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

Appeal No: C/31158/2017
(Arising out of Order in Appeal No. VIZ-CUSTM-OOO-APP-034-17-18, Dated 13.10.2017 passed by Commissioner (Appeals), Visakhapatnam)

Andhra Organics Limited ... Appellant (s)

Vs.

CC&ST, Visakhapatnam ... Respondent(s)

Appearance
Shri M. Rajendran, Advocate for the Appellant.
Shri M. Chandra Bose, Addl. Commissioner/AR for the Respondent.

Coram:

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

Date of Hearing : 07.02.2018
Date of decision: 07.02.2018

FINAL ORDER No. A/30425/2018

[Order per: Mr. M.V. Ravindran]

1. This appeal is directed against Order-in-Appeal No. VIZ-CUSTM-OOO-APP-034-17-18, Dated 13.10.2017.

2. Heard both sides and perused the