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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11764 of 2018

(Arising out of OIA-CCESA-SRT-APPEAL-PS-473-2017-18 dated 08/01/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Rita Dyeing And Printing Mills Pvt Ltd **......Appellant**

Plot No. 7108, 7110, 7112, Road No. 71, Gidc, Sachin,
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **.........Respondent**

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE:

Shri S. Suriyanarayanan, Advocate for the Appellant
Shri J A Patel, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12482 /2021

DATE OF HEARING: 02.11.2021
DATE OF DECISION: 02.11.2021

RAJU

The appellant are processor for fabrics. During the period 16.12.1998 to 31.03.1999, the appellant opted to work under compound levy scheme. The levy was based on the length of the stenter. Initially there was a dispute regarding excludability of the length of galleries from the length of stenter which was finalised by Hon'ble Apex Court in case of Sangam processors - 2002 (146) ELT 254 (S.C). Consequently, the refund was originally denied on the ground that the appellant had not challenged the finalisation of the capacity under compounded scheme. However, in view of the decision of Hon'ble High Court of Gujarat in the case of Premraj Dyeing Printing & Mills Ltd, the matter was remanded to the Original Adjudicating Authority. The original adjudicating authority sanctioned the refund, however, transferred the amount to the consumer welfare fund holding that the refund would result in unjust enrichment. Aggrieved by the said order the appellant filed an appeal before Commissioner (Appeals) who also rejected the said appeal. Hence, the appellant are now before the Tribunal, once again. The issue before us is if the assessment was provisional and if the provision of unjust Enrichment would apply to the refund arising before 25.06.99. It is seen that an identical circumstances the Tribunal Vide Order No. A/11209/2018 dated 13.06.2018 has observed as follows.

> "4. I have carefully considered the submission made by both sides and perused the records. I find that the issue, whether unjust enrichment is applicable in the case of provisional assessment during the relevant period is a next question of law before this Tribunal and this Tribunal can entertain the issue. The fact is not under dispute that the duty paid is pertaining to the period December 1998. The same was paid on 05.06.1999. The assessment was provisional during the relevant period. There was no provision of unjust enrichment in the case of provisional assessment under Rule 9B. This express provision brought into the statute w.e.f 25.06.1999 by inserting the Sub-Rule (5) of Rule 9B of Central Excise Rules, 1944. This issue has been considered by this Tribunal's Larger Bench in the case of Commissioner of Central Excise & Service Tax vs. M/s Panasonic Battery India Co Ltd, wherein the Larger Bench held that for the duty paid during the provisional assessment and consequential refund on finalization, the provision of unjust enrichment is not applicable before 25.06.1999.
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> 5. Following the Larger Bench Judgment and as per the discussion made herein above, I am of the view that in the facts of the present case, unjust enrichment is not applicable. Therefore, the impugned order is set-aside and the appeal is allowed."

2. Relying on the aforesaid decision by this tribunal on identical circumstance, the impugned order is set aside and appeal is allowed.

(Dictated and Pronounced in the open court)

RAJU
MEMBER (TECHNICAL)

Prachi