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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 186 of 2012

(Arising out of OIA-56/COMMR-A-/KDL/2012 passed by Commissioner of CUSTOMS-KANDLA)

Messrs Varsha Plastics Pvt Ltd **......Appellant**
Varsha, 13 Adarsh Society,
Ramchandra Lane Extn, Malad, (W),
Mumbai, Maharashtra-400064.

VERSUS

C.C.-Kandla **.......Respondent**
Custom House,
Near Balaji Temple,
Kandala, Gujarat

APPEARANCE:
Sh. Amal Dave, Advocate for the Appellant
Sh. G. Jha, Authorised representative for the Respondent

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

Final Order No. A/ 11459 /2019

DATE OF HEARING: 24.07.2019
DATE OF DECISION:24.07.2019

RAMESH NAIR

The appellant's refund claim was rejected on the ground of unjust-enrichment by the adjudicating authority, the said rejection was upheld by the Commissioner. It was observed by the lower authorities that though the appellant had submitted C.A certificate but the books of account were not submitted. Against the impugned order passed by the Commissioner (Appeals) the appellant filed the present appeal.

2. Sh. Amal Dave, Ld. Counsel appearing on behalf of the appellant submits that they have submitted the C.A certificate wherein it was certified that the incidence of the duty for which the appellant is seeking refund has not been passed on to any other person. He submits that even though the books of accounts could not be submitted but on the basis of C.A certificate it is established that there is no unjust-enrichment on the part of the appellant. Accordingly, refund should not been rejected on the ground of unjust-enrichment. In support, he placed reliance on the following judgments:-

- Mangal Textile Mills Pvt Ltd-2004 (171) ELT 160 (Guj.)
- Birla Corporation Ltd-2008 (231) ELT 482 (Tri.-Mumbai)
- Shyam Textile Mills.-2015 (328) ELT 390 (Tri.-Ahmd.)
- Eastern Shipping Agency- 2013 (32) STR 630 (Tri.-Ahmd.)
- Supreme Industries Ltd.-2017 (358) ELT (Tri.-Mumbai)
- Madhucon Bina Puri-2015 (320) ELT 458 (Tri.-Mumbai)
- Shrinathi DYG-2011 (24) STR 108 (Tri.-Ahmd.)

3. Sh. G. Jha, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that merely on the basis of C.A certificate, it cannot be established that incidence was not passed on. Since, the C.A certificate is based on the books of account, the said books of accounts should be submitted by the appellant. Even after giving an opportunity the appellant is not able to submit any books of accounts. He placed reliance on the following judgments:-

- Shoppers Stop Ltd-2018 (8) GSTL 47 (Mad.)
- BPL Ltd-2010 (259) ELT 526 (Mad.)
- Crompton Greaves Ltd-2011 (22) STR 380 (Tr.-Mum.)
- Be Office Automation P Ltd-2009 (235) ELT 838 (Tri.0Mum)
- Hanil Era Textiles Ltd-2008 (225) ELT 117 (Tri.-Mum)

4. I have carefully considered the submission made by both the sides and perused the records. I find that the limited issue to be decided by me is whether the refund of the appellant is hit by unjust-enrichment or otherwise. It is observed from the records and also from both the orders of the lower authorities that the appellant have already submitted CA certificate, however, at no point of time they have submitted the books of accounts. Even the CA certificates are also one dated 13.08.2010 and another one is 19.01.2004. The unjust-enrichment has to be examined only at the time of release of the refund even as on today it is to be ascertained that whether the incidence of duty has been passed on and otherwise. The appellant is not able to submit any books of accounts from which it cannot be ascertained that the amount for which the refund has been shown as receivable which can establish that the incidence of duty has not been passed on.

5. As regards, the CA certificate is not a concluding document that shows the incidence was not passed on but it is based on the books of accounts. In absence of any books of accounts for the current period, the CA certificate

cannot alone help the appellant to overcome the aspect of unjust-enrichment. Therefore, in absence of providing books of accounts by the appellant, the aspect of unjust-enrichment is not established. Accordingly, I am of the view that both the orders passed by the lower authorities are correct and legal which do not require any interference. As regards, the judgments submitted by the appellant even though the CA certificate can be taken support for establishing unjust-enrichment but in the present case both the CA certificates are of very old period and for the purpose of unjust-enrichment the present position is relevant for which neither any CA certificate was produced nor any books of accounts. Therefore, the judgments relied by the Ld. Counsel is not helpful for the case.

6. Accordingly, I uphold the impugned order and dismiss the appeal.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi