CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70013 of 2019

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1451-18-19 dated 14/09/2018 passed by Commissioner (Appeals), Customs & Central Tax, Noida)

M/s Pigeon India Pvt. Ltd. **.....Appellant**

(Plot No.6E, Sector 40-41, Ecotech-1,

Greater Noida, Gautam Budh Nagar-201301)

VERSUS

Commissioner, Central Tax (CGST

& Central Excise), Gautam Budh Nagar **.....Respondent**

(3rd Floor, Wegman's Business Park, KP-III,

Greater Noida-201301, U.P.)

APPEARANCE:

Shri Atul Gupta, Advocate for Appellant
Shri Santosh Kumar Agarwal, Authorized Representative for Respondent

CORAM :
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71969 / 2019

DATE OF HEARING: 06 December, 2019
DATE OF DECISION: 06 December, 2019

PER: ANIL G. SHAKKARWAR

The present appeal is arising out of impugned Order-in-Appeal dated 14 September, 2018.

2. Brief facts of the case are that appellants were engaged in the manufacture of various baby care products. Appellant

paid duty at the time of removal of goods from factory to their warehouse at the rate of 12.50% and subsequently realized that they should have paid central excise duty at the rate of 6%. Therefore, they filed a claim for refund of around Rs.17 lakhs. The Original Authority through Order-in-Original dated 17 October, 2017 allowed the refund claim and paid the said amount to the appellant. Aggrieved by the said order, Revenue preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeal) has held that the said refund was hit by unjust enrichment and therefore, he has set aside the said Order-in-Original dated 17 October, 2017. Aggrieved by the said order appellant is before this Tribunal.

3. Shri Atul Gupta learned advocate appearing on behalf of the appellant has submitted that when the goods were removed from the factory to the warehouse central excise duty at the rate of 12.5% was paid. However, when the goods were actually sold to the dealers from the depots no central excise invoice was issued and invoice for payment of sales tax was issued and therefore, the burden of central excise duty was not passed on to the ultimate customers. He has submitted that such circumstances are covered by a Ruling by Hon'ble High Court of Gujarat in the case of M/s Ashish Metal Rolling Mills V/s Commr. of C.EX., Ahmedabad-I reported as 2014 (305) E.L.T. 510 (Guj.). He has also further submitted that they are prepared to submit all the books of account and related papers and Charter Accountant's Certificate that the burden has not been passed on.

4. Learned A.R. have supported the impugned order.

5. Having considered the submissions from both the sides and on perusal of record, I note that the learned Commissioner (Appeals) did not have the advantage of ruling by Hon'ble Gujarat High Court in the case of M/s Ashish Metal Rolling Mills (Supra) while deciding the issue. I, therefore, remand the matter to Commissioner (Appeals) to decide the

matter afresh taking into consideration submissions including any other submissions by the appellant and relying on the ruling by Hon'ble Gujarat High Court in the case of M/s Ashish Metal Rolling Mills (Supra). It is made clear that it is an open remand and appellants can rely on any ground they wish to rely.

6. In above manner after setting aside the impugned order appeal is allowed by way of remand.

(Dictated and Pronounced in open Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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