the Order-in-Original.

2. Briefly the facts of the present case are that the respondent filed a refund claim of Rs.16,35,238/- (Duty Rs.13,95,236/- + Redemption Fine Rs.1,00,000/- + Penalty Rs.1,40,000/-) accrued

as consequential relief arising out of Order-in-Appeal dated 28.05.2023 passed by the Commissioner (Appeals), CGST, Ludhiana. The Appellant had filed Bill of Entry No. 9998886 dated 07.06.2017 for import of polyster semi furnished double ply blanket size 234cms X240 cms. and bed sheets size 225 cms. X 230 cms. (hereinafter referred to as the impugned goods) which were self-assessed under Chapter Sub-heading No.63014000 of the Customs Tariff Act, 1975. The officer of SIIB after detailed examination, have drawn sample which were sent to Textile Committee for examination. The Textile Committee, Ludhiana reported that impugned goods were Other Pile Fabric of Man- Made Fibers' and cannot be classified as 'Bed Sheets.

2.1. The impugned goods were mis-declared by the appellant as Polyster Semi Furnished double Ply Blanket size 234 cms. X240 cms. and Bed Sheets size 225 cms. X 230 cms instead of Other Pile Fabric of Man- Made Fibers' classifiable under Subheading No.60019200 attracting BCD @10% or Rs. 100/- per kg. whichever is higher.

2.2 On these allegations, a Show Cause Notice dated 27.08.2017 was issued and vide Order-in-Original dated 23.01.2018 allowed the goods to be redeemed on payment of required Customs Duty plus redemption fine of Rs.1,00,000/- under Section 112(a) of the Customs Act, 1962. The appellant deposited the duty. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide order dated 28.05.2020 allowed the appeal of the respondent. Thereafter, the appellant filed the refund application seeking refund of the amount deposited by them. The Refund Sanctioning Authority vide Order dated 17.05.2021 sanctioned the refund claim but instead of crediting into account of the respondent transferred to the Consumer Welfare Fund in accordance with the provisions of Section 27(2) of the Act. Aggrieved by the said order, respondent filed appeal before the Commissioner who, vide the impugned order, has allowed the appeal of the respondent and set aside the Order-in-Original crediting the amount to the Consumer Welfare Fund. Hence, the present appeal.

3. Heard both sides and perused the records of the case.

4. Learned Authorized Representative for the appellant submits that the impugned order is not sustainable in law as the learned Commissioner (Appeals) has not appreciated the facts and the law. He further submits that the Commissioner (Appeals) has erred in the impugned order holding that the provisions of Section 27(2) are not applicable in the instant case as the duty charged was not a duty and were charged under authority of law. He further submits that the entire amount paid by the appellant is nothing but Excise duty only and not a deposit. He further submits that the Customs duty was collected from the respondent under the authority of law. He further submits that the original authority has rightly credited the amount to the Consumer Welfare Fund by invoking principle of unjust enrichment and has not considered the certificate issued by

the Chartered Accountant as valid. For his submission, learned Authorized Representative relies in the case of **Al-Saif International Vs Commissioner of Customs-I, Nhava Sheva-2009 (247) ELT 161 (Tri. Mumbai).**

5. On the other hand, learned counsel for the respondent submits that the original authority has sanctioned the refund but wrongly credited the same to the Consumer Welfare Fund by invoking the bar of unjust enrichment which is not applicable in the present case. He further submits that the Commissioner (Appeals) has rightly considered all the issues involved and has categorically given detailed findings based on the decision of the Courts. He further submits that the Revenue, in the present appeal, has not taken the ground of unjust enrichment. He further submits that the amount involved in the present case is only Rs.16,35,238/- which is below the monetary limit prescribed for filing the appeal by the Department.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the original authority has sanctioned the refund but credited the same to the Consumer Welfare Fund by invoking the principle of unjust enrichment whereas the learned Commissioner has considered this issue of unjust enrichment along with other issues and has given detailed findings on each issue. Here it is appropriate to reproduce the relevant

findings recorded by the Commissioner (Appeals) which are reproduced herein below:

> "4.10 I find that the certificate of Charted Accountant holds good sanctity and should not be neglected as such. It may be noted that the Chartered Accountant hold license issued by the ICAL which is an institution created by the Act of the Parliament i.e. Chartered Accountants Act, 1949. The Certificate of the CA is admissible as conclusive evidence acceptable at different platform and even by the appellate forum. Further, the Hon'ble Tribunal in the case of Gopi Krishna Processors Pvt. Ltd. v. CCE cited as 2007 (210) ELT 529 (Del.) held that the charted accountant being an expert and having knowledge of accounting system, his certificate not to be overlooked. The certificate of the CA is enough evidence showing no burden passed to customers and the contrary is not proved thus refund admissible. Reliance is placed on the following judgments:
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> - C.C. v. Innova Polypack 2006(202) ELT 350
> - CCE v. Ferro Alloys 2006(193) ELT 563
> - Kudremukh Iron Steel Co. v. CC 2007(217) ELT 286
> - Jindal Vijaynagar Steel v. CC 2007 (207) ELT 65
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> 4.11 Reliance is placed on the judgment of CESTAT, Mumbai in the case of Karan Associates Vs. Commissioner of Customs(Import) Nhava Sheva reported at 2015 (330) ELT. 321 (Tri. - Mumbai)
> Refund Unjust enrichment C.A. approved by Government of India under Chartered Accountant Act, 1949 and C.A's certificate supported by other corroborative evidence like balance-sheet and calculation of amount, etc. not to be brushed aside - Assessee eligible to refund of amount - Section 11B of Central Excise Act. 1944.
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> 4.12 Reliance is also placed on the judgment of Hon'ble CESTAT, Ahmedabad in the case of Afcons Infrastructure Ltd. Versus Commissioner of C. EX. & S.T., Daman reported at 2015 (329) E.L.T. 390 (Tri. Ahmd.) Hon'ble CESTAT held that

