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

C/40864/2015

(Arising out of Order-in-Appeal No. 31/2015 dated 20.01.2015 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals-I), Coimbatore).

M/s. Savio India Ltd. — Appellant

Vs.

CCE & ST, Coimbatore — Respondent

Appearance

Shri A. Mohammed Ismail, Advocate
for the appellant

Shri B. Balamurugan, AC (AR)
for the Respondent

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing: **03.08.2017**
Date of Pronouncement: 10/8/17

FINAL ORDER No. 41605 **/2017**

As per the facts on record, it is seen that the imports made by the appellants was referred to Special Valuation Branch (SVB), Customs House, Chennai, for verification and investigation of their relationship and its influence on the transaction value as required under Board's Circular No. 11/2001-Cus. After completion of the investigation, the SVB, Customs House, Chennai, has passed an

Order-in-Original No. 80/2001 dated 30.01.2001 ordering to add the Technical Knowhow fee paid by the appellants to their principals viz., M/s. Savio Machine Tessili SPA, Italy for import of Automatic Vending Machine (AVM) for manufacture of auto cone winders by the appellant in the transaction value under Rule 9 (1) (c) of (erstwhile) Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. Aggrieved by this, the appellants preferred an appeal before the Commissioner (Appeals) , Chennai and the Commissioner (Appeals) Chennai vide order Cus. No. 586/2001 dated 20.09.2001 set aside the Order-in-Original and held that the appellants were not required to add the technical know-how fee of DM 510,000 as per the original order and allowed the appeal. Subsequently the Department preferred an appeal before the Hon'ble CESTAT, Chennai and the Hon'ble CESTAT, Chennai vide its Final Order No. 278-313 dated 18.03.2002 has remanded the matter back to the Commissioner (Appeals), Chennai. The Commissioner (Appeals) in his denovo order held that lump-sum fee paid by the appellatns to their principals is addable to the invoice price under Rule 9 (1) (c) of (erstwhile) Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. In turn, the appellants again preferred appeal before the Hon'ble Tribunal, Chennai and the Tribunal vide its Final Order No. 935/2008 dated 27.08.2008, held that Technical know-how fee is not required to be added to the transaction value and the said order was accepted by the Department vide F.N o. M/40/2009 dated 31.10.2008.

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2. Therefore the appellants preferred a refund claim for Rs.8,76,890/- towards payment of extra duty deposit on ex-bond clearances effected during the period 31.01.2001 to 20.07.2012. After due process of law, the competent authority vide Order-in-Original dated 08.10.2014 rejected the refund claim as time barred in accordance with the provisions of Section 27 of the Customs Act, 1962.

3. Being aggrieved with the said order the appellant filed an appeal before the Commissioner (Appeals) contending that the issue was not refund of duty so as to attract the provisions of Section 27 of the Customs Act. The same was extra deposits by them to the extent of 2%, as directed by the customs authorities. The order passed by the original adjudicating authority added the technical know-how fee in the transaction value and directed the lower authorities to finalize the provisional assessment made for the period from 1997-98 to 1999-2000 and the said order was set aside by the higher appellate authority. There was no direction in the order of the original adjudicating authority to pay 2% extra amount at the time of further imports. As such they have contended that the said deposits were only extra duty deposits and are not covered by the Section 27 of the Act.

4. After hearing both sides, I find that in their latest decision, the Hon'ble Madras High Court in the case of *CC (Exports), Chennai Vs. Sayonara Exports Pvt. Ltd.* – 2015 (321) ELT 583 (Mad.) has observed that limitation aspect is not applicable in refund of extra

duty deposit made pending finalization of provisional assessment and the same are required to be automatically refunded without filing application for refund under Section 27 of the Customs Act, 1962. I find that the factual position in the case before the Hon'ble Madras High Court is more or less identical to the facts of the present case, thus making the ratio of law declared by the Hon'ble High Court as applicable to the facts of the present case. Accordingly, I hold that the appellant is entitled to the refund of extra deposit made by them during the pendency of the matter before various authorities.

5. It is also seen that the refund stands rejected on the ground of unjust enrichment also. The appellants have contended that the Commissioner (Appeals) has made a general observation that a businessman collects all the dues from their customers and did not have been called for the records or explanation so as to verify the said aspect. They have submitted that in the Balance Sheet and Chartered Accountant's Certificate, the said amount has been shown as receivables and as such the principles of unjust enrichment would not be applicable.

6. I find force in the above contention of the Ld. Advocate. No documents or records stand verified by the lower authorities so as to come to the conclusion of unjust enrichment and only a general observation to the extent that no prudent businessman would continue to pay higher duty without passing the same to the buyer of the goods, stand made by the appellate authority. As such,

while allowing the appeal on the point of limitation, I set aside the impugned order and remand the matter to the original adjudicating authority for examination of the principles of unjust enrichment. Needless to say that the appellant would be given opportunity to put forth their case.

7. Appeal is thus allowed by way of remand.

(Order pronounced in the open Court on 10/8/17)

9/8/17
(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

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