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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.11005 of 2013

(Arising out of OIA-16/COMMR-A/JMN/2013 dated 30/01/2013 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

C.C.-Jamnagar(prev) **.........Appellant**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

VERSUS

Indian Oil Corporation Ltd **.........Respondent**
Vadinar,
Vadinar, Jamnagar, Gujarat

APPEARANCE:
Shri R. P. Parekh, Superintendent (Authorized Representative) for the Appellant
Shri Chandan Kumar, General Manager (Finance) for the Respondent

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

Final Order No. A/12363/2021

DATE OF HEARING: 16.09.2021
DATE OF DECISION:16.09.2021

RAMESH NAIR

This appeal is arising out of the Order-In-Appeal dated 30.1.2013 whereby, the learned Commissioner (Appeals) held that the refund is not hit by unjust enrichment and allowed refund of an amount of Rs.12,59,641/- in respect of Bill of Entry No.82,83 & 85/2011 against which the revenue has filed the present appeal on the ground that the provision for the said amount was not made as receivable under the head of Loans & Advances in the balance sheet as on 31st March, 2011, since the same was shown as receivable in the balance sheet as on 30th September, 2011. The contention of the revenue is that since the said amount was not shown as receivable as on 31st March, 2011 the said amount became expenditure and consequently became part of the cost of the product. Therefore, the incident of the said amount stood passed on hence, the refund of the said amount is not admissible and the same should be credited to the Consumer Welfare Fund.

02. Shri R.P. Parekh, learned Superintendent (Authorized Representative) appearing on behalf of the revenue-appellant reiterates the ground of appeal. He submits that since the appellant has not shown the refund amount in the present appeal as receivable on 31st March, 2011 the said

amount became expenditure in the year 2010-11 therefore, the refund is hit by unjust enrichment.

03. Shri Chandan Kumar, learned General Manager (Finance) of the respondent company submits that the learned Commissioner (Appeals) has elaborately given the finding how this amount is not hit by unjust enrichment. He submits that even though the amount in question has not been shown as receivable on 31st March, 2011 the same was included in the total value of the stock as on 31st March, 2011 and the same was carried forward as opening balance in the year 2011-12 therefore, the amount which included in the closing stock as on 31st March, 2011 as per accounting principle the same cannot be treated as part and parcel of cost of product. He submits that subsequently the said amount was shown as receivable in the balance sheet as on 30th September, 2011. He submits that the reason for not showing the receivable out of stock as on 31st March, 2011 is that since the assessment was provisional, the exact amount could not be ascertained as on 31st March, 2011 and when the assessment was finalized and exact amount was calculated the same was shown as receivable in the half yearly balance sheet as on 30th September, 2011. Therefore, the amount refund in question is not hit by unjust enrichment.

04. I have carefully considered the submissions made by both the sides and perused the records. I find that the learned Commissioner (Appeals) in the impugned order at Para 8.3 after analyzing the factual details given the following finding:

> *"8.3 From the details given in Para 8.1 & 8.2, it is evident that goods imported under Bills of Entry No. F-82 dated 09.03.2011, F-83 dated 11.03.2011 & F-85 dated 18.03.2011 were lying in stock. As per the accounting principles, the duty suffered on goods "lying in stock as 'finished' or as, 'stock- in-process' are carried forward to the next financial year and are not posted as "expense" in the accounts. As a result, it would require to be posted as receivable in the next financial year. It is evident from the impugned order that the appellant had booked the disputed amount as receivable in balance sheet as on 31.03.2011. From the submissions of the appellant it transpires that they had booked an amount of Rs.12,59,741/- (Rs.13,58,594 (-) Rs. 98,853/-) only as receivable in the balance sheet as on 31.03.2011. They have not given any further details about the accounting treatment to the duty in respect of the remaining two bills of entry no. F-68/13.01.2011 & F-71/25.01.2011 (involving refund amount of Rs.38,087/- and Rs.60,766/- respectively). Thus, I find that the appellant has not been able to rebut the presumption and unjust enrichment in respect of the refund of duty thereon on these two bills of entry and thus this amount has been correctly transferred to Consumer Welfare Fund"*

From the above finding of the learned Commissioner (Appeals) the fact is not under dispute that the value of three bills of entries in question was included in the closing stock on 31st March, 2011. As per the grounds of appeal, only because the amount of refund was not shown as receivable as on 31st March, 2011 in the balance sheet the said amount stand expensed and become a cost of product.

4.1 I absolutely disagree with this contention of the department for the reason that even though the amount was not shown as receivable but it is included in the closing stock as on 31st March, 2011. The said amount has not become part of expenditure and therefore, cannot be treated as absorbed in the cost of final product. In the financial year 2011-12 admittedly the said amount shown as receivable in the balance sheet as on 30th September, 2011. With this fact it is clear that right from the closing position of 31st March till 30th September, 2011 the amount of refund has not been absorbed in the cost of final product. Therefore, the question of passing of incident of the said amount does not arise.

05. Considering this fact, the learned Commissioner (Appeals) has given clear finding therefore, I do not find any infirmity in the impugned order. Accordingly, the impugned order is upheld. Revenue's appeal is dismissed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul