CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20766/2018-SM, E/20768/2018-SM

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-49-50/2017 dated 22/02/2017 passed by Commissioner of Central Tax , COCHIN(Appeal)]

M/s. CEAT Ltd.
RPG House 463 Dr. A B Road Worli
MUMBAI - 400078
MH

Appellant(s)

Versus

Commissioner Of Central Tax & Central Excise, Cochin
C.R. Buildings, I.S Press Road
Cochin - 682018
Kerala

Respondent(s)

Appearance:

Mr. Mahesh Raichandani, Advocate
UBR LEGAL ADVOCATES
806, 8TH FLOOR, 'D' SQUAR
OPP, GOKLIBAI SCHOOL, DADABHAI ROAD,
VILE PARLE WEST
MUMBAI - 400056
MH

For the Appellant

Mr. K.T. Pakshirajan, AR For the Respondent

Date of Hearing: 05/11/2018
Date of Decision: 05/11/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21704-21705 / 2018

Per : S.S GARG

The appellants have filed these two appeals against the common impugned order dated 22.02.2018 whereby the Commissioner (Appeals) has rejected the appeals of the appellant. Since the issue involved in both the appeals is identical and impugned order is common therefore both the appeals are being disposed of by this common order.

2. Briefly the facts of the present case are that the appellant is involved in the manufacture and sale of automobile tyres, tubes and flaps falling under Chapter heading 40 of the Central Excise Tariff Act, 1985. Certain types of "CEAT" branded tyres were procured by the appellant from ***M/s. Rado Tyres Ltd***., Kothamangalam, Ernakulam a registered manufactures of tyres. The appellant filed a refund claim being the excess duty paid by ***M/s. Rado Tyres Ltd***. on the goods cleared amounting to Rs.8,19,996/- during the period April 2011 to March 2012 and Rs.10,53,089/- during the period April 2012 to March 2013 respectively. The lower adjudicating authority rejected the refund claim as inadmissible in terms of provisions of Section 11B of the Central Excise Act, 1944 (hereinafter referred to the Act) read with Rule 7 of Central Excise Rules, 2002 (hereinafter referred to the Rule) on the ground of unjust enrichment. Aggrieved by the order of the original authority, the appellant filed two appeals before the Commissioner (A) and the Commissioner (A) has held that the appellants are having *local standi* to file the refund application and as far as the unjust enrichment is concerned, the learned Commissioner (A) has held that the refund claim is

barred by principle of unjust enrichment and the third issue was with regard to the limitation on which the Commissioner (A) has not given any finding but rejected the appeals of the appellant.

3. Heard both sides and perused the records of the case.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that there were three issues before the Commissioner (A) - first issue was whether the appellant is having the *local standi* to file the refund claim and second was whether the appellant is eligible for refund claim and the third was whether the refund claim is hit by limitation. He further submitted that on *local standi* the Commissioner (A) has decided in favour of the appellant and as far as eligibility to refund is concerned, the Commissioner (A) has held that the appellant is not eligible to claim the refund by relying upon the decision of the Apex Court in the case of ***CCE Vs. Addison & Co. Ltd., 2016 (339) ELT 177 (SC)*** wherein it has been held that the assessee has failed to prove that incidence of tax has not been passed on to the ultimate consumer. He further submitted that as far as the third point of limitation is concerned, the Commissioner (A) has not given any finding. Learned counsel further submitted that as

far as unjust enrichment is concerned, the Commissioner (A) has wrongly observed that the appellant has not produced any documentary evidence to prove that incidence of duty has not been passed on to any other person including the ultimate buyer. Learned counsel produced before me the certificate of Chartered Accountant who after auditing the books of accounts of the appellant for both the years has certified that an amount of Rs.17,76,000/- excise duty refund is shown as receivable under the head balances with Government authorities and shown in the balance sheet for the year ended 31st March, 2018 . The Chartered Accountant has also certified that the said duty of excise has not been passed on to any other person by the company.

4.1 Further, the learned counsel has also produced on record the relevant portion of the balance sheet wherein the said amount has been shown as receivable from the Government authorities. Learned counsel further submitted that the Commissioner (A) did not call these documents from the appellant otherwise the appellant would have produced the said documents to the satisfaction of the Commissioner. He further submitted that the decision of the Apex Court in the case of ***Addison & Co. Ltd***. cited supra is not applicable in the facts and the circumstances of this case because in the present case, the appellant has proved on record that the incidence of duty has not been passed on to the buyer and has been borne by the appellant. As far as the third issue on limitation is concerned, the Commissioner (A) has not given any finding but the original authority has held that the claim is beyond limitation as provided under Section 11B of the Central Excise Act. Learned counsel further submitted that the finding of the original authority to refund the claim is beyond the period of one year from the relevant date i.e. purchase date, and is hit by limitation of time is unsustainable. He further submitted that had appellant filed a refund claim within one year from the date of purchase then it would have been held as premature and it is only after the finalization of assessment of ***M/s. Rado Tyres*** that the appellant is in a position to file the refund claim and from the date of finalization of the assessment, the present claim is within limitation. He further submitted that Rule 7 of the Central Excise Rules, 2002 is applicable to the principal manufacturer i.e. CEAT and hence refund is not time barred as held in ***2008 (231) ELT 359***.

5. On the other hand, the learned AR defended the impugned order and submitted that since the appellants have failed to produce the documents shown that the incidence of duty

has not been passed on to the ultimate buyer hence the decision of the Commissioner (A) is very much legal.

6. After considering the submission of both the parties and perusal of the material on record, I find that the appellants are having a *local standi* to file the refund claim as held by the Commissioner (A) against which the Department has not filed any appeal; as far as issue of unjust enrichment is concerned, I find that the appellants have produced before me the balance sheet as well as the certificate of the Chartered Accountant showing that the incidence of excise duty has not been passed on to the buyer or any other person and the same is shown as receivable in the books of accounts but these documents have not been considered by the authorities below. Similarly, I find that the original authority has wrongly rejected the refund claim on time bar by holding that the claim has been filed beyond the period of one year from the relevant date i.e. purchase date whereas the original authority should have considered the limitation of one year from the date of finalization of the assessment as provided in Rule 7 of Central Excise Rules, 2002 but the same has not been done by the original authority therefore in view of my discussion above, I am of the opinion that this case needs to be remanded back to the original authority with a direction to consider the certificate of the Charted Accountant specifically

certifying that the incidence of duty has not been passed on to the buyer. The decision of the Apex Court in the case of ***Addison & Co. Ltd.*** (supra) is not applicable in the present case because the appellant has produced on record the certificate of Charted Accountant which was not there before both the authorities below. Further, the original authority will also consider the issue of limitation of one year which will start from the date of finalization of the assessment and not from the date of purchase made by the appellant. With these observations, I remand back both the appeals to the original authority that will pass *de novo* order regarding the refund claim after considering the observations made by me above and will dispose of all the claims within a period of three months from the date of receipt of certified copy of this order. The original authority will comply with the principles of natural justice and will also consider the law laid down by this Tribunal in various decisions relied upon by the appellant. Hence, both the appeals are disposed of by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **05/11/2018**)

S.S GARG
JUDICIAL MEMBER

Parveen...