

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20833/2019-SM

[Arising out of Order-in-Appeal No. 89/2019 dated
22/05/2019 passed by the Commissioner of Customs,
Bangalore-I (Appeals)]

**Commissioner of Customs
Mangalore**

New Customs House
Panambur
Mangalore – 575 010
Karnataka

Appellant(s)

VERSUS

J M Baxi & Company

Sadhoo Complex, 1st Floor,
NH 66, Bangra Kulur
Mangalore – 575 013
Karnataka

Respondent(s)

Appearance:

Mrs. D.S. Sangeetha, Jt. Commr.
(AR)

For the Appellant

Mr. Joy Thattil Ittoop, Advocate

For the Respondent

CORAM:

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

Final Order No. 20872 / 2019

Date of Hearing: 18/10/2019

Date of Decision: 18/10/2019

Per: S.S GARG

The present appeal is directed against the impugned order dated 22/05/2019 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has dismissed the appeal of the Revenue and upheld the De novo order dated 13/08/2018.

2. Briefly the facts of the present case are that the respondent had filed Bill of Entry No. 163 dated 30/06/2015 for the bunkers and provisions to be consumed on the vessel "MT Swarna Kalash" during the period of her coastal run. The BE was initially assessed provisionally on advance payment of Rs. 59,51,007/- (Rupees Fifty Nine Lakhs Fifty One Thousand and Seven only). Consequent to the reversion of the vessel, ibid, into foreign run, the Deputy Commissioner of Customs (Appraising), New Customs House, Panambur, Mangalore finalized the provisional assessment in terms of Section 18(2) of the Customs Act, 1962 and noticed an excess payment of Rs. 38,85,649/- (Rupees Thirty Eight Lakhs Eighty Five Thousand Six Hundred and Forty Nine only). Accordingly, the claimant filed a refund claim seeking the refund of Rs. 38,85,649/- (Rupees Thirty Eight Lakhs Eighty Five Thousand Six Hundred and Forty Nine only) which was found to be paid in excess. The Assistant Commissioner of Customs (Refunds), after verifying the claim, has sanctioned the refund of Rs. 38,85,649/- (Rupees Thirty Eight Lakhs Eighty Five Thousand Six Hundred and Forty Nine only) vide the Order-in-Original No. 64/2016 Refund dated 25/11/2016.

2.1. The Department however challenged the Order-in-Original No. 64/2016 Refund dated 25/11/2016 on the grounds that the OIO is not legal and proper as the refund relates to Customs duty and the issue

of *unjust enrichment* had not been examined by the original authority and filed an appeal before the Commissioner of Customs (Appeals), Bangalore. The Commissioner of Customs (Appeals) vide Order-in-Appeal No. 974/2017 dated 27.11.2017 held that principle of *unjust enrichment* had to be tested before sanctioning any refund and as the original authority had erred in this regard, the case was remanded to the original authority for passing a speaking order after giving the claimant an opportunity.

2.2. The original authority examined the refund claim with respect to principles of *unjust enrichment* and vide the impugned order held that the claimants have sufficiently proved that the duty incidence had not been passed on to any other person and did not order any change in the OIO No. 64/2016 dated 25.11.2016. Aggrieved by the *de novo* order of the original authority, the Department has filed the present appeal.

3. Heard both the parties and perused the records.

4. Learned AR appearing for the Revenue submitted that the claimant had shown the amount paid towards Customs duty as 'expenditure' and not as 'receivables' in their books of account and hence the refund claim is not free from the *unjust enrichment*. She further submitted that the CA certificate alone cannot be relied upon for deciding the principles of *unjust enrichment*. In support of her contention, she relied upon the following decisions:

- a. CC, Mangalore-Cus. Vs. Mangalore Refinery and Petrochemicals Ltd. - 2017 (8) TMI 395 - CESTAT BANGALORE
- b. Union of India Vs. Solar Pesticide Pvt. Ltd. - 2000 (116) E.L.T. 401 (S.C)

- c. *Commr. of Cus. (Export), Chennai Vs. Scientific Instruments Co. Ltd.* – 2014 (12) TMI 530 – Madras High Court
- d. *M/s. Hindustan Petroleum Corporation Ltd. Vs. Commr. of Central Excise, Mumbai-II* – 2014 (5) TMI 767 – CESTAT Mumbai

5. On the other hand learned counsel appearing for the respondent submitted that both the authorities have properly examined the aspect of unjust enrichment and has also considered the certificate issued by the CA clearly stating that duty has not been passed on to the buyer and has been borne by Shipping Corporation of India which is a Public Sector Undertaking. He further submitted that in the present case the refund has been credited of the excess duty paid and with regard to excess duty paid, the doctrine of unjust enrichment is not applicable at all. He also submitted that in the case of Public Sector Undertaking i.e. Shipping Corporation of India in the present case doctrine of unjust enrichment is not applicable as held by the Supreme Court in the case of ***Mafatlal Industries Ltd. and others Vs. Union of India and Ors. (1997) 5 SCC 536***. In support of his submission, he has relied upon the following decisions:

- a. *CCE, Pune Vs. Atlantic Shipping Pvt. Ltd.* – 2014 (307) E.L.T. 776
- b. *Karnataka Antibiotics Vs. CCE* – 1996 (83) E.L.T. 114 (Tri.-Chennai)
- c. *CC Vs. IOCL* – 2012 (282) E.L.T. 368 (Del.)
- d. *UOI Vs. Solar Pesticide Pvt. Ltd.* – 2000 (116) E.L.T. 401 (SC)

6. After considering the submissions of both the parties and perusal of the material on record, and the various decisions relied upon by both the authorities, I find that the doctrine of unjust enrichment is

not applicable in the present case because the Shipping Corporation of India is a Public Sector Undertaking and in view of the Supreme Court decision in the case of **Mafatlal Industries Ltd.** cited supra. Further I find that in the present case doctrine of unjust enrichment will not be applicable because the appellant is seeking only the refund of excess duty paid *inter alia* at the time of provisional assessment and when the assessment was finalized it was found that he has paid excess amount of Rs. 38,85,649/- (Rupees Thirty Eight Lakhs Eighty Five Thousand Six Hundred and Forty Nine only) which should have been refunded to him without issue of show-cause notice. Further I find both the authorities have examined in detail the application of the doctrine of unjust enrichment and has returned the categorical findings that doctrine of unjust enrichment is not applicable in the present case and the Shipping Corporation of India has not passed on the Customs duty to any other persons and has itself suffered duty. Therefore, the ground raised by the Revenue in the grounds of appeal is not tenable in law in view of the various decisions cited supra. In view of my discussion above, I am of the considered opinion that there is nothing wrong in the impugned order which is upheld by dismissing the appeal of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **18/10/2019**)

(S.S GARG)
JUDICIAL MEMBER

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