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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10355 of 2020
Customs Miscellaneous (ORS) Application No. 10300 of 2020

(Arising out of OIA-JMN-CUSTM-000-APP-201-2019-20 dated 20/12/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

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

VERSUS

ATLANTIC SHIPPING P LTD ......**Respondent**
Plot No. 12, Panchvati Colony, Sikka
Jamnagar, Jamnagar, Gujarat

APPEARANCE:
Shri J. A Patel, Superintendent (AR) appeared for the Appellant
Ms. Shamita Patel, Advocate for the Respondent

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

Final Order No. A/ 11149 /2022

DATE OF HEARING: 08.09.2022
DATE OF DECISION: 08.09.2022

RAMESH NAIR

The brief facts of the case are that the case was made out against the appellant where demand of custom duty at the rate of Rs. 2/- per liter on HSD was confirmed against the demand. The appellant had made a pre-deposit of Rs 27,25,678/- The case on the merit has travelled up to this Tribunal and this Tribunal in Appeal No. C/188-189,376/2010 allowed the appeal vide Final Order No. A/11905-11907/2018 dated 07.09.2018. As regard the refund of pre-deposit , it was sanctioned by the Adjudicating Authority and credited into Consumers Welfare fund on the ground of unjust enrichment. The appellant has taken up the matter against the said order and filed an appeal before the Commissioner (Appeal). The Commissioner (Appeals) vide order dated 20.12.2019 allowed the appeal of the appellant holding that the interest of refund credited into consumer welfare fund should be given to the appellant. It is this order which was challenged by the Revenue in the present appeal. The revenue 's appeal is solely on the ground that even though this Tribunal disposed of the appeal on merit vide order dated 07.09.2018, the revenue had filed the ROM Applications bearing No. C/ROM/ 10196-10195/2020.

2. Ms. Shamita Patel, Learned counsel appearing on behalf of the assessee submits that since the ROM Applications filed by the Revenue have been dismissed by this Tribunal vide order No. M/10369-10371/2022 dated 28.07.2022 nothing services in the present department's appeal. She submits that the Revenue has not challenged the issue of refund of pre-deposit or unjust enrichment in the present appeal.

3. Shri J.A Patel, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the grounds of appeal.

4. I have carefully considered the submission made by both sides and perused the records. From the appeal memo it is observed that the revenue filed the present appeal only on the ground that the department has filed ROM before this Tribunal against the CESTAT order dated 07.09.2018 the relevant ground is reproduced below:-

> *"It is pertinent to mention here that the crux of the matter relates to the refund which arises consequent implementation of the Hon'ble CESTAT Order No. A/11905 -11907/2018 dated 07.09.2018. During the course of the review of the said CESTAT Order dated 07.09.2018, it has been noticed that the same is not legally correct and hence, an ROM has been filed by the Department against the same. Thus, it is a fact that the issue has not attained finality."*

4.1 As regard the above ROM Application , this Tribunal vide order No. M/10369-10371/2022 dated 28.07.2022 dismissed the ROM Application. Therefore, the entire appeal based on the above ground has no substance. Moreover, on the merit of the case the issue attained finality in the Respondent's case as per this Tribunal order No. A/11905-11907/2018 dated 07.09.2018 and also the order of this Tribunal in Revenue's ROM dated 28.07.2022. I find that Revenue in the present appeal has not challenged the issue of unjust enrichment which has been decided by the Commissioner (Appeals) in the impugned order. Therefore, in the given circumstances the Revenue's appeal is not sustainable, accordingly, the same is dismissed. MA also stands disposed of.

(Dictated and pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

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