CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – SMB
Court – I

Appeal No. E/30052/2018

(Arising out of Order-in-Appeal No. HYD-EXCUS-MD-AP2-0048-17-18 dated 11.09.2017 passed by Commissioner (Appeals-II), GST & Central Excise, Hyderabad)

Commissioner of Central Tax,
Medchal - GST **…..Appellant(s)**

Vs.

M/s Saraca Laboratories Ltd., **…..Respondent(s)**

Appearance
Shri Arun Kumar, Deputy Commissioner (AR) for the Appellant.
Shri M. Rajendran, Advocate for the Respondent.

Coram:
Hon'ble Mr. M. V. Ravindran., Member (Judicial)

Date of hearing: 15/02/2018
Date of decision: 15/02/2018

FINAL ORDER No. ____________________

[Order per: M. V. Ravindran.]

This appeal is filed by Revenue directed against Order-in-Appeal No. No. HYD-EXCUS-MD-AP2-0048-17-18 dated 11.09.2017.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding refund of an amount of Rs. 6,80,974/-. The Adjudicating Authority has rejected the refund claim and the First Appellate Authority has allowed the same.

4. Facts of the case, in brief, are that the appellants are holders of CE Registration No. AACCS8240HXM001 for the manufacture of Bulk Drugs i.e., 'Ranitidine HCL' and Ranitidine Base' falling chapter 29 of the CETA, 1985. The appellants filed a refund claim on 24.10.2016 seeking of refund of Rs. 6,80,974/- consequent to the decision of the Hon'ble Commissioner (Appeals) in OIA No. HYD-CE-001-APP-047-15-16 CE dated 27.01.2016 delivered in their favour. The appellants filed the refund claim on the ground that they paid the duty equivalent to the CENVAT credit availed on the goods cleared on payment of duty on being pointed out by the departmental audit informing that re-packing of the damaged goods does not amount to manufacture and as such the credit availed in respect of such goods was irregular; apart from the payment made by the appellants during audit intervention, a show cause notice was issued proposing duty demand of Rs. 29,20,709/-; the notice was adjudicated by confirming the duty demand proposed in the notice by the Joint Commissioner Customs, Central Excise and Service Tax, Hyderabad-I Commissionerate in OIO No. 21/2014 CE dated

13.10.2014; on an appeal filed by the appellants to this forum, my Learned Predecessor allowed the appeal in OIA No. HYD-EXCUS-MD-AP2-0048-17-18-CE dated 11.09.2017, OIA No. HYD-CE-001-APP-047-15-16 CE dated 27.01.2016 while setting aside the order impugned therein. Consequently, the appellants filed the refund claim with the lower authority claiming the deposit made by them at the time of departmental intervention. A show cause notice dated 02.11.2016 was issued to the appellants proposing to reject the subject refund claim on the grounds of limitation and unjust enrichment in terms of Sec. 11B(2) of the CE Act, 1944. After due process of law, the notice was adjudicated in the impugned order wherein the refund claim was rejected on the grounds that the appellants failed to prove the bar of unjust enrichment with relevant documentary evidences and that the claim was hit by bar of limitation as the claim of 'under protest' was not recorded with the department at any point of time. The rejection of the refund claim in the impugned order culminated in the instant appeal in A. No. 25/2017.

5. Aggrieved by the order of the Adjudicating Authority, an appeal was preferred before the First Appellate Authority, who by the impugned order allowed the appeal and directed the lower authorities to refund amount to the appellant.

6. Learned Departmental Representative reiterates the grounds of appeal. It is his submission that the First Appellate

Authority is in error in holding that provisions of Section 11B (2) of the Central Excise Act will not applicable in this case as the refund can be sanctioned in respect of duty and credit paid on input services. It is his submission that the said provision would apply, in the case in hand. It is his further submission the respondent in this case has not passed the hurdle of unjust enrichment even going by Chartered Accountant Certificate, which was produced as it did not indicate period for which the amount has been shown as receivable. It is his further submission the judgment of the Hon'ble High Court of Gujarat in the case of *Ruchi Soya Industries Ltd.,* [2016 (336) ELT 423] which states that principles of unjust enrichment are applicable to every case of refund irrespective of reasons for claiming refund, will cover the issue in favour of Revenue.

7. On careful consideration of submissions made by both sides, I find that the Revenue in this case is challenging the Order-in-Appeal only on the ground of unjust enrichment having not been considered by the First Appellate Authority in it is correct prospective, and the First Appellate Authority allowed the appeal only on limitation in favour of the respondent herein. I find that it is not so, in order to appreciate the findings of the First Appellate Authority on the ground of unjust enrichment, I reproduce the relevant portion from paragraph No. 5.2 which reads as under:

> ***5.2*** *The lower authority vide para 7 of the impugned order rejected the Chartered Accountants' Certificate submitted by the appellants on the ground that it did not speak of the period during which the subject amount*

of refund has been shown as receivables and also held that they failed to substantiate their claim with necessary financial statements or documents such as profit and loss account or balance sheets etc., pertaining to the period 2010-11. In this regard I find that the instant appeal pertains to the refund of the credit reversed during 2010 as evidenced by the documents submitted and also the applicable interest paid thereon. The debit entry made in their CENVAT account was not on account of utilization of the said credit for payment of duty but just a reduction in their credit balance made on being pointed out by the department. Such reversal occurred after the clearance of the impugned goods and thus established no linkage with any clearance of goods. This being the case, the debit entry made in the CENVAT Account of the appellants does not represent any duty, the question of passing on of incidence to any other person does not arise at all.

It can be seen from the above reproduced findings, the First Appellate Authority has come to a correct conclusion as to satisfaction of unjust enrichment by the respondent herein. I perused the Chartered Accountant's Certificate and which was produced before the lower authorities, I find that the Chartered Accountant has categorically stated that the respondent (assessee) has been carrying on an amount of Rs. 6,80,974/- in the balance sheet under the "excise duty receivable". I find that the First Appellate Authority was correct in holding that the respondent herein has satisfied the condition of there is no unjust enrichment. Accordingly, I hold that the impugned order is correct and legal and does not suffer from any infirmity. The appeal stands rejected.

(Order dictated and pronounced in open court)

(M. V. RAVINDRAN)
MEMBER(JUDICIAL)

Lakshmi….