CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

REGIONAL BENCH COURT No. - 2

Customs Appeal No. 20209 of 2018

[Arising out of the Order-in-Appeal No.783-915/2017 dated 13.10.2017 passed by the Commissioner of Customs (Appeals), Bangalore.]

M/s. United Telelinks (Bangalore) Ltd.,
No.39/13, Appareddy Palya Main Road,
Off 7th Main, HAL II Stage,
Indiranagar,
Bangalore – 560 038. **....Appellant**

Versus

The Commissioner of Customs
C.R. Building, Queens Road,
P.B. No.5400,
Bangalore,
Karnataka – 560 001. **....Respondent**

Appearance:

Mr. H. Y. Raju, Advocate for the Appellant
Mr. K. Vishwanath, Suptd. (AR) for the Respondent

Coram:
Hon'ble Mr. P. A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Date of Hearing: 12.01.2024
Date of Decision: 11.07.2024

FINAL ORDER No. 20597 of 2024

Per P. A. Augustian:

M/s. United Telelinks (Bangalore) Ltd., appellant had imported Mobile phones and filed 133 Bill of Entry under self-assessment for their clearance by declaring the goods under CTH 85.17 and assessing the goods, *inter alia* with concessional CVD at 1%. However, Respondent did not accept the self-assessment and demanded CVD at full rate of 12.5%. Appellant has paid the excess amount of CVD under protest and filed an appeal challenging the said assessment. The Commissioner (Appeal) allowed the appeal by way of remand and adjudicating authority vide Order-in-Original No. 66/2017 dated 24.01.2017 held that the appellant is eligible for exemption as mentioned under Sl.No.263A in Notification No.21/2012-CE dated 17.03.2012. Accordingly, Appellant filed refund claim of excess CVD paid in respect of 133 Bills of Entry. Appellant also submitted certificate dated 06.02.2017 confirming that the appellant has not availed any input Cenvat Credit. Appellant also produced certificate from Chartered Accountant stating that refund has been shown as 'Receivables' in the books of accounts of the Appellant. Accordingly, Deputy Commissioner (Refund) vide Order-in-original dated 03.03.2017 sanctioned the refund. Aggrieved by the said order, respondent filed appeal before the Commissioner (Appeals), who vide impugned order remanded the matter to adjudicating authority to reconsider the issue on unjust enrichment. Aggrieved by the said order, present appeal is filed.

2. When the matter came up for hearing, Learned Counsel for the appellant submits that regarding re-verification of unjust enrichment issue in terms of Section 28C and Section 28D of Customs Act, 1962 is illegal and unsustainable. Regarding unjust enrichment, learned counsel further submits that as per Para 11 of the Order-in-Original, the appellant has furnished a certificate dated 13.02.2017 issued by M/s. Prakash & Thiagarajan (CA) wherein the refund claim amount has been shown in the Company's Balance sheet as Customs Duty Deposit Receivable under Long Term Loans,

whereas in the copy of the balance sheet of the appellant furnished to the department for financial year 2015-16, they have accounted under 'Long Term Loans and Advances' under 'Assets'. Learned counsel further submits that the excess payment was made at the time of import under protest. Thus, there is no justification for remanding the matter to reconsider the issue of unjust enrichment. Learned counsel further submits that as per the judgements/decisions of the Hon'ble High Courts and Tribunal, Respondent is bound to accept the Chartered Accountant's Certificate. Learned Counsel also produced a chart showing the comparison of the price of the goods sold for the period prior and post import on payment of CVD at 12.5% under protest with connected tax invoices and submits that there is no change in the price of goods even after paying the CVD at higher rate and it shows that incidence of duty was not passed on to the customers to allege unjust enrichment.

3. Learned Counsel submits that the issue is covered by large number of decisions including the following:-

i. **YU Telvventures Pvt. Ltd. Vs UOI 2017 (358) ELT 81 (Del)**

ii. **Prl. Commr. of Customs, New Delhi (ACC Import) Vs M/s. Micromax Informatics Ltd.**
- 2023 (9) TMI 1267 - CESTAT NEW DELHI

iii. **Prl. Commr. of Customs, New Delhi (ACC Import) Vs M/s. Telecare Network (1) Pvt. Ltd,**
-2023 (3) TMI 1132-CESTAT NEW DELHI

iv. **Prl. Commr. of Customs Vs Telecare Network (1) Pvt. Ltd.**
-(2023) 13 Centax 8 (Del.)

