IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Excise Appeal No.E/179/2008 [SM]

[Arising out of Order-in-Appeal No.554 (RKS) CE/JPR-II dated 24.10.2007 passed by the Commissioner (Appeals-II), Central Excise, Jaipur-II]

M/s.Swastika Suitings Ltd. ...Appellant

Vs.

C.C.E. Jaipur-II ... Respondent

Present for the Appellant : Ms.Rinki Arora, Advocate
Present for the Respondent: Mr.U.Sengraj D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 12/09/2017

FINAL ORDER NO. 57088/2017

PER: S.K. MOHANTY

Rejection of refund claim on the ground of unjust enrichment, is the subject matter of present dispute.

2. Brief facts of the case are that the appellant is a process house, engaged in the work of processing of man-made fabrics. During the period 16.12.1998 to 29.02.2000, the value of galleries was included in the length of the chambers of the stenter machine, and accordingly, the appellant had paid the duty on such value. However, this Tribunal vide order dated 09.03.2001 had remanded the matter for re-determination of the annual capacity production (ACP) in the

light of decision of Larger Bench of this Tribunal, in the case of Sangam Processors, holding that galleries were not to be included in the computation of length of chambers. As per said decision of the Tribunal, lesser amount of duty was required to be paid in respect of the galleries. Since the appellant had paid higher duty during the disputed period, claimed such duty as refund before the Jurisdictional Central Excise Authorities. The ld. Dy. Commissioner of Central Excise vide order dated 31.03.2013 has rejected the refund claim of Rs.33,67,824/- as time bar. On appeal, the ld. Commissioner (Appeals) of Central Excise vide order dated 22.11.2004 has allowed the appeal of the appellant with consequential benefit. In view of the favourable order by the Commissioner (Appeals), the appellant vide its letter dated 30.11.2004 made the request for grant of refund before the authorities. Thereafter, the Department issued the show cause notice dated 15.12.2004, seeking rejection of refund application, on the ground of unjust enrichment. The show cause notice was adjudicated vide order dated 11.05.2007, wherein part of the refund claim was allowed and part of claim was rejected on the ground of unjust enrichment. On appeal, the ld. Commissioner (Appeals) has upheld the adjudication order. Hence, the appellant has filed the present appeal before the Tribunal.

3. The ld. Advocate appearing for the appellant submits that the incidence of excess paid duty has been borne by the appellant and the same has not been passed on to any other person. Thus, she submits that the doctrine of unjust

enrichment is not applicable in this case and the appellant is entitled for refund of the excess duty paid by it. To support such stand, the ld. Advocate has produced the balance sheet for the relevant period and also a certificate issued by the Chartered Accountant of the appellant Company. She also produced the affidavit executed by the buyers of the goods to show that the excess claimed duty by the appellant had not been paid by them.

4. On the other hand, the ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. I find that the subject refund claimed amount had been reflected as "advance excise duty deposit" under the column 'loans and advances' in the Balance Sheet for the relevant period. Further, on the basis of the records maintained by the appellant, the Chartered Accountant has also issued the Certificate, certifying that the incidence of duty has not been passed on by the appellant to any other person and the incidence of such amount has been borne by it. Further, affidavit issued by the buyer of the goods indicates that they have not paid the excess duty claimed by the appellant in its invoice. Thus, the above documents prove beyond any shadow of doubt that the incidence of duty in this case has not been passed on by the appellant and the same has been borne by it. Thus, under the facts and circumstances of the case, the

doctrine of unjust enrichment is not applicable. Accordingly, the appellant will be entitled for the refund amount credited to the Consumer Welfare Fund.

7. Therefore, after setting aside the impugned order, I allow the appeal in favour of the appellant with consequential benefit of refund.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita