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

C/40692/2017

(Arising out of Order-in-Appeal No. 01/2017 dated 10.01.2017 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy).

M/s. 3F Industries Ltd. : Appellant

Vs.

Commissioner of Custom, Trichy : Respondent

Appearance

Shri A.K.S. Moorthy, Advocate,
for the Appellants

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **10.10.2017**

FINAL ORDER Nos. 42404/**2017**

Per Bench

This is the case of claim of refund of Rs. 1,09,11,275/- along with interest filed by the appellant with regard to Bills of Entry No. 6, 7 & 8/2001 dated 03.08.2001 and 9/2001 dated 04.08.2001 for clearance of 2471.788 MTs of RBD Palm Olein

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from the Bonded warehouse for home consumption. RBD Palm Olein attracts duty based on the tariff value fixed by the Government of India from time to time. While clearing the said goods, the importer had paid the duty on the tariff value notified by the Govt. prior to 03.08.2001. However, the Govt. had enhanced the tariff value vide Notification No. 36/2001 dated 03.08.2001. Therefore, differential duty was demanded based on the higher tariff value fixed w.e.f. 03.08.2001. The importer paid the differential duty under protest and preferred a Writ Petition before the Hon. High Court of Madras. The Hon. High Court of Madras vide Order in Writ Petition No. 15635/2001 dated 04.06.2015, held that as long as the impugned Notification has been notified in the Official Gazette, to the public, only on 06.08.2001, the duty becomes payable only from that date and as such the excess duty collected is refundable. Based on the above judgment of the Hon. High Court the claimant has filed the subject refund claim. Original authority vide an order dated 13.06.2016, sanctioned the refund of Rs. 1,09,11,275/-, however, held that it is hit by unjust enrichment and hence credited the amount to the Consumer Welfare Fund. The ground taken by the original authority was his observation though initially the impugned amount was shown as receivables in the balance sheet, however the same was charged off to profit and loss account as per the advice of their auditor, hence, the incidence of duty has been passed on as since the same was charged to profit and loss account. In appeal, the Commissioner

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(Appeals) vide the impugned order dated 10.01.2017 upheld the view taken by the original authority and also noted that the importer has not provided sufficient documents to discharge the burden of proof of unjust enrichment. The appeal was therefore rejected. Hence, the appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellants, Shri AKS. Moorthy, Vice President of the appellant Company submits that they had cleared the goods from the warehouse on 04.08.2001, and had also effected sale of the goods before they actually paid the differential duty in September, 2001. However, the fact of the same has not been accepted by both the authorities in spite of having submitted a Chartered Accountant's Certificate. Shri AKS. Moorthy however concedes that documents like invoices etc., to support their claim that the incidence of duty has not been passed on, had not been submitted before the original authority. He however contends that these had been produced before the Commissioner (Appeals), the fact of which has been recorded in para-2 of the impugned order. He further submits that in the statement of accounts it was initially shown as receivables and later charged as profit and loss account only on the advice of their auditors since their appeal in the Hon. High Court was pending for a long time. In the circumstances, Shri AKS. Moorhy pleads that the appeal may be allowed.

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3. On the other hand, Ld. AR, Shri K. Veerabhadra Reddy, JC, supports the impugned order and submits that while the Commissioner (Appeals) has only taken note of the arguments of the appellants that the sales have been effected before the payment of differential duty, however, there is no proof adduced by the appellants which has been disclosed in the order. He also submits that the very fact of the appellants having treated the impugned amount as charged to the profit and loss account will indicate that the incidence of duty has been passed on.

4. Heard both sides and have gone through the facts.

5. What is not in dispute is the eligibility of the refund claim. Both the lower authorities agree that the refund claim is sanctionable. However, they hold that the claim did not pass the test of unjust enrichment and accordingly, it requires credited to the Consumer Welfare Fund. One of the grounds for this stand is that the importer had not provided sufficient documents with regard to unjust enrichment. In fact, the original authority in his order, while sanctioning the amount ordering its credit to Consumer Welfare Fund, and rejecting the claim of the appellant for payment of interest and additional interest, has however ordered that the appellant shall submit the original documents pertaining to the subject refund claim as and when traced. Be it as it may be, that the appellant contends that they have produced all the invoices concerning sale of goods warehoused

and then cleared to prove that they have not passed on the incidence of duty. All that is then required to be seen whether the impugned warehoused goods after their clearance have been sold by appellant well before the payment of differential duty of customs and/or whether the burden of differential duty has been passed on in any of the invoices. The representative for the appellants is vociferous in his contention that they have paid the differential duty only after sale of all the goods was completed. However, on their own admission, all these documents have not been produced before the sanctioning authority. Accordingly, we are of the considered opinion that the appellants should be given another opportunity before the original authority to prove their bonafides and to establish that they have indeed completed the sale of goods before they paid up the differential duty to their buyers. Once this aspect is able to be proved, the treatment of the impugned amount in their books of accounts, whether as receivables or charged to profit and loss account will not be of much consequence. This refund claim has been arising out of a dispute in the year 2001. The appellant has even approached to the Hon'ble High Court and only on the orders of the High Court they preferred the refund claim. More than 16 years have passed in the interregnum. In the circumstances, it would be appropriate that the denovo proceedings would be completed without undue delay, in any case, within three months of the date of the receipt of this order. Needless to say, in such denovo proceedings, the appellants shall be permitted to produce additional evidence if any, so desired. All issues are left open including the claim of interest on the refund amount.

6. Appeal allowed by way of remand.

(Order dictated and pronounced in the open Court)

(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)	(SULEKHA BEEVI C.S.) MEMBER (JUDICIAL)

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