IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 4.1.2018

Appeal No. C/53660/2014-SM

(Arising out of Order-in-Appeal No. 24(VC)/CUS/JPR-I/2013 dated 7.11.2013 passed by the Commissioner of Central Excise (Appeals), Jaipur-I)

M/s Saraf Fab Trade Pvt. Ltd. Appellant

Vs.

CC, Jaipur-I Respondent

Appearance

Shri Jatin Mahajan, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 50373/2018

Per S.K. Mohanty :

Crediting of the refund amount to the Consumer Welfare Fund under Section 27(2) of the Customs Act, 1962 is the subject matter of present dispute.

2. The brief facts of the case are that the appellant had imported a quantity of 108.50 MTs of PVC floor sweep and filed the Bill of Entry dated 31.7.2010, by declaring the value of the same as Rs. 22,69,275/-. The department had resorted to the provisional assessment and the value of the imported goods was provisionally assessed at Rs. 51,48,320/-. Upon assessment of the Bill of Entry, the appellant had paid the duty amounting to Rs.13,09,382/-. Upon

receipt of certificate regarding the quality of the imported goods from CIPT, the department had finalised the Bill of Entry on the assessable value of Rs. 34,01,480/- and assessed the duty liability at Rs. 9,47,750/-. Since, the appellant had paid excess duty at the time of provisional assessment, filed the refund application before the Customs authorities, claiming refund of excess duty of Rs. 3,61,618/- paid by it. The refund application was adjudicated vide order dated 25.10.2011, wherein the refund amount was sanctioned, but was credited to the Consumer Welfare Fund. The grievance of the appellant is that, since the appellant had borne the incidence of excess paid duty by itself and had not passed on the same to the buyer or any other person, instead of crediting the refund amount to the Consumer Welfare Fund, the same should be refunded to the appellant.

3. The ld. Advocate appearing for the appellant submits that upon verification of the books of account maintained by the appellant, the auditor of the company had certified that the incidence of duty has been borne by the appellant. Thus, he submits that the refund benefit should be available to the appellant alone. He further submits that the provisionally assessed value of the unit price of the subject goods is higher than the goods sold in the domestic market. Thus, he submits that since the appellant had sold the goods at a lesser price, there is no scope of passing on the duty burden to the buyer of the goods and accordingly, the doctrine of

unjust enrichment is not applicable for crediting the refund amount to the Consumer Welfare Fund.

4. On the other hand, the ld. DR appearing for the Revenue submits that as per the mandates of the Customs statute, the refund sanctioning authority should credit the refund amount to the Consumer Welfare Fund and the same should be refunded to the claimant only, when adequate documentary evidences were produced showing that the incidence has been borne by him and not been passed on to any other person. Thus, he submits that the onus entirely lies with the appellant to prove that the incidence of duty liability has not been passed on, which has not been satisfactorily discharged by the appellant, crediting of the refund amount to the Consumer Welfare Fund by the authorities below is in conformity with the statutory provisions.

5. Heard both sides and perused the records.

6. On perusal of the certificate of Chartered Accountant available in the case file, I find that the said certificate has not been specified with the date when it was prepared and also there is no reference to the particular Bill of Entry in question, against which the goods were imported by the appellant. Further, such certificate was issued in reference to the Notification No. 102/2007 dated 14.9.2007, which deals with refund of special additional duty. In the present case,

since the refund claim does not pertain to only the said amount and also relates to the customs duty and the CVD component, such certificate cannot be considered for deciding the issue regarding applicability of the doctrine of unjust enrichment. Further, I find that the appellant has not produced any other evidence to show that it had not passed on the duty incidence to any other person. The submissions of the ld. Advocate that the goods were sold at a lesser price than the price at which the Bill of Entry was provisionally assessed, will not hold good inasmuch as selling price will not determine the question of passing on the incidence of duty burden to the buyer or any other person. Since, the customs statute clearly mandates that the claimant of refund should show adequate documentary evidences that the incidence of duty has not been passed on, which admittedly has not been satisfied by the appellant, I am of the view that transferring the refund amount by the authorities below to the Consumer Welfare fund cannot be interfered at this juncture.

7. Therefore, I do not find any infirmity in the impugned order. Accordingly, the appeal filed by the appellant is dismissed.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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