CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD
REGIONAL BENCH

Excise Appeal No.70338 of 2019

(Arising out of Order-in-Appeal No. 324-CE/APPL/LKO/2018 dated 13.06.2018 passed by the Commissioner of Customs, Central Excise & CGST (Appeals), Lucknow)

K.R. Pulp & Papers Ltd. **Appellant**
Unit: 11, Jalalabad Road,
Shahjahanpur (U.P.)

Vs.

Commissioner of Central Excise &CGST, Lucknow **Respondent**
7A, Ashok Marg,
Lucknow 226 001, U.P.

Appearance:

Shri Jameel Ahmad, Advocate, for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 23.04.2025
Date of Decision: 16.05.2025

FINAL ORDER No. 70293/2025

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is engaged in manufacture of writing paper and craft paper falling under Chapter 48 of Schedule to Central Excise Tariff Act, 1985. Appellant sells excisable goods through dealers. At the time of clearance of goods from the factory, central excise duty is paid. Appellant offers various types of discounts to the dealers. The quantity discount is also offered by the appellant. The quantification of the discount is ascertained after the goods are sold by the dealers. Therefore, the discount is settled through issue of credit notes by the appellant to the dealers in final settlement of accounts and in response, the dealer issues debit notes to the appellant. The credit note issued by the appellant has separate mention of duty element in the note. On the basis of such credit notes issued by the appellant to the dealers for the period from February 2015 to January 2016, appellant filed application for refund of Rs.8,23,229/- before the original authority. The original authority allowed the refund of Rs.8,22,386/- out of the amount claimed through order-in-original dated 31.03.2017. Aggrieved by the said order, Revenue preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) has recorded his findings and order in para 6 and 7 of order-in-appeal dated 31.07.2017 which is reproduced below:-

"6. I have gone through the case record. It is observed that the respondent initially paid the duty and collected the same from their buyers. Claim of refund has arisen due to discount extended subsequently to the buyers in form of credit notes. The point for determination in this case is whether there would be unjust enrichment, if the said refund is granted to the respondent. There is nothing on the record to show that the buyers of the respondent did not collect the duty from subsequent Buyers i.e. consumers. In other words, there is no evidence that the burden of the duty has not been passed on to the consumers.

7. In the case of Commissioner Central Excise, Madras V/s Addisons & Co. Ltd. 2016 (339) E.L.T. 177 (S.C.) Hon'ble Supreme Court has held that since duty component on turnover discount was initially passed onto buyer who further passed onto ultimate consumer who could not be identified, refund of such duty claimed by assessee on the plea that such duty returned back by issuing credit notes subsequent to clearance of goods was not admissible being hit by bar of unjust enrichment under Section 12B of CEA 1944. It was further held that as ultimate consumer who actually paid duty could not be identified, amount would be retained in fund and utilized for benefit of Consumers."

In view of the said findings and order, learned Commissioner (Appeals) has modified the order of the original authority by crediting the refund that was allowed to the appellant to the Consumer Welfare Fund. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has relied on this Tribunal decision in the case of Commissioner of Central Excise, Ghaziabad vs. Bhushan Steel Ltd. reported at 2015 (319) ELT 347 (Tri.-Del.) which was affirmed by Hon'ble High Court of Allahabad vide 2016 (340) ELT 107 (All.).

3. Heard the learned AR for Revenue. Learned AR for Revenue has submitted that learned Commissioner (Appeals) has recorded his findings in para 6 and 7 on the basis of the crux of Hon'ble Supreme Court ruling in the case of Commissioner of Central Excise, Madras vs. Addison & Co. Ltd. reported at 2016 (339) ELT 177 (SC). He has further submitted that in Review Petition filed in Civil Appeal No.7906 of 2002 by Addison & Co. Ltd., Hon'ble Supreme Court had rejected the said Review Petition and upheld their earlier order in the case of Commissioner vs. Addison & Co. Ltd. (supra) and that the order of Hon'ble Supreme Court in the Review Petition is reported at 2017 (353) ELT A64 (SC) and is titled as Adison and Co. Ltd. vs. Commissioner. He has submitted that by dismissing the Review Petition filed by Addison & Co. Ltd., Hon'ble Supreme Court has reaffirmed their earlier order that when duty component on turnover discount was initially passed on to the buyer who further passed it on to ultimate customer, refund of such duty claimed by the manufacturer on the basis of issue of credit notes subsequent to clearance of goods was not admissible to the manufacturer being hit by bar of unjust enrichment.

