FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 12/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70931/2017-SM[BR] dated 05/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/70008/2015	**Gobind Sugar Mills Ltd** Po Aira Estate LAKHMIPUR KHERI U.P.
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. II

APPEAL No.E/70008/2015-EX[SM]

(Arising out of Order-in-Appeal No. 218-ST/APPL-LKO/LKO/2015 dated 29/05/2015passed by Commissioner of Customs, Central Excise &Service Tax (Appeals), Lucknow)

M/s Gobind Sugar Mills Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of Hearing : 05/09/2017
Date of Decision : 05/09/2017

FINAL ORDER NO:-70931/2017........

सीमा शुल्क, उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS, EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Ashok Jindal

The appellant is in appeal against the impugned order wherein refund claim filed by the appellant has been rejected on the grounds of unjust enrichment.

2. The brief facts of the case are that the appellant is manufacturer of sugar and molasses. The appellant was paying service tax on Inwards Goods Transport Agency Services and availing Cenvat credit thereof. Later on it was held that appellant was not required to pay services for

Ashok Jindal

transportation of cane in their factory. Therefore, the appellant reversed the Cenvat credit for service tax paid to Goods Transport Agency Service and filed refund claim. Initially the refund claim was sanctioned by the Adjudicating authority. Later on, the Revenue filed appeal before the Commissioner (Appeals) wherein the learned Commissioner (Appeals) has held that the bar of unjust enrichment is applicable and consequently rejected the refund claim. Aggrieved by the said order, appellant preferred appeal before me.

3. The learned Counsel for the appellant submits that when it has been held that they are not liable to pay service tax, therefore whatever service tax was paid, they are seeking refund of the same. In that circumstances bar of unjust enrichment is not applicable, as they are maintained sufficient balance in their Cenvat credit account during the impugned period. It is further submitted that as the price of sugar is fixed, in that circumstances doctrine of unjust enrichment is not applicable as whatever duty is payable by the appellant, is to borne by the appellant only. Therefore, the impugned order is to be set aside.

4. On the other hand, learned A.R. submits that as the appellant has paid the service tax on Goods Transport Agency Service and availed Cenvat credit thereon and therefore Cenvat credit has been utilized for payment of duty of sugar

then the duty element has been passed on. In that circumstances doctrine of unjust enrichment is applicable.

5. Heard the parties and considered the submissions.

6. On careful consideration of submissions made by both sides, I find that the issue before me is as to whether in the facts and circumstances of the case, the doctrine of unjust enrichment is applicable or not?

7. In this case, it is a fact on record that price of sugar is fixed, therefore, whatever duty is payable by the appellant, the same is borne by appellant and no part of duty is recoverable from the buyers as the price of sugar is includible in all taxes in the fixed price of sugar. In these circumstances, bar of unjust enrichment is not applicable.

7. In these terms, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated in Court)

Sd/-

(Ashok Jindal)

Member(Judicial)

akp

प्रमाणित प्रति/Certified True Copy

26/09/17

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001