**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. I**

Excise Appeal No. 52164 of 2014

[ Arising out of order-in- Appeal No. 214 (OPD) CE/JPR-II/2013 dated 31.12.2013 passed by Commissioner (Appeals), Customs and Central Excise, Jaipur II.]

**Bsl Ltd.** **Appellant**

**Vs.**

**Commissioner of Central Excise & ST, Jaipur II** **Respondent,**

**Appearance:**
**Shri Amit Jain, Advocate for the Appellants assessee**
**Shri R K Mishra, AR for the Respondent Revenue**

**CORAM:**
**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
**Hon'ble Mr. V. Padmanabhan, Member (Technical)**

Date of Hearing : 06.10.2017
Date of Decision : 06.11.2017

**FINAL ORDER NO. 57653 /2017**

**Per: V. Padmanabhan:**

This appeal is filed against the Order-in Appeal No. 214 (OPD) CE/JPR-II/2013 dated 31.12.2013 passed by Commissioner (Appeals), Customs and Central Excise, Jaipur II.

2. This is the third round of litigation before this Tribunal. The present proceedings emanate from the remand instructions passed in Final Order No. 56/2009-Ex dated 16.1.2009 whereby the Hon'ble Tribunal had remanded the matter back to the Adjudicating Authority to consider the issue afresh in light of decision of Rajasthan High Court in UOI vs. AK Spintex Ltd. [2009 (234) ELT 41 (Raj) on the issue of unjust enrichment.

3. The appellant was a job worker, clearing fabrics received from the supplier after processing it. The appellant discharged appropriate duty on processed fabrics, i.e., duty paid on value of raw material plus processing charges. Dispute arose between 1984 to 1990 between the Appellant and the Department regarding the value to be adopted by Appellant for duty payment. To comply, the Appellant paid duty under protest on higher value as demanded by the Department.

The issue was settled by Hon'ble Supreme Court in ***Ujagar Prints [1989 (39) ELT 493(SC)*** ] in favour of the Appellant after which the Appellant filed the 20 refund claims of the amount in question that had been paid in excess under protest.

4. The refund claims were denied on multiple grounds whereby the issue went upto the level of Hon'ble Tribunal Twice, and was remanded back. Thus, vide Final Order no. 56/2009-EX dated

16.01.2009, the matter was remanded back to the adjudicating authority for the second time, to assess the admissibility of refund claims on ground of unjust enrichment.

5. In the remand proceedings, both the authorities held that the refund claimed filed by the appellant, are admissible on merit in the light of the Apex Court's decision in the ***Ujagar Print's*** case. But the claims were not paid to the appellant on the ground that they have failed to establish that the incidence of tax has not been passed on to the buyers. Aggrieved by the impugned order, the present appeal has been filed.

6. With the above background, we heard Shri Amit Jain, learned Advocate on behalf of the appellant and Shri R K Mishra, learned DR for the Revenue.

7. The Ld. Advocate, after taking us through the history of the case submitted that the refund claims under Section 11B of the Excise Act are not hit by unjust enrichment as the amounts were deposited under protest.

Though the duty payment at higher rate had been made by the Notice under protest and such differential duty had been recovered by the Appellant from the buyers. However, vide respective agreement with the buyers, it had been agreed that the Appellant shall continue to contest the issue with the Department, and in case the issue is decided in favour of the Appellant, and such excess duty paid is refunded, the said amount shall be paid back to the respective buyers after reducing the legal expenses incurred.

Thus, even if such amounts had been recovered from the buyers this fact will not automatically lead to the conclusion that there was unjust enrichment, since such buyers were legally entitled to the refund claim of excess duty paid by the Appellant, in light of Appellant's agreements with them. Thus, sanctioning of the present refund claim would not lead to any unjust enrichment of the Appellant as the same would then be passed on to the buyers as well.

8. The learned DR justified the impugned order. He referred to para 9 of the impugned order wherein the lower Appellate Authority has given a clear finding that the case law of ***A.K. Spintex*** is distinguishable in the facts of the present case. He also submitted that the appellant has charged full duty from the buyers and the payment there of has also been received. He also relied on the Decision of the Hon'ble Madras High Court in the case of ***Fenner India Ltd. reported as [2014(305) ELT. 524 (Mad.)]*** He argued that the appellant has not produced anything on record to show that they have suffered the incidence of tax and as has been held by the Hon'ble Madras High Court, the refund is liable to be rejected.

9. We heard both sides and perused the record. Any claim filed for refund of Central Excise duty is to be processed and dealt with only in terms of Section 11B of the Central Excise Act 1944. This section presumes that the incidence of any duty for which refund has been claimed has been passed to by the manufacturer who has paid such duty. Only if it is established that the incidence of such duty has not been passed on, can the refund be paid in cash to the claimant. In the instant case there is no dispute that the duty has been paid in excess and that the refund is admissible on merit. However, on the question of unjust enrichment, there is dispute. It is on record that duty payment at higher rate had been made by the appellant under protest and such differential duty had also been recovered from their buyers. But the submission of the appellant is that they have entered into agreements with the buyers to the effect that they will continue to contest the issue with the department and in case the issue is settled in favour of the appellant, and such excess duty paid is refunded, the said amount will be paid back to the respective buyers.

10. We have considered the contractual terms as above. But we areafraid such contracts will not satisfy the requirements of the stipulations in Section 11B. The basic question to be considered is whether the appellant has passed on the incidence of the differential

duty to their buyer. The answer is a clear affirmative. Consequently in terms of the clear provisions of Section 11B, the refund cannot be paid to the appellant. An agreement to pass on the duty if refunded, cannot come to the aid to of the appellant.

11. In view of the above discussions, we find no reason to interfere with the impugned order which is sustained for the reasons mentioned therein.

12. In the result, the appeal is rejected.

[Order Pronounced in the open court on 06.11.2017 ]

**(Justice Dr. Satish Chandra)**
**President**

**(V. Padmanabhan)**
**Member (Technical)**

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