CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – I

EXCISE APPEAL NO. 51227 OF 2017

[Arising out of Order-in-Appeal No. 39(AK)CE/JPR/2017 dated 21.03.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur]

Birla Corporation Ltd. **...Appellant**
Unit: Birla Cement Works &
Chanderia Cement Works,
Madhav Nagar, Sector-III
P.O. Cement Factory,
Chittorgarh – 312021 (Raj.)

VERSUS

Commissioner of Central Excise
& CGST - Udaipur **...Respondent**
142-B, Sector-11, Hiran Magri,
Udaipur, Rajasthan - 313002

APPEARANCE:
Shri Vivek Sharma and Ms. Saumya Mehrotra, Advocates for the Appellant
Shri Rakesh Agarwal and Shri S.K. Ray, Authorized Representatives for the Respondent

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 19.11.2025
DATE OF DECISION: 19.11.2025

FINAL ORDER NO. 51814/2025

JUSTICE DILIP GUPTA

M/s. Birla Corporation Ltd.[1] has filed this appeal to assail the order dated 21.03.2017 passed by the Commissioner (Appeals) that upholds the order dated 17.06.2003 passed by the Assistant Commissioner to the extent that it has denied interest accruing on the amount of refund sanctioned that was deposited in the bank.

2. It transpires from the records that the claim of the appellant for payment of reduced duty in terms of the Notification dated

1. **the appellant**

01.03.1987 was denied by the department as a result of which the appellant paid the duty under protest. This issue was ultimately decided in favour of the appellant and it was held that the appellant would be entitled to claim benefit of this Notification.

3. Consequently, the appellant filed a claim for refund of the duty that had been deposited under protest. The Assistant Commissioner, by order dated 20.12.1994, sanctioned the refund claim of Rs.9,70,25,847/- but directed only an amount of Rs.1,13,048/- should be paid to the appellant and the remaining amount of Rs.9,69,12,799/- should be deposited in the Consumer Welfare Fund because of unjust enrichment. This order was assailed by the appellant before the Tribunal in an Excise Appeal, which was decided by the Tribunal by order dated 05.12.2002. The Tribunal directed that since the duty was deposited under protest, the theory of unjust enrichment will not apply and, therefore, directed that the Assistant Commissioner shall make payment of the refund amount with utmost expedition.

4. It transpires that pursuant to directions issued by the Rajasthan High Court, the amount of Rs.9,69,12,799/- was deposited in a Nationalized Bank so that interest would accrue.

5. The order of the Tribunal dated 05.12.2002 was assailed by the department before the Supreme Court and the Supreme Court by judgment dated 25.01.2007 **(Commissioner of Central Excise**

Jaipur Vs. Birla Corporation Ltd.)[2] set aside the order of the Tribunal. The Supreme Court noticed that that the crucial question was whether duty element had been passed on to the customer and for ascertaining this fact remitted the matter to the Commissioner.

6. The Commissioner, by order dated 30.04.2013, sanctioned the amount of Rs.1,13,048/- to the appellant and also noted that this amount had been paid to the appellant by refund order dated 20.12.1994. In respect of amount of Rs.9,69,12,799/-, the Commissioner held that it cannot be sanctioned in favour of the appellant since it was hit by unjust enrichment and, accordingly, ordered that it shall be credited to the Consumer Welfare Fund.

7. This order of the Commissioner was challenged by the appellant before the Tribunal by filing Excise Appeal No. 58922 of 2013. Before the Tribunal, learned counsel for the appellant pointed out that the earlier order dated 20.12.1994 passed by the Assistant Commissioner sanctioning refund was reviewed by the Committee of Commissioners for filing an appeal before the Tribunal and against the said review order, the appellant had filed Civil Miscellaneous Writ Petition No. 5357 of 2004 before the Rajasthan High Court in which a stay was granted on 08.12.2004. In view of the aforesaid submission made by learned counsel for the appellant, the Tribunal disposed of the appeal in the following terms:

> "4. In view of above, we are of the view that nothing can be done in the matter as the matter is pending before the Hon'ble High Court of Rajasthan. Hence, liberty is granted to the

2. 2007 (2008) ELT 481 (SC)

> appellant to come again after having the final verdict from the Hon'ble High Court of Rajasthan within the prescribed time, if advise so. With the aforesaid decision the appeal is disposed of."

8. The position, therefore, that emerges is that the issue as to whether the amount of Rs.9,69,12,799/- which had been sanctioned has to be paid to the appellant or deposited in the Consumer Welfare Fund has not attained finality because the appeal that was filed by the appellant to assail the order passed by the Commissioner (Appeals) was disposed with liberty to the appellant to come again after having the final verdict of the Rajasthan High Court. It is pointed out by the learned counsel for the appellant that the said writ petition of the year 2004 is still pending before the Rajasthan High Court.

9. Learned Authorized Representative appearing for the department has pointed that the said writ petition filed by the appellant has been rendered infructuous because it was directed against the review order of the Committee of Commissioners for filing an appeal before the Tribunal against the order of the Assistant Commissioner dated 20.12.1994 that sanctioned the refund amount but directed it to be deposited in the Consumer Welfare Fund but the appeal filed by the appellant before the Tribunal was decided on 05.12.2002 against which the department had filed an appeal before the Supreme Court which had directed the matter to be considered afresh by the Commissioner for examining whether the doctrine of unjust enrichment would apply. Learned Authorized Representative also pointed out that pursuant to the directions of the Supreme Court, the Commissioner decided

the issue on 30.04.2013, against which the appellant had filed Excise Appeal No. 58922 of 2013 which was disposed on 26.10.2016 granting liberty to the appellant to come again after the matter was decided by the High Court.

10. The issue as to whether the amount of refund that was sanctioned has to be paid to the appellant or deposited in the Consumer Welfare Fund had earlier been decided by the Commissioner in the order dated 30.04.2013 holding that it would have to be deposited in the Consumer Welfare Fund.

11. This issue would now have to be decided in terms of the decision of the Tribunal rendered on 26.10.2016 in the appeal that was filed by the appellant to assail the order dated 30.04.2013 passed by the Commissioner.

12. The present appeal has been filed against that part of the order passed by the Commissioner (Appeals) refusing to grant interest to the appellant on the amount of Rs.9,69,12,799/- deposited in the bank pursuant to the order by the Rajasthan High Court. Grant of interest to the appellant would depend on whether it is the appellant which has to receive the refund amount or the amount has to be deposited in the Consumer Welfare Fund. At the moment there is an order of the Commissioner against the appellant and unless that order is set aside and an order is passed that the amount has to be paid to the appellant, interest cannot be paid to the appellant.

13. It is therefore not necessary to keep this appeal pending any longer. It is for the appellant to take appropriate steps for getting a decision on the issue as to whether the principle amount of Rs.9,69,12,799/- has to be refunded to the appellant or it has to be deposited in the Consumer Welfare Fund. The appellant can get interest only if it is held that the refund amount has to be paid to the appellant.

14. The appeal is, accordingly, disposed of with the aforesaid observations.

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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