v. **Hero Motorcorp Ltd. Vs CC (Import & General) -2014 (302) ELT 501 (Del.)**

vi. **CC, Bangalore Vs Apple India Pvt. Ltd. -2014 (309) ELT 29 (Kar.)**

vii. **CCE & Cus. Guntur Vs Crane Betel Nut Powers Works - 2011 (274) ELT 113 (Tri-Bang.)**

viii. **CCE, Surat-II Vs Binakia Synthetics Ltd. - 2013 (294) ELT 156 (Tri-Ahmd.)**

ix. **Bangalore Vs Visaka Industries Ltd. -2009 (248) ELT 865 (Tri-Bang.)**

x. **Ashiqui Export (P) Ltd. Vs CC, Cochin -(221) ELT 67 (Tri- Bang)**

xi. **Zenith Ltd. Vs CCE, Mumbai -2005 (187) ELT 23 (Tri- Mumbai.)**

xii. **Gujarat State Fertilizers & Chemicals Ltd. Vs CCE, Vadodara- 2014 (309) ELT 94 (Tri-Ahmd.)**

xiii. **Mirc Electronics Ltd. Vs CC, Ahmedabad - 2013 (287) ELT 225 (Tri-Ahmd.)**

xiv. **CCE & ST, Jalandhar Vs Shankar Printing Mills - 2015 (321) ELT -295 (Tre-Del.)**

xv. **Chapter-14 (5) of Customs Manual 2023**

xvi. **Circular No.18/2010 - Cus. Dated 08.07.2010**

4. Learned Authorised Representative (AR) reiterated the findings and submits that the documents produced by the appellant were not sufficient to allow full refund as sought by the appellant and also further relied on the following decisions/judgements of various Tribunals.

i. **Pelican Rubber Ltd., Versus Commissioner of Customs, Hyderabad [Final Order No. A/30158/2023]**

ii. **Nokia India Sales Pvt. Ltd., Versus Commissioner of Customs, Ahmedabad [2019(368) E.L.T 975(Tri.–Ahmd.)**

iii. **Shoppers Stop Ltd., Versus Commissioner of Customs (Exports), Chennai [2018 (8) G.S.T.L. 47 (Mad.)]**

iv. **C.C. (Import), Mumbai Versus Forever Living Health Nutrition & Beauty care Products Pvt. Ltd.,**
-2014 (304) E.L.T. 721 (Tri. - Mumbai)

v. **A.K. Enterprise Versus Commissioner of Customs (Port), Kolkata [2006 (199) E.L.T. 67 (Tri. – Kolkata)]**

vi. **Kirloskar Oil Engines Ltd., Versus Commissioner of Customs, Mumbai [2004 (174) E.L.T. 54 (Tri. – Mumbai)]**

vii. **Union of India Versus Solar Pesticide Pvt. Ltd.,**
-2000 (116) E.L.T. 401 (S.C.)]

viii. **Skycell Communications Ltd. Versus Commissioner Of Customs, Chennai [2007 (216) E.L.T. 702 (Tri.– Chennai)]**

ix. **India Agencies Versus Commissioner Of Customs, Chennai [2007 (212) E.L.T. 507 (Tri.– Chennai)].**

5. Heard both sides and perused the records. On merit the payment was initially made under protest. Adjudicating Authority in his findings held that since the imported goods were manufactured outside India, the question of availing any Cenvat Credit on inputs and or capital goods under Rule 3 of Cenvat Credit Rules, 2004 did not arise and hence they are eligible for the concessional CVD at 1% in terms of the duty rate prescribed against the entry at Sl.No.263A of Notification No.12/2012-CE dated 17.03.2012 as amended. Only after considering the issue in detail, adjudicating authority vide Order-in-original No. 66/2017 dated 24.01.2017 held that the appellant is eligible for exemption as mentioned under

Sl. No.263A in Notification No.21/2012-CE dated 17.03.2012. Based on the above, Adjudicating authority sanctioned refund of Rs.15,91,88,963/-. However, in appeal, Commissioner (Appeal) vide impugned order remanded the matter to adjudicating authority to reconsider the issue on unjust enrichment.

6. We find that in support of the refund claim, appellant have furnished a certificate dated 13.02.2017 issued by M/s. Prakash & Thiagarajan (CA) showing the due amount in the Company's Balance sheet as 'Customs Duty Deposit Receivable under Long Term Loans'. Further, appellant also furnished copy of the balance sheet for financial year 2015-16, where they have accounted the said amount under 'Long Term Loans and Advances' under 'Assets'. As per the Final Order of the Tribunal in the matter of **M/s. Micromax Informatics Limited (supra),** "once the certificate is produced from Chartered Accountant with Balance sheet, onus stands shifted upon the department to falsify those documents before concluding a presumptive finding. Similarly, Hon'ble High Court of Karnataka in the matter of **Commissioner of Customs Vs. Apple India Ltd(supra)** also held that once assessee has produced certificate from Chartered Accountant stating that the assessee has not passed the burden directly or indirectly, it is sufficient to rebut the presumption of unjust enrichment. Same view was upheld by this Tribunal in the matter of **CC Vs. Visaka Industries Ltd. (supra).** Thus, the finding given by the Appellate authority directing the original authority to revisit the issue on unjust enrichment is unsustainable.

7. in view of the above discussion and the considering the decisions of the Hon'ble High Court and Tribunal the appeal is sustainable. Accordingly, the appeal is allowed with consequential relief, if any in accordance with law.

(Order pronounced in Open Court on 11.07.2024)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

PULLELA NAGESWARA RAO
MEMBER (TECHNICAL)

Ganesh