Refund Unjust enrichment - Bar of Incidence of duty whether passed on to customers- Assessee submitted CA's certificate that no part of duty paid by manufacturer reimbursed by customer. Nuclear Power Corporation Ltd. Similar certificate from Nuclear Power Corporation also submitted - Commissioner (Appeals) confirmed rejection on the ground of non-production of costing of product HELD When authenticity and genuineness of certificate not doubted and no material available on record to discard CA's certificate, there is no need to furnish cost of material and pricing of contract-Orders set aside - Section 11B of Central Excise Act, 1944 (paras 6,7,8)

4.13 1 find that refund sanctioning authority treated the redemption fine and penalty at par with duty and held that refund on account of R.F and Penalty also comes under the preview of unjust enrichment and transferred the whole amount of refund including RF and Penalty into consumer welfare fund. The refund sanctioning authority failed to give any reasoning that how refund on account of redemption fine and penalty comes under the preview of section 27(2) of the Act. I hold that in view of the express language of Section 27 of the Customs Act, 1962 only the duty and interest can be subject to unjust enrichment and the refund of fine and penalty cannot be subject to unjust enrichment more so in view of the customs rules. There are plethora of judgments in which several Courts/CESTAT has held that Unjust enrichment is not applicable on redemption fine and penalty. My observation are supported by the judgment of Hon'ble CESTAT, Allahabad in the case of Mohit Paper Mills Ltd Vs. Commissioner of Customs, Noida reported at 2019 (368) E.L.T 994 (Tri. - All.).

Refund Unjust enrichment bar not applicable for refund of redemption fine and penalty deposited at the time of clearance of goods from Customs which was also treated as pre- deposit for filing appeal before Tribunal as the said deposit was not during ordinary course of business - Section 27 of Customs Act, 1962.

4.14 Reliance is also placed on the judgment passed by Hon'ble CESTAT, Mumbai in the case of Commissioner of Customs(Import), Mumbai Vs Agro Impex reported at 2014 (307) E.L.T. 371 (Tri. - Mumbai)

Refund claim of penalty and redemption fine Bar of unjust enrichment Applicability - HELD: As per documentary evidence produced in form of Chartered Accountant's certificate and balance sheet clearly mentioning refund amount as receivable from department, no burden passed on to customers - Bar of unjust enrichment rightly held as not applicable - Impugned order upheld - Section 27 of Customs Act, 1962.

4.15 It is prudent to note that any amount collected by the department in excess is amount collected without any authority of law and in a way amount to enriching the exchequer against the principles laid down under Article 265 of the Constitution of India. Accordingly excess payment made or collected without the authority is not also hit by the doctrine of limitation as given under Section 11 B of the Central Excise Act, 1944, and also is not covered under the said section 11BB of the Central Excise Act, 1944. Following judgments are also worth looking into:

A) Judgement of Hon'ble Madras High Court in case of M/s JE Infosystem (C.M.A. No. 601 of 2018)

"14. There is no doubt in our minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper and agamst the tenets of Article 265 of the Constitution of India."

B) Hon'ble Supreme Court in case of M/s Shri Vallabh Glass Works Ltd. Vs Union of India held that:

"Just as an assessee cannot be permitted to evade pavment of rightful tax, the authority which recovers tas without any authority of law cannot be permitted to retain the amount, merely because the tax payer was not aware at that time that the recovery being made was without any authority of law”

4.16 In view of decisions of various Courts, there is no doubt that duty charged was not a duty and was charged without authority of law. Once, it is proved that excess duty charged was not a duty, the provisions of Section 27(2) of the Customs Act, 1962 are not applicable in this casc

4.17 I find that the adjudicating authority in its order relied upon a draft circular issued by CBEC, New Delhi vide F No. 137/29/2016-Service Tax, wherein the principle of unjust enrichment in the cases of refund

> has been discussed in detail I find that impugned OIO was passed on 17.05.2021 and as per adjudicating authority's view, the said circular was still draft circular at that time and means no final circular was issued till the date of issuance of impugned 010 Further, search made on the CBIC website revealed that no such circular was ever issued. Thus, findings of the adjudicating authority on the basis of draft circular which was not issued has no relevance and cannot be considered for deciding the issue in hand."

7. Since the Commissioner (Appeals) has given reasoned findings as per law and I do not find any infirmity in the impugned order passed by the Commissioner (Appeals) therefore I uphold the impugned order by dismissing the appeal of the Revenue.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

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