CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CustomsAppeal No.10317 of 2019
(Arising out of OIA-JMN-CUSTM-000-APP-019-18-19 dated 11.07.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs & Service Tax-Ahmedabad)

Reliance Industries Limited **...Appellant**
Exim Clearance Cell Central Administration Building
(cab) East Wing B Block, Ground Floor, Meghpar Padana
Jamnagar, Gujarat-361280

VERSUS

C.C.-Jamnagar **...Respondent**
Sharda House,Bedi Bandar Road,
Opp. Panchvati,
Jamnagar-Gujarat

APPEARANCE:
Shri JC Patel, Ms.Shipla Balani, Sh. Rahul Gajera (Advocates) appeared for the Appellant
Shri Prashant Tripathi, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. 12707 /2023

DATE OF HEARING: 12.11.2024
DATE OF DECISION: 14.11 .2024

RAMESH NAIR

The following issues raised in the present appeal.

a) Whether department's appeal before Commissioner (Appeals) against Consequential Order of refund which was found due on finalization of assessments was maintainable, when no appeal was filed by department against finalization of assessments.

b) Whether, in any event, in the case of import of Liquid Bulk Cargo viz. Petroleum Crude Oil, the quantity as per Ship Ullage measurement at Port of Discharge can be taken to be the quantity imported for assessment of duty although it does not represent the actual quantity unloaded in India.

c) Whether, in any event, when the quantity ascertained as per Ship Ullage measurement at Port of Discharge is only marginally in excess of the Bill of Lading and Invoice quantity by 0.30%, whether extra duty on such marginal excess is payable, when the transaction value remained unchanged.

2. Shri J C Patel learned counsel appearing on behalf of the appellant, at the outset, submits that the refund has arisen out of the final assessment order passed by the department, however said final assessment order was not challenged and in terms of the final assessment order the refund was sanctioned and such final assessment order was not challenged by the department. It is his submissions that once the final assessment order was passed and the refund has arisen out of such order, and by initiating the proceeding by issuing a show cause notice for recovery of the refund already granted, is not legal and correct. Hence all the proceedings in such show cause notice is liable to be set aside. He also made a detailed submission on the facts and merits of the case. He placed reliance on the following judgments:

- UOI vs Food Specialities 1998 (97) ELT 402 (SC)
- ITC Ltd. 2019 (368) ELT 216 (SC)
- CCE Hindustan Petroleum Corp. Ltd. 2000 (121) ELT 109 Civil Appeal dismissed by Hon'ble SC 2002 (142) ELT A280 (SC)
- Asian Solvochem P. Ltd. 2023 (7) TMI 217-Ahmd
- Indian Oil Corp. Ltd. 2018 (11) TMI 1506
- Mangalore Refinery and Petrochemicals Ltd. 2015 (323) ELT 433 (SC)
- Suchitra Components Ltd. 2007 (208) ELT 321 (SC)
- Welspun Corp Ltd. 2019 (370) ELT 874
- PayalPolyplast P. Ltd. 2015 (317) ELT 477

3. Shri Prashant Tripathi, Learned (Superintendent) Authorised Representative appearing for the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that irrespective of any dispute raised by the department by issuing a show cause notice and further proceedings against the refund order, but the fact remains that the refund has arisen out of the final order on bill of entry passed by the assessing authority and due to which the refund was rightly sanctioned by the sanctioning authority. It is also a fact on record that the Revenue has not challenged

the final assessment order which is the genesis for granting the refund. In such situation the entire proceeding of issuing a show cause notice, adjudication and passing the appellate order, in our view is clearly infructuous. Therefore, on this ground itself, the impugned order passed by learned Commissioner (Appeals) is not sustainable.This issue has been considered in various judgments including the judgment of Hon'ble Supreme Court in the case of UOI vs Food Specialities (Supra) wherein the following order was passed.

> ***"[Order]-C.A. No. 4527 of 1997*** *- Shri Vellapally, learned senior Counsel for the respondent assessee states that this appeal arises out of a consequential order made pursuant to the decision reported in Dalmia Industries Ltd. v. Collector of Central Excise - 1992 (61) E.LT. 295 pertaining to classification in respect of the same assessee. He submits that the question of classification was decided by the Tribunal in the assessee'sfavour and even though a caveat was filed in this Court by the assessee, there is no intimation of any appeal being filed by the Department against the Tribunal's decision pertaining to classification. He submits that irrespective of the merits of the Tribunal's decision on the question of classification, if the decision in the assessee'sfavour has become final, the question of the consequential order about quantum made by the Tribunal in favour of the assessee, cannot alone be challenged by the Department. He submits that this appeal must fail for this reason alone because the question of correctness of the view taken by the Tribunal on the question of classification is no longer open in respect of the product known as 'New Sapan DairySpecial.*
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> *2. In view of the above statement made by the learned Counsel for the assessee- respondent, and it not having been shown to us that the Department has challenged the Tribunal's decision on the question of classification reported in Dalmia Industries case (supra), this appeal must fail for this reason alone.*
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> *3. The appeal is dismissed.*
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> *4.* ***C.A. Nos. 1567/93 and 2482-84/93****-The submission of the learned Additional Solicitor General is that the expression 'skimmed milk' also includes partially skimmed milk and for this reason the product should be classified under Heading 0401.13. In the impugned judgment the view taken is that partially skimmed milk powder' is a separate marketable commodity from 'skimmed milk powder' and, therefore, it has to be classified under the Heading 0401.19 and not 0401.13 as claimed by the Revenue. In the impugned judgment, detailed reasons are given for rejecting the Revenue's contentions. Apart from referring to the fact that partially or completely skimmed milk are mentioned as separate products in the main heading itself, it has been pointed out with reference to ISI specification as well as Prevention of Food Adulteration Rules and the International Standard that partially skimmed milk powder' is different from skimmed milk powder and is so recognised therein. Nothing is shown to us against this material to suggest that a different view is preferable for any reason. There is, thus, no ground to interfere in the appeals."*

The similar view was taken by the Hon'ble Supreme Court's Larger Bench decision in the case of ITC Limited wherein it was categorically held that unless the assessment order is challenged, no consequential effect can be given.We are therefore, of considered view that since the final assessment order which is undisturbed attained finality and refund has arisen out of such order, at a later stage before Commissioner (Appeals), Revenue cannot made an allegation contrary to the final assessment order, therefore, the impugned order passed by the learned Commissioner (Appeals) is not sustainable, accordingly, the same is set aside. The appeal is allowed with consequential relief. The other issues raised by the appellant are kept open.

(Pronounced in the open court on 14.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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