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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12193 of 2018

(Arising out of OIA-CCESA-SRT-APPEALS-PS-514-2017-18 dated 28.03.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Shree Labdhi Prints **......Appellant**

1301/1, ASHWINI KUMAR ROAD,
OPP. VISAMO, SURAT-GUJARAT

VERSUS

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

NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

APPEARANCE:

Shri. Amal Dave, Advocate for the Appellant
Shri D. kanjani, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12608 /2021

DATE OF HEARING: 02.09.2021
DATE OF DECISION: 14.12.2021

RAMESH NAIR

The issue involved in the present case is that refund claim in respect of the refund claim filed by the appellant whether the provision of unjust enrichment under Section 11B of Central Excise Act, 1944 is applicable or otherwise.

2. I have heard both the sides and considered the submission made by both the sides and the judgements relied upon.

3. Both the lower authorities held that the appellant could not satisfy that the incidence of refund has not been passed on to any other person. I find that the appellant has submitted the Chartered Accountant Certificate wherein it was certified that the incidence of duty paid by the appellant has not been passed on to any other person. Both the lower authorities have after considering the certificate held that since the amount was shown as expenditure, it is deemed to have been passed on to any other person. I do not agree with this finding of the lower authorities for the reason that even though the amount was shown as expenditure that itself is not a concluding

proof that the appellant have passed on the incidence of refund to any other person. Since the adjudicating authority has not verified the supporting books of accounts to come to the conclusion that even though the amount shown as expenditure whether the incidence of the same was passed on or otherwise. Therefore, the adjudicating authority should not decide the matter only on the Chartered Accountant Certificate but considering the books of accounts which the appellant should produce before the adjudicating authority to prove that the incidence of duty for which refund was sought for has not been passed on to any other person. Accordingly, without going into other issues keeping all the issues open, I remand the matter to the adjudicating authority for deciding the matter afresh. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 14.12.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Neha