CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60461 of 2023

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-266-2023 dated 27.03.2023 passed by the Commissioner (Appeals), Central Excise, Jalandhar]

M/s Heera Industries ......**Appellant**
Opposite Devi Talab Hospital
Preet Nagar, Tanda Road
Jalandhar Punjab 144004

VERSUS

Commissioner of CE & CGST, Jalandhar ......**Respondent**
CGST Commissionerate, Jalandhar
C.R. Building, Model Town Road,
Jalandhar, Punjab 144001

APPEARANCE:

Shri Ravi Chopra, Advocate for the Appellant

Shri Narinder Singh, Authorized Representative for the Respondent

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

FINAL ORDER NO. 61039/2025

DATE OF HEARING: 11.08.2025
DATE OF DECISION:11.09.2025

The present appeal is directed against the impugned order dated 27.03.2023 passed by the Commissioner (Appeals), whereby the Commissioner (Appeals) has upheld the Order-In-Original rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacture of Aluminium Milk Cans and have been

clearing the same on payment of duty at Tariff rate of 12.5% under Chapter Heading 7612. However, with effect from November 2016, the appellant started clearing manufactured Aluminium Milk Cans under Chapter Heading 7615 on payment of central excise duty @ 6% Ad Valorem and also simultaneously filed the refund claim of Rs.22,12,923/- on 05.06.2017 for the past period from 04.06.2016 to 29.10.2016 for excess duty paid @ 12.5% as against 6% Ad Valorem i.e. differential duty of 6.5% Ad Valorem.

2.2 Thereafter, a show cause notice was issued proposing to deny the claim for the reason that the appellant has charged Central Excise Duty @ 12.5% Ad Valorem in the invoices issued for supply of Aluminium Cans to the buyers as per the contracts/purchase orders entered into with them and that such contracts/purchase orders quoted rates inclusive of all taxes. As per the Department, based on these documents, it was alleged that the appellant has already transferred the burden/incidence of duty on to the buyers/customers. After following the due process, the original authority rejected the refund claim on the ground that the appellant has not been able to cross the bar of unjust enrichment. Aggrieved by the said order, the appellant filed the appeal before the Commissioner (Appeals) who also rejected the same. Hence, the present appeal.

3. Heard both the sides and perused the material on record.

4. The Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the submissions of the appellant as well as

without considering the decisions relied upon by the appellant. He further submits that the appellant was paying the duty @ 12.5% whereas other manufacturers of identical goods were paying duty @ 6% Ad Valorem. He further submits that he sought the clarification from the Department by writing a letter but the department did not clarify the issue and thereafter from November, 2016 the appellant has also started paying 6% on the said goods and thereafter filed the refund claim for Rs. 22,12,923 of excess duty paid by them during the period 04.06.2016 to 29.10.2016. Learned counsel for the appellant further submits that as per the purchase orders the rate agreed between the parties will be inclusive of everything including the taxes and he has not charged the duty from the buyer. The learned counsel further submits that the duty mentioned in the invoices are only for the purpose of complying with the legal requirement of Rule 11(2). In support of his contention, the learned counsel has also produced the certificate from the Chartered Accountant who has also stated that the appellant has not passed on the incidence of duty to the buyers.

4.2 Learned counsel further submits that identical issue has been considered in the following decisions which have been decided in favour of the assesse.

- *M/s. Amadalavasa Co-operative Sugars Ltd- 2007(219)ELT 526(Tri-Bang.)*

- *(ii) M/s. Saifco Cements Pvt Ltd- 2017(347)ELT 299(Tri-Chandigarh)].*

- *(iii) M/s. Sandeep Metal Craft Pvt Ltd- (2008(226) ELT 428(Tri-Mumbai).*

5. On the other hand, learned authorized representative for the revenue reiterated the findings of the impugned order and submitted that as per the provisions of Section 11B(1) and 11B(2) read with Section 12A and 12B of the Act governing the manner of indicating the amount of duty in the price of goods, etc, for the purpose of refund and crediting certain amounts to the Consumer Welfare Fund, has been fully complied while passing the order by both the authorities denying the refund claim. Learned AR further submits that combined reading of Section 12A and 12B leads to the conclusion that the claimant is eligible for refund claim of Central Excise duty only if the said claimant himself has borne the incidence of such central excise duty. He further submits that the burden to prove that tax incidence has not been passed to the buyer is on the claimant which has not been rebutted by the appellant in this case.

5.2 Learned AR further submits that scrutiny of relevant documents as detailed in paras 4.6.1 and 4.6.2 of the order in original dated 09.01.2020 clearly shows that the documents produced by the appellant clearly states that the price negotiated with the buyers are inclusive of the excise duty therein. He further submits that the argument of the appellant that the duty was shown in the invoice merely for the calculation purpose does not have force because rate contracts/purchase orders specifically include excise duty which has been duly charged by the appellant from the buyers.

5.3 The learned AR further submits that though the learned counsel has produced the certificate from the Chartered Accountant but the said certification is contrary to the contracts/purchase orders invoices on record. Further said certificate is not supported by the evidence or basis upon which the conclusion was drawn. He also submits that the certificates nowhere explains the nature of documents gone through for scrutinize such a sensitive matter of revenue. Learned AR further submits that the appellant has failed to cross the bar of unjust enrichment and therefore, are not entitled for refund. For this submission, he has relied upon the following decisions:

(i) 2005 (184) E.L.T. 154 (Tri. Del.) INTERACH BUILDING PRODUCTS (P) LTD. Versus COMMR. OF C. EX., GHAZIABAD

(ii) 2006 (193) E.L.T. A143 (S.C.)- Interarch Building Products Ltd. v. Commissioner

(iii) 2007 (212) E.L.T. 507 (Tri. Chennai) COMMISSIONER OF CUSTOMS, CHENNAI INDIA AGENCIES Versus

(iv) 2009 (248) E.L.T. 394 (Tri. Del.) STEEL STRIPS LIMITED Versus COMMISSIONER OF CENTRAL EXCISE, LUDHIANA

(v) 2010 (262) E.L.T. 129 (P & H)- STEEL STRIPS LTD. Versus CESTAT, NEW DELHI

(vi) 2011 (266) E.L.T. A27 (S.C.) - Steel Strips Ltd. v. CESTAT

(vii) 2014 (304) E.L.T. 721 (Tri. Mumbai)- C.C. (IMPORT), MUMBAI Versus FOREVER LIVING HEALTH NUTRITION & BEAUTYCARE PRODUCTS PVT. LTD.

(viii) 2018 (8) G.S.T.L. 47 (Mad.)- SHOPPERS STOP LTD. Versus COMMISSIONER OF CUSTOMS (EXPORTS), CHENNAI.

5.4 Learned AR also submitted and distinguished the decisions relied upon by the appellant cited (Supra) on the ground that the facts and circumstances in those cases are totally different than the facts in the present case.

6. I have considered the submissions of both the parties and has perused the material on record and has also considered the various decisions relied upon by both parties; the only question involved in the present case is whether the appellant is entitled for the refund of Rs. 22,12,923 on the ground that he has paid excess duty @ 12.5% under chapter heading 7612 whereas the said product falls under chapter heading 7615 which attracts excise duty @ 6% Ad valorem. Further, I find that as per the appellant, the other manufacturers are paying the duty @6% on identical goods. Further, I find that though the issue of classification stands decided in favour of the appellant but the issue in the present proceedings are limited to the issue of refund of Central Excise Duty of Rs. 22,12,923. Further, I find that though in the purchase order, it is mentioned that the price is inclusive of all the taxes but in all the invoices issued by the appellant to the buyer the central excise duty separately mentioned which shows that the appellant has passed on the duty to the buyer.

7. Further, I find that this issue has been considered by the jurisdictional High Court of Punjab and Haryana in the case of Steel Strips Ltd. Vs. CESTAT, New Delhi cited (Supra), wherein the

Division Bench of Punjab and Haryana High Court while dealing with the refund filed by the assessee has formulated the following substantial of question of law;

(i) Whether in the facts and circumstances of the present case the present appellant is rightly claiming the refund of duty when the incidence of duty has not been passed on to the customers and the question of unjust enrichment does not arise is legally sustainable in the eyes of law?

(ii) Whether in the facts and circumstances of the present case the provisions of Section 11-B of the Act apply when the duty has been paid under protest is legally sustainable in the eyes of law?

(iii) Whether in the facts and circumstances of the present case, the action of the authorities below in not following the judgment of the Hon'ble Apex Court is sustainable in the eyes of law?

8. Further, I find that the Hon’ble High Court of Punjab and Haryana after considering the submissions of both the parties has held in para 5 as under:

> *5. We are unable to accept the submission. The adjudicating authority, the Commissioner as well as the Tribunal have concurrently held that the assessee will be deemed to have passed on the burden of duty once the gate passes/invoices showed that that duty was part of the invoices issued. The Tribunal has referred to several Judgments consistently holding that in such a situation presumption is that the duty has been passed on to the consumers and the said presumption is not rebutted merely by the fact that the assessee did not actually realize the amount. Once the duty is added in the invoices, the purchaser gets benefit of MODVAT credit, learned Counsel for the*

> *assessee has not been able to show any law that in such a case, the burden on the assessee will stand discharged. In absence thereof, the concurrent finding that the assessee passed on the burden of duty is not liable to be disturbed. No substantial questions of law arises. The appeal is dismissed.*

9. Further, I find that the assessee though filed appeal against the decision of the Punjab and Haryana High Court in the case of Steel Strips Ltd. Vs. CESTAT, New Delhi cited (Supra) but subsequently withdrawn the appeal and the same was dismissed by the Hon'ble Apex Court as withdrawn which is reported in ***2011 (266) ELT A27 (S.C).*** Further, I find that Tribunal CESTAT, New Delhi in the case of M***/s Interach Building Products (P) Ltd. Vs. Commr. Of C.Ex. Ghaziabad*** reported in ***2005 (184) ELT 154 (Tri.-Del.)*** has also considered the principle of unjust enrichment and has held in the following paras:

> *8. In the invoices as observed above, duty element has been separately shown while clearing the goods. We are unable to subscribe to the contention of the Counsel that it was done only with a view to meet this statutory requirement of showing the duty separately in the invoices, Rather, from this fact of showing the duty separately in the invoices, it can be safely inferred that appellants had passed on the incidence of duty to the customers/buyers. In none of these invoices, it was indicated that the duty element separately shown by them Was only a formality and that it was not to be charged from the buyers. When they were paying the duty under protest, it is difficult to accept that they did not charge duty from their customers. They in fact indicated the duty separately in their invoices while clearing the goods only with an intention to make it known to their customers/buyers, the duty involved on the cleared goods and requiring them to pay the same. The affidavit of Shri K.C. Sharma, General Manager of M/s. Lloyds Industries, copy of*

which is at page 84 of the paper book, referred by the Counsel, does not in any manner prove that the incidence of duty was not passed on by the appellants at the time of sale of goods to that company. He has only deposed that his company placed the order with the appellants and the price agreed was inclusive of all taxes and duties and that the rate of duty was not relevant for placing the order. He had not disclosed as to what was the price agreed upon and how much was the duty element therein. When the duty element, as observed above, had been separately shown, besides the price, in the invoices, by the appellants, that itself is enough to make his affidavit meaningless.

9. The duty was no doubt paid by the appellants under protest but still they were under legal obligation to cross the bar of unjust enrichment by showing that they had not passed on the incidence of duty to the buyers, for claiming the refund, in view of the latest pronouncement by the Apex Court in the case of CC Mumbai v. Allied Photographics India Ltd. (2004 (156) E.LT 3).

10. Having failed to prove the non-passing of the incidence of duty to the buyers, the refund claims of the appellants have been rightly held to be hit by the principle of unjust enrichment. The appellants cannot be permitted to enrich themselves by collecting the duty from both ends Ie. Government as well as the consumers/buyers.

11. The ratio of law laid down in CCE, Calcutta v. Nicco Corporation Ltd. CCE, Calcutta v. Panihati Rubber (2004 (172) E.LT. 310 (Cal.)] [2004 (61) RLT 19] referred to by the Counsel during the course of arguments, is not attracted to the case of the appeilants. In the first case, the duty was borne by the assessee by reducing the profit margin and there was non-payment of duty by the customers. In the second case, the contract price was indusive of duty and no duty was paid by the buyers. Keeping the facts and circumstances of these cases, it was observed by the Tribunal that the bar of unjust enrichment was not attracted. But such is not the position in the present *case. Moreover, the law laid down in both those cases being contrary to the law pronounced by the Apex Court in Mafatial Industries and CCE, Mumbai v. Allied Photographics India Ltd. (supra) referred to above, cannot be applied to the case of the appellants.*

12. In the light of discussion made above, we do not find any illegality in the impugned order and the same is upheld. The appeal of the appellants is dismissed.

10. In view of my discussion above, I am of the considered view that the issue is squarely covered in favour of the Revenue and the refund filed by the appellant has rightly been rejected by both the authorities. By following the ratio of the said decision, I do not find any infirmity in the impugned order passed by the Commissioner (Appeals) and consequently, I dismiss the appeal of the appellant.

(Order pronounced in the open court on 11.09.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

Kailash