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

REGIONAL BENCH- COURT NO.3

Customs (Stay) Application No. 10300 of 2022
(on behalf of respondent)
in
Customs Appeal No. 10578 of 2022
(Arising out of OIA-KDL-CUSTM-000-APP-01-22-23 dated 12.04.2022 passed by Commissioner of Customs-Kandla)

C.C. KANDLA **.........Appellant**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA-GUJARAT

VERSUS

RELIANCE INDUSTRIES LIMITED **........Respondent**
REFINERY AND PETROCHEMICAL DIVISION
VILLAGE: MEGHPAR PADANA TAL. LALPUR
JAMNAGAR-GUJARAT

APPEARANCE:
Shri V.G. Iyengar, Superintendent (Authorized Representative) for the Appellant
Shri J.C. Patel, Shilpa Balani (Advocate) appeared for the Respondent

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

Final Order No. A/ 10300 /2023

DATE OF HEARING: 17.10.2022
DATE OF DECISION:17.02.2023

RAMESH NAIR

The revenue filed the present appeal challenging the order of the Commissioner (Appeals) whereby the Revenue has allowed the refund on merit as well as on unjust enrichment. The Revenue has made ground of appeal only on the issue of unjust enrichment. The factual background of the case is that the Respondent imported cranes under the contract of the Foreign Party in USA. Out of the three lots of consignments, two consignments arrived at Mundra Port and one consignment arrived at Kandla Port. The present appeal relates to the import made at kandla under bill of entry no. 2066982 dated 15.02.2019. In respect of these consignments, the respondent claimed benefit of partial exemption of Notification No. 72/2017-Cus dated

16.08.2017. The Notification provided for effective rate of duty of 25% if the cranes are re-exported within 6 to 9 months of import and effective rate of duty of 30% if the imported cranes are re-exported within 09-12 months of the date of import. Since the respondent expected that the cranes would be re-exported within 09-12 months of the date of import, bill of entry was assessed @30%. The contract however, was completed in less than 9 months and accordingly, the effective rate of duty applicable was 25%. The respondent, therefore, applied for re-assessment of duty @ 25% both in the case of import at Mundra and Import at Kandla. Such reassessment was carried out by customs and bill of entry was reassessed to 25% as against the original assessment @ 30%. Due to this difference for the excess payment of 5%, the appellant filed the refund claim. In respect of refund claims related to import at Kandla and Mundra a common Chartered Accountant Certificate was issued in respect of excess duty paid which certified that the excess duty paid both at Mundra and Kandla had not been debited in Profit and Loss Account and had not been passed on to any other person and consequently, unjust enrichment would not arise for refund of excess duty. The refund claim in respect of Mundra Port was allowed by the OIO No. MCH/22/ACS/AC/REF/2020-21 dated 04.06.2020 and MCH/28/ACS/AC/REF/2020-21 dated 25.06.2020. The said orders upheld the refund claim on merits and also held there was no unjust enrichment in view of Chartered Accountant Certificate. The said orders have been accepted by the department. As regard, the refund claim made at Kandla which is the subject matter of present appeal, the same was rejected by order in original no. KDL/AC/RRP73/REF/2020-21 dated 29.12.2020 passed by Assistant Commissioner (Refund), Custom House, Kandla on the two grounds: (i) the respondent had not challenged the original assessment. (ii) the

Respondent had failed to prove that there is no unjust enrichment. The respondent's appeal against the said OIO dated 29.12.2020 has been allowed by the Commissioner of Customs (Appeals) by order in appeal dated 12.04.2022 in which the Commissioner (Appeals) in para 10, placed reliance on the said two orders passed by Mundra which has been accepted by the department. Being aggrieved by the order in appeal, present appeal was filed by the Revenue.

2. Shri V.G. Iyengar, Learned (superintendent) Authorized Representative appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that learned Commissioner (Appeals) has not independently examined the aspect of unjust enrichment whereas he has simply followed the order of the Mundra Custom in the Respondent's case, therefore, the order is not correct and legal.

3. Shri J.C. Patel, learned counsel along with Ms. Shilpa Balani, learned advocate appearing on behalf of the respondent submits that the learned Commissioner (Appeals) has rightly followed the finding of the order of Mundra Customs. He submits that there is common CA Certificate provided in respect of excess duty paid at Mundra Customs as well as Kandla Customs whereas the CA Certificate has been considered and viewed that there is no unjust enrichment, the same was rightly followed by the Commissioner (Appeals) in the impugned order. Therefore, there is no reason for rebut the said finding in the department's appeal.

4. We have carefully considered the submission made by both the sides and perused the records. We find that in the present case, the revenue has not challenged the merit of the case however their appeal

is only on the ground of unjust enrichment. The Revenue contended that the learned Commissioner (Appeals) merely followed the order of Mundra Custom however he h as not independently examined the aspect of unjust enrichment. Learned Commissioner (Appeals) as regard unjust enrichment given the following findings.

> *"10. The appellant also contended that in the identical matter in respect of BOE No. 9939845. dated 05.02.2019 & BOE No. 2640788 dated 30.03.2019, refund have been granted by Mundra Customs vide OIO No. MCH/28/ACS/AC/REF/2020-21 dated 25.06.2020 & OIO No.MCH/22/ ACS/AC/REF/2020-21 dated 25.06.2020 respectively. The Appellant has further contended that they had imported similar case of PTC crane through Mundra port with payment of 30% of the Tariff rate, re-exported before 09 months and the reassessment of the Bill of Entry was done for duty rate @ 25% of the tariff rate. The refund raised out of the excess duty was applied and the same was granted vide the OIO No. MCH/28/ACS/AC/REF/2020-21 dated 25.06.2020. In view of the above, I find merit in the contentions raised by the Appellant and the impugned order is liable to be set aside.*
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> *10. In view of the above, the impugned order is set aside and appeal is allowed with consequential relief in accordance with law."*

From the above finding, it is observed that the learned Commissioner (Appeals) simply followed the order of Mundra (Custom) and no independent finding was given as regard the unjust enrichment. Despite that the Revenue has raised the ground of unjust enrichment in their appeal. We are of the view that as regard, the issue of unjust enrichment, it is purely based on the fact on the basis and the same can be established on the basis of books of accounts along with CA Certificate. The issue of unjust enrichment depends on fact of each case, however, the learned Commissioner (Appeals) except following the order of Mundra (Customs), neither examined the fact of unjust enrichment of the present case, nor given any independent finding. Therefore, in our considered view, the matter related to issue of unjust enrichment needs to be reconsidered by the learned Commissioner (Appeals). Accordingly, we set aside the impugned order and remand the matter to the learned Commissioner (Appeals) only for the purpose of examining the issue of unjust enrichment on the basis of records such as CA Certificate, books of accounts etc. With the above observation, the appeal is allowed by way of remand to the Commissioner (Appeals). Stay application also stand disposed of.

(Pronounced in the open court on 17.02.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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