CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 00004 of 2012-SM

[Arising out of Order-in-Original/Appeal No 319-320-CUS-COMMR-A--AHD dated 12.10.2011 passed by Commissioner of CUSTOMS-AHMEDABAD]

Hindalco Industries Limited .... **Appellant**
PO- Dahej, Bharuch,
SURAT, GUJARAT -392130

VERSUS

Commissioner of Customs, Ahmedabad .... **Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE :

Shri Manish Jain, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 27.03.2023

DATE OF DECISION : 29.03.2023

FINAL ORDER NO. A/ 10740 /2023

RAMESH NAIR :

This appeal is filed against order-in-appeal No. 319-320-CUS-COMMR-A--AHD dated 12.10.2011 and corrigendum dated 20.10.2011 issued therein, whereby the Commissioner (Appeals) has upheld the part amount of refund claim and credited into Consumer Welfare Fund on the ground of unjust-enrichment.

2. Shri Manish Jain, learned Counsel appearing on behalf of the appellant submits that learned Commissioner (Appeals) held that the part refund is hit by unjust-enrichment only on the ground that the amount was not shown under the head loan and advances in the balance sheet. He submits that the appellant for some period shown the amount as sundry creditors in their

books of account and corrected as loan and advances. However, the Commissioner has not properly verified the treatment of amount of refund given in the appellant's books of account, therefore his order is not legal and correct.

3. Shri Anand Kumar, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, it prima-facie appears that on the basis of treatment of amount of refund in books of the appellant, the incidence of duty paid by the appellant has not been passed on. However, the learned Commissioner (Appeals) has not properly verified the treatment of amount given in books of account, therefore, the matter needs to be remanded to the Commissioner. Accordingly, the impugned order is set-aside and the appeal is allowed by way of remand to the Commissioner (Appeals). Learned Commissioner (Appeals) to pass a fresh order after reconsidering the refund which was held to be hit by unjust-enrichment in the impugned order.

(Pronounced in the open court on 29.03.2023*)*

(Ramesh Nair)
Member (Judicial)

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