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

Appeal No.C/40118/2018

[Arising out of Order-in-Appeal No.SEA.C.Cus II No.676/2017 dt.29.09.2017 passed by the Commissioner of Customs (Appeals - II), Chennai]

ShethImpex Vivo Solutions Pvt Limited	Appellant
Versus	
Commissioner of Customs, Chennai IV Commissionerate	Respondent

Appearance:

Shri G. Derrick Sam, Advocate
For the Appellant

Shri L.Nandakumar, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri.P.Dinesha, Member (Judicial)

Date of hearing : 28.9.2018

FINAL ORDER No. 42655 / 2018

This appeal is filed by the assessee claiming refund of excess amount paid. This is the case of the assessee / appellant that the imported medical equipments vide Bill of Entry No.627594 dt.12.5.2004 for which it paid out by mistake without claiming concessional rate of duty (as per Notification No.21/2002); that even though the original authority was satisfied and sanctioned the refund, yet the same was credited to Consumer Welfare Fund; that on appeal the prayer was rejected by the Commissioner (Appeals); that even they further appealed to CESTAT, Chennai, was also rejected; that on further appeal, the Hon'ble High Court of Madras remanded the matter back to file on Commissioner (Appeals) vide order dt.2.12.2016; that even there after, the Commissioner (Appeals) rejected the appellant's prayer on a different ground altogether, by which the Commissioner (Appeals) went beyond the scope of remand, etc.

2. Per contra, Ld.DR supported the findings of lower authorities.

3. Heard both sides. On perusal of the documents placed on record and also have gone through the decisions referred to prior course of hearing. The Hon'ble High Court had directed the Commissioner of Appeals to take on record the additional evidence and then pass a fresh order since the Hon'ble High Court was satisfied that the additional evidence sought to be placed on record had satisfied the exceptions carved out in Rule 5.

4. In the above factual matrix, Ld.Advocate points out that the Certificate issued by the Chartered Accountant having not been specifically rejected, the same is deemed to have been accepted. This, according to him, is also in accordance the direction of the Hon'ble High Court. I find merit in the submissions of the

Ld.Advocate. Further, I note that the certificate of the Chartered Accountant referred to above, as submitted by the Ld.Advocate, is directed to be considered, forms the essential document per se. The other document namely the certificate from the statutory auditor as required by the Commissioner (Appeals) herein could only be considered at best a supporting evidence only if there was any iota of doubt on the primary evidence namely the Certificate of Chartered Accountant referred to and accepted by the Hon'ble High Court. Therefore, the certificate of statutory auditor required and observed by the Commissioner (Appeals) as not furnished, could not be treated as a primary document itself, to deny any benefit in the nature of refund as in the case on hand.

5. The concept of unjust enrichment has a serious impact and has to be weighed carefully by the revenue and it cannot be an automatic choice for the revenue to reject every claim and credit / deposit the amount into 'Consumer Welfare Fund' under the guise of unjust enrichment. Section 12C of Central Excise Act deals with setting up of 'Consumer Welfare Fund' and the amount that could be credited into this fund is specified in Sub-Section (2). For the sake of convenience, Section 12C (ibid) is extracted herein below :-

SECTION 12C. Consumer Welfare Fund. ____ (1) There shall be established by the Central Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed, -

(a) the amount of duty of excise referred to in sub-section (2) of section 11B or sub-section (2) of section 11C or sub-section (2) of section 11 D;

(b) the amount of duty of customs referred to in sub-section (2) of section 27 or sub-section (2) of section 28A, or sub-section (2) of section 28B of the Customs Act, 1962 (52 of 1962);

(c) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

[(d) the surplus amount referred to in sub-section (6) of section 73A of the Finance Act, 1944 (32 of 1994)

From the above, the scope of amounts sought to be deposited in the Consumer Welfare Fund is very limited and specific : the authorities cannot invoke this provision on mere assumptions or surmises, without satisfying the conditions laid down. In the case on hand, the first certificate of Chartered Accountant accepted by the Hon'ble High Court itself contained a specific plea that the assessee / appellant has not passed on the duty incidence to its customers, which fact has not at all been disputed by the authorities below. This itself carves the case of the appellant out of mischief of Section 11B and the scope of 'unjust enrichment'.

6. In the light of the above factual observations, I am of the view that the rejection of refund by the revenue authorities is contrary to law and unsustainable for which reason I set aside the same. Consequently the appeal is allowed with consequential reliefs, if any.

(P.DINESHA)
MEMBER (JUDICIAL)

VSR