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

C/40165/2017

[Arising out of Order-in-Appeal C.Cus II No.923/2016, dated 17.10.2016 passed by the Commissioner of Customs (Appeals-II), Chennai]

COMMISSIONER OF CUSTOMS, CHENNAI-IV APPELLANT

Versus

M/s. ADYAR GATE HOTEL RESPONDENT

Appearance:

For the Appellant Shri K. Veerabhadra Reddy, JC(AR)
For the Respondent Shri Hari Radhakrishnan, Adv.

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **04-07-2017**

FINAL ORDER NO. 41126/2017

Per Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal.

2. I have heard Shri K. Veerabhadra Reddy, JC(AR) appearing for the Revenue and Shri Hari Radhakrishnan, Advocate appearing for the respondent.

3. As per facts on record, the respondent imported "light and light fittings" on 25.05.1999 under Export Promotion Capital Goods (EPCG) Scheme under the claim of benefit of Notification No.28/97-Cus., dated 01.04.1997. The said claim of the appellant was not accepted by the Revenue and the goods were cleared on payment of import duty to the tune of Rs.9,07,778/-.

4. Subsequently on adjudication, the said claim was denied and the matter was taken up in appeal before the higher appellate forum. After two rounds of litigation, the dispute was finally resolved by the Tribunal vide its Final Order No.41482/2015, dated 28.10.2015 in favour of the respondent laying down that they are entitled to concessional rate of duty under EPCG Scheme.

5. As a consequence, the appellants filed a refund claim on 16.12.2015, claiming the refund of duty of Rs.7,62,841/-, initially deposited by them. It is seen that the Assistant Commissioner sanctioned only an amount of Rs.1,31,761/- and ordered the same to be deposited in the "Consumer Welfare Fund" on the ground that the assessee has not been able to establish that the duty so paid was not passed on by them to the ultimate consumer and as such, the refund claim would be hit by unjust enrichment.

6. On appeal against the said order, Commissioner (Appeals) allowed the appeal by observing as under:-

> "In the instant case, the appellant submitted the Chartered Accountant's certificate before the LAA, in which the Chartered Accountant, after verification of the books of accounts of the appellant, has certified that the excess duty of Rs.7,62,841/- paid, was not passed on to any customer/recipient of services or any other person. At the time for personal hearing, the appellant furnished a further certificate from the Chartered Accountant in which it is clearly mentioned that an amount of Rs.7,62,841/- due as refunds, has been shown as receivables/recoverable in the books of accounts of the appellant and this amount has not been taken into account while arriving at the cost of services provides to the customers. Along with this certificate, an extract of the general ledger, having an entry by JV dated 30.11.2015 is also enclosed. As per this JV, excess depreciation on Recessed Light Fittings was reversed and put in Customs duty recoverables. The appellant at the time of personal hearing explained that after the CESTAT decided the case in their favour in October, 2015, vide final order dated 28.10.2015, this entry was passed on in their books of accounts and the Customs duty became receivable/recoverable in their books of accounts before filing the refund claim on 16.12.2015. I see merit in the plea of the appellant and taking into consideration the entries made in the books of accounts and the Chartered Accountant's certificate, since the amount of Rs.7,62,841/- claimed as refund is shown

> as receivables/recoverable in the books of accounts of the appellant, the bar of unjust enrichment is crossed and the appellant becomes entitled for the refund. On the issue if incidence of duty is initially passed on to customers due to dispute but subsequently reversed by credit notes and returned to buyers of goods and shown in the balance sheet of the claimant as receivables, CESTAT and Courts in a number of cases have held that accounting of such amount as receivables in the balance sheet is sufficient evidence to hold that incidence of duty has not been passed on to the customers."

7. For holding as above, he relied upon various decisions of the Tribunal as also Karnataka High Court and Punjab & Haryana High Court judgments. Specific reference was made to the Tribunal's decision in the case of *Shree Krishna Nylon Pvt. Ltd. Vs Commissioner of Central Excise, Mumbai-III* reported in *2015 (327) E.L.T.626 (Tri.-Mumbai)*. Accordingly, he directed the lower authority to sanction the refund of Rs.7,62,841/- [Rupees Seven Lakh Sixty Two Thousand Eight Hundred and Forty One only]. Being aggrieved with the said order, Revenue has filed the present appeal.

8. Revenue's contention is that the said refund claim would be hit by unjust enrichment inasmuch as, the appellants have not established beyond doubt that the said duty paid by them was not recovered from their customers. However, I find that the goods imported by the appellant are "light and light fittings" which are used by them in their hotel for enhancing the beauty and decor. The same are neither sold to any other person nor consumed in the manufacture of any other final products which are ultimately sold to their customers. In such a scenario, in my view, the principle of unjust enrichment will not apply. In any case, the appellate authority has gone by the Chartered Accountant's Certificate stating that they have not recovered the said amount from any other person and the same has been shown as "Receivables/Recoverables in their books of

accounts. It is not the Revenue's case that the said Chartered Accountant's Certificate does not reflect the correct position. Neither they have been able to produce any evidence so as to cause doubt on the said certificate or to rebut the same. In this view of the matter, I find no infirmity in the impugned order of Commissioner (Appeals) and no reasons to interfere in the same

Accordingly, Revenue's appeal is rejected.

(Dictated and pronounced in open court)

5/7/17.

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
05-07-2017

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
3/7/17
सहायक पंजीकार/Asst. Registrar
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अपील अधिकरण/(CESTAT)
चेन्नै/Chennai