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

E/106/2011

(Arising out of Order-in-Original No. 1/2009 dated 02.01.2009 passed by the Commissioner of Central Excise, Commissionerate –II, Chennai).

M/s. Britannia Industries Ltd. Appellant

Vs.

CCE, Chennai-II Respondent

Appearance

Shri Manoj Kumar, 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. 41592 **/2017**

After hearing both sides, I find that the appellant is engaged in the manufacture of biscuits falling under the erstwhile Tariff Item No. 1C of Central Excise Act. They were using tin containers for packing of the goods. As per the appellant, the cost of the tin containers was required to be excluded from the assessable value of the biscuits for payment of duty. Accordingly, they filed ten refund claims for the period 18.12.1980 to28.02.1983 for claiming refund of excise duty of Rs. 25,89,000.82 paid on the value of tin metal containers, which according to them were durable and returnable.

2. The Assistant Collector, while examining the refund claims found that some of the tin containers sent to the dealers were not returned whereas, the tin containers sent to the dealers in local area were returned. Accordingly, he passed Order-on-Original dated 06.05.1986 granting refund of Rs. 1,83,253.56, where the tin containers were actually returned to the assessee and rejected the balance of refund claim amounting to Rs. 24,05,747.26, wherever the tin containers were not returned by the buyers.

3. The said order of the Assistant Collector was appealed against by the appellant before the Commissioner (Appeals), who vide his order dated 31.03.1987 held that when there is no dispute about the returnability condition, such abatement has to be allowed and directed the Assistant Commissioner to grant refund, if otherwise admissible. Thereafter, the appellant again filed refund application, in terms of the said order of the Commissioner (Appeals). The said application was filed on 15.07.87 for an amount of Rs. 24,15,040.60 on the ground that their claim was disallowed by the Assistant Commissioner on 06.05.1986 and on appeal they are again stands succeeded, with directions to grant refund. It is seen that aggrieved by the order of the Commissioner

(Appeals), vide which he had allowed the assessee's appeal, laying down that the value of tin containers is not required to be added in the assessable value of the biscuits, Revenue filed an appeal before the Tribunal, which was dismissed by the CESTAT vide its Order No. 154/1990A dated 20.02.1990. The said dismissal was on technical ground that there was no specific authorization by the Collector for filing an appeal, which was a statutory requirement under Section 35 (B) 2 of the Central Excise and Salt Act, 1944. Subsequently, a miscellaneous application was filed to recall the said order which was again dismissed by the Tribunal. Thereafter, the Revenue filed an appeal before the Hon'ble Supreme Court which was again dismissed.

4. As a result of all the above developments the appellants became entitled to the refund of the duty paid by them on the value of tin containers. As the refund was not being granted they addressed a letter dated 29.09.2008 requesting the Department to sanction the refund claims. As a result, the appellant was directed to furnish the related documents showing payment of duty on the tin containers. Subsequently, another SCN dated 12.11.2008 was issued to the appellant calling for vital documents so as to process their refund claim and to satisfy the eligibility and admissibility of the same. The SCN observed that in as much as the Tribunal has dismissed the appeal on the technical ground of the appeal having been filed without any specific authorization from the competent authority, it could not be concluded that reopening of the issue on

valuation of goods in question should amount to contempt of any Court of law.

5. In response to the above notice, the appellant furnished three TR-6 challans dated 30.12.86, 06.03.87 and 26.03.87 in support of their refund claim. As per the Revenue, the said TR-6 challans cannot be considered to be duty paying documents for the period in question and could not be attributed to the duty paid on the value of tin metal containers. Accordingly, the Dy. Commissioner vide his impugned order rejected the refund claim dated 15.07.87 in terms of Section 11 B of the Central Excise Act.

6. Aggrieved with the said order of the Dy. Commissioner, the appellant filed an appeal before the Commissioner (Appeals) who rejected the same on the ground that the appellant has not been able to specify their refund claim based upon the documentary evidence. However, in respect of the provisions of Section 11 B, which were amended subsequently, as regards the unjust enrichment he held in favour of the assessee. Hence, the present appeal.

7. After hearing both sides and after going through the impugned order and the entire development in the case, I find that the sole question required to be decided is as to whether the appellant's refund claims which were the subject matter of the first round of litigation right upto the Hon'ble Supreme Court are required to be sanctioned or the lower authorities were right in rejecting the same on the ground of non-submission of documents.

It is not disputed that the said refund claims were part of the first adjudication order by the original authority, which travelled right upto the Supreme Court. The Revenue's stand is that the earlier order of the Tribunal, which also stands confirmed by the Hon'ble Supreme Court had dismissed the Revenue's appeal on the technical issue and not on merits and as such reopening of the case cannot be called to be contempt of Court. The subject matter of the earlier appeal was also the same very refund claims and as such whether the appeal filed by the Revenue before the Tribunal stands rejected on technical ground or on merits is irrelevant in as much as by rejection of the Revenue's appeal, the order of the Commissioner (Appeals) has attained finality. The entire case of the Revenue was on inclusion or exclusion of the cost of the tin metal containers which attained finality with the passing of the order by the first appellate authority ie., Commissioner (Appeals). Revenue, while passing the original order never doubted the fact of payment of duty by the assessee. In fact, a part of the refund was sanctioned after observing that the tin containers stand returned to the assessee. It is only the balance amount which was rejected on the ground that as the tin containers were not actually returned, they cannot be considered for abatement. This fact by itself leads to the inevitable conclusion that the duty was prepaid by the appellant on the value of the tin containers. The appellant having succeeded right upto the Supreme Court, a subsequent issuance of SCN, for the second time, in respect of the same refund claims cannot be appreciated. The adjudication cannot be done in piece meal and the appellant having succeeded in the first round of litigation, the Department cannot raise, subsequently, another objection for rejection of the refund claims. The appellants have rightly contended that in such cases the principles of *res judicata* will apply.

8. For the reasons recorded as above, I set aside the impugned order and allow the appeal with consequential relief to the appellants. Needless to say that the said order would be implemented by Revenue as early as possible in as much as the matter is quite old.

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

9/8/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal
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