CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 3

E-HEARING

CUSTOMS APPEAL NO. 20431 OF 2023

[Arising out of Order-in-Appeal No. 04/2022 dated 18.01.2022
passed by the Commissioner of Customs (Appeals), Bangalore]

M/s. GSEC Limited
2nd Floor, Gujarat Chamber Building
Ahmedabad – 380 009

Appellant(s)

VERSUS

Commissioner of Customs
Mangalore
New Customs House, Panambur
Mangalore – 575 010

Respondent(s)

APPEARANCE:
Mr. Ali Akbar Devjani and Mr. Rishab Suman, Advocates for the Appellant
Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20710 / 2025

DATE OF HEARING: 29.05.2025
DATE OF DECISION: 29.05.2025

PER : DR. D.M. MISRA

Heard both sides.

2. This is an appeal filed against the Order-in-Appeal No. 04/2022 dated 18.01.2022 passed by the Commissioner of Customs (Appeals), Bangalore. The short issue involved in this appeal for consideration is whether the appellants are entitled to refund of Rs. 25,00,000/- deposited during the course of investigation. After completion of the investigation, a show-cause notice was issued and on adjudication, demand was

confirmed. The amount deposited earlier during investigation was appropriated by the adjudicating authority. Aggrieved by the said order, appellant preferred an appeal before this Tribunal and by order dated 13.03.2020, the appeal was allowed with consequential relief, if any, as per law. Consequently, appellant filed a refund application before the authorities, who on adjudication sanctioned the refund but transferred it to Consumer Welfare Fund. Aggrieved by the said order, they preferred an appeal before the learned Commissioner (Appeals).

3. Before the learned Commissioner (Appeals), the Authorized Representative appearing for the appellant disputed the jurisdiction of the learned Commissioner (Appeals). Consequently, the learned Commissioner (Appeals) dismissed their appeal.

4. Learned Advocate for the appellant submits that the Authorized Representative (AR) who appeared before the learned Commissioner (Appeals) for the appellant though challenged the jurisdiction of the learned Commissioner (Appeals) submitting that the credit/recredit into out of Consumer Welfare Fund is within the power of jurisdictional AC/DC did not mean that the learned Commissioner (Appeals) has no jurisdiction to examine the issue of applicability of *unjust enrichment* to the facts of the case as decided by the adjudicating authority against the appellant.

5. Learned Authorized Representative for the Revenue has submitted that since the appellants themselves had challenged the jurisdiction of the learned Commissioner (Appeals), therefore, the matter was not decided on merit, accordingly, their appeal was dismissed.

6. I find that the Commissioner (Appeals) has not decided the issue on merit that is the applicability of *unjust enrichment*

to the refund amount claimed on the basis of the evidence placed before the adjudicating authority. Since the issue has not been addressed by the learned Commissioner (Appeals) on merit, it is appropriate to remand the matter to the learned Commissioner (Appeals), to address the issue on merit i.e. applicability of principles of *unjust enrichment* and whether burden of duty claimed as refund passed on to the consumer or otherwise. Since the matter is quite old, it is expected that the learned Commissioner (Appeals) would decide the matter within three months from the date of communication of this order. Needless to mention principles of natural justice be observed. Appeal is allowed by way of remand.

(Dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

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