4. We have gone through the record of the case and submissions made. We understand that the appellant had initially paid central excise duty and cleared the goods to the dealers. The quantity discount and other types of discounts were finally settled after the sales took place. The discounts were passed on by the appellant to their dealers by issue of credit notes. The credit notes also had mention of the central excise duty element in each credit note and on the said basis the appellant sought refund of central excise duty which was allowed by the original authority. Learned Commissioner (Appeals) has held that the appellant was hit by bar

of unjust enrichment and, therefore, he credited the said refund to Consumer Welfare Fund by relying on ruling by Hon'ble Supreme Court in the case of Commissioner of Central Excise, Madras vs. Addison & Co. Ltd. (supra). We find that Hon'ble Supreme Court had occasion to decide Review Petition bearing Review Petition (Civil) No. 884 of 2017 in the same case which was dismissed by Hon'ble Supreme Court. The order of Hon'ble Supreme Court as reported at 2017 (353) ELT A 64 (SC) is reproduced below for ready reference:-

*"**(1) Refund of duty on turnover discount hit by bar of unjust enrichment even if such duty paid back to buyers by issuing post-clearance credit notes (2) Refund claim can also be made by ultimate consumer***

The Supreme Court Bench comprising Hon'ble Mr. Justice RanjanGogoi, Hon'ble Mr. Justice Amitava Roy and Hon'ble Mr. Justice L. Nageswara Rao on 27-4-2017 ***dismissed*** *the Review Petition (Civil) No. 884 of 2017 in Civil Appeal No. 7906 of 2002 with R.P. (C) Nos. 547-548/2017 in C.A. No. 8383/2016 and 14689/2015, R.P. (C) Nos. 593-598/2017 in C.A. Nos. 8386, 8391, 8384, 8390, 8385, 8388/2016 filed by Adison and Co. Ltd. against their own judgment and order dated 29-8-2016 in Civil Appeal No. 7906 of 2002 as reported in* ***2016 (339) E.L.T. 177 (S.C.)*** *(Commissioner v. Addison & Co.). While dismissing the petition, the Supreme Court passed the following order :*

"These Review Petitions have been filed against the judgment dated 29th August, 2016 whereby the appeals were allowed.

Delay condoned.

Application(s) for amendment of cause title in Review Petition (Civil) No. 548 of 2017 in Civil Appeal No. 14689 of 2015 is allowed.

We have perused the Review Petitions as well as the grounds in support thereof. In our opinion, no case for review of judgment *dated 29th August, 2016 is made out. Consequently, the review petitions are dismissed."*

The Supreme Court in its impugned order had held that since duty component on turnover discount was initially passed onto buyer who further passed it onto ultimate consumer who could not be identified, refund of such duty claimed by assessee on the plea that such duty returned back by issuing credit notes subsequent to clearance of goods was not admissible being hit by bar of unjust enrichment under Section 12B of the Central Excise Act, 1944.

It was further held that the downstream buyers/ultimate consumers can also make claim for refund of duty paid in excess. Plea that the ultimate buyers/consumers do not figure in the Scheme of Sections 11B, 12A, 12B and 12C of the Central Excise Act, 1944 was not acceptable."

On understanding the ruling by Hon'ble Supreme Court, it is very clear that when a manufacturer has paid the central excise duty on the turnover discount which is passed on to the buyer and which is further passed on to ultimate customer, then under those circumstances the manufacturer is not admissible to seek refund of incidence of such excise duty by way of issue of credit notes since the duty incidence is already passed on to the ultimate consumer and in respect of manufacturer the refund is hit by bar of unjust enrichment. We, therefore, do not find any infirmity in the order passed by learned Commissioner (Appeals) which is impugned here.

5. We affirm the impugned order and reject the appeal.

(Order pronounced in the open court on 16.05.2025)

(P.K. Choudhary)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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