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

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 13062 of 2018-SM

[Arising out of OIA-CCESA-SRT-APPEALS-PS-324-2018-19 dated 31/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s R & D Multiples (Metal Cast) Pvt. Ltd. **.....Appellant**
A1/17,GIDC, KILLA PARDI, PARDI,
VALSAD, GUJARAT

VERSUS

C.C.E. & S.T. Surat-I **.....Respondent**
NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR, SURAT, GUJARAT-395001

APPEARANCE:
None appeared for Appellant
Sh. Dharmendra Kanjani, Superintendent (Authorized Representative) for Respondent

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

FINAL ORDER NO. A/ 12577 /2021

DATE OF HEARING:02.12.2021
DATE OF DECISION:02.12.2021

PER: RAMESH NAIR

The issue involved is that whether in the case of refund claimed by the appellant unjust enrichment in terms of Section 11B is applicable or otherwise.

2. None appeared on behalf of the appellant despite several opportunities given earlier also.s

3. Shri Dharmendra Kanjani, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by Learned AR and perusal the records, I find that the limited issue to be decided is whether unjust enrichment under Section 11B is applicable in respect of refund claimed by the appellant. As per the facts the appellant had reversed cenvat amount as asked by the department in terms under Section 11D thereafter

no Show Cause Notice was issued and the appellant claimed refund. The stand of the appellant is that since the amount paid by them is not duty, therefore, refund of the amount deposited is not hit by unjust enrichment. I find that the appellant had paid the amount in terms of Section 11D even though subsequently it was found that the same is not payable but the amount was admittedly paid as a duty only. The Learned Commissioner (Appeals) also held that in case of any refund, the unjust enrichment is applicable as held by the Hon'ble Apex Court in case of Mafatlal Industries, therefore, I am also of the clear view that in respect of the present refund, the provision of unjust enrichment is applicable. In the interest of justice, one opportunity need to be given to the appellant to satisfy that the amount of duty paid by them for which the refund sought for has not been passed on to any other person accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority to pass a fresh order after giving opportunity to the appellant.

(Dictated and pronounced in open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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