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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10324 of 2019-SM

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-496-2018-19 dated 30.10.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I (Appeal)]

Gomti Processors Sachin .... **Appellant**
Plot No A-1/241-243 GIDC Sachin
SURAT, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Surat-I .... **Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

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

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

DATE OF HEARING/ DECISION : 17.01.2022

FINAL ORDER NO. A/10031 / 2022

RAMESH NAIR :

The issue involved in the present case is that, whether the unjust-enrichment is applicable in the facts of this case where the duty was paid provisionally prior to amendment to Rule 9B of Central Excise Rules, 1944 brought into statute with effect from 25.06.1999.

2. Shri S. Suryanarayanan, learned Counsel appearing on behalf of the appellant submits that the issue is no more res-integra. The amendment was brought into statute with effect from 25.06.1999 whereby the unjust-enrichment provision was inserted, even in the cases of provisional assessment, the unjust-enrichment is not applicable prior to amendment. He relied upon the judgment of this Tribunal in the case of *Shree Balaji*

Dyeing and Printing Mills Limited vs. CCE (Appeals), Surat vide order No. A/11209/2018 dated 13.06.2018.

3. Shri J. A Patel, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the record. I find that the only issue involved is, whether the appellant's refund claim is hit by the provisions of unjust-enrichment in the fact that duty of the gallery portion is paid provisionally. I find that in this case, the duty was paid under provisional assessment during December 1998 to May 1999. At the relevant time, there was no provisions of unjust-enrichment in Rule 9B (5) of Central Excise Rules, 1944 and the same was inserted from 25.06.1999. Therefore, the provisions of unjust-enrichment of Rule 9B (5) of Central Excise Rules, 1944 cannot be made applicable retrospectively. Hence the refund claim could not have been rejected on the ground of unjust-enrichment. This Tribunal while dealing with identical facts, passed the following order:-

> **"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.

5. From the above decision, it can be seen that the facts of the present case are the same as in the above cited judgment. Accordingly, it is directly applicable to the present appeal. Hence the impugned order is set-aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

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