CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Appeal No. C/354/2010

[Arising out of 60/Cus/Ldh/2010 dated 30.04.2010 passed by the Commissioner (Appeals) of Customs & Excise, Chandigarh-I]

M/s Gaurav Enterprises **: Appellant (s)**
786, street No. 1, Mauradura, Millar Ganj, Ludhiana, Punjab

Vs

Commissioner of Customs, Amritsar **Respondent (s)**
Preventive Customs House,
C.R. Building, The Mall, Amritsar, Punjab

APPEARANCE:
Shri Naveen Bindal, Advocate for the Appellant
Shri Bhasha Ram, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

ORDER No.A/61030 / 2019

Date of Hearing:20.11.2019

Date of Decision:20.11.2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim has been rejected on the ground that the appellant has failed to pass the bar of unjust enrichment.

2. The facts of the case are that at the time of import the appellant paid Basic Customs Duty (BCD) @ 5% in fact, the rate of Basic Customs Duty (BCD) was 2%. The appellant filed a refund claim, claiming the refund of excess duty paid by them. The adjudicating authority allowed the refund claim to the appellant, but, on appeal by the Revenue, the refund claim was rejected by the Ld. Commissioner
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(Appeals) holding that the appellant has failed to pass the bar of unjust enrichment. Against the said order, the appellant is before me.

3. Heard the parties and perused the records.

4. On perusal of records, I find that while entertaining the claim of refund, the goods were lying in the premises of the appellant and were not sold. When it is a fact on record that the goods have not been sold, the question arises whether the bar of unjust enrichment is applicable to the facts of the case or not?

Admittedly, the passing of duty on the buyer comes into picture only when goods are sold. When the goods are not sold, the appellant is not required to establish that the duty incident is not been passed on the buyer. As there is no buyer at all, in that circumstances, the Ld. Commissioner (Appeals) fell in an error holding that the appellant is required to pass the bar of unjust enrichment as held by the Hon'ble Apex Court in the case of Mafat Lal Industries Ltd. vs. Union of India 1997 (89) ELT 247 (SC). Therefore, I do not find any merit in the impugned order, the same is set-aside.

5. In result, the appeal is allowed with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.