CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 1

EXCISE APPEAL NO. 11987 OF 2017

[Arising out of OIA-VAD-EXCUS-004-APP-069-2017-18 dated 02/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

UPL LIMITED **Appellant**
Plot No.3405/3406, GIDC Ankleshwar,
Bharuch, Gujarat

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-BHARUCH **Respondent**
Vadodara-II, GST Bhavan, Subhanpura, Vadodara
Gujarat-390023

Appearance:
Shri S J Vyas, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10099/2025

Date of Hearing/Decision : 06.02.2025

In the instant case, the appellant before this court is feeling aggrieved by an order of adjustment of demand made by the department against the rebate claim which was sanctioned to them. The department suo moto adjusted the rebate amount against the amount demanded from them, even when the party made an appeal against the order of demand to Commissioner (Appeals) and then they were in appeal before RA who after pronouncing the matter remitted back to the adjudicating authority.

2. Therefore, as per the advocate for the appellant there is no demand even adjudicated against them, what to talk of any final demand being there. He seeks to rely on the decision in the matter of M/s. National Engineering Industries Ltd Vs. CGST Jaipur as reported in 2019 (3) TMI 137

- CESTAT New Delhi in which in para 6 following observation has been made:

> *"The bare perusal makes it clear that only such sum is liable to be recovered in such manner as mentioned above, which is payable by the assessee to the Government. In the present case, since the amount qua which the refund has been adjusted is not finally held as being payable, the demand confirmed been already sub-judiced before the competent authority, to my opinion, Department was not entitled to recover the same. The question of suo moto adjusting the sanctioned refund qua the said demand therefore does not arise."*

2.1. It was his pleading, therefore, that in the stated case amount of refund was not allowed to be adjusted till the time, the demand had attained finality. And was sub-judiced before the competent authority. In the instant case it is his stand that when the matter was seized of before the adjudicating authority as per the remand order of Revisionary Authority, it cannot be said that a confirmed demand against appellant existed on that date. Therefore, he states that he is on the better footing even than the party which got relief from the court in above cited case.

3. Learned AR points out that the matter is sub-judiced and remanded as per the direction of Revisionary Authority. He refers to the following case laws 2010 (259) ELT 101 (Tri.-Delhi) - CCE, Indore VS. GOM Industries Ltd, 1994 (73) ELT 519 (SC) - Collector of Customs, Bombay Vs. Krishna Sales Pvt Ltd, 2006 (200) ELT 417 (Tri.-Bang.) CCE, Tirupathi Vs. Annapurna Industries Ltd, 2004 (175) ELT 887 (Tri.-Delhi) Pfizer Ltd. Vs. CCE, Chandigarh to seek support on the proposition that department can adjust refund against confirmed demand.

4. The point of emphasis of relying upon above cases is that mere filing of appeal does not operate as the stay against demands. Accordingly, the refund existing could be appropriated. The learned advocate rebuts stating that in these judgments it was never considered that the remand of the RA was an open remand. In rebuttal the learned Advocate draws the attention

of this court to the para 13 of the remand order of revisionary authority which reads as follows:-

> *"In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. BC/136/SURAT-II/2011 dated 22.06.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Surat-II and remands the case to the original adjudicating authority as ordered supra."*

5. The point emphasized being where there is an order passed which has been set aside with direction of open remand to the adjudicating authority, it cannot be said that as on date there exists any demand.

6. The rival submissions have been considered by this court. It finds weight in whatever learned advocate has stated that as on date with the setting aside of the order by the Revisionary Authority, there is no demand which is existing.

In view of the facts and circumstances of the case, the order adjusting rebate against demand is now liable to set aside. The judgment quoted by learned AR are distinguishable on the facts.

7. Accordingly, Appeals are allowed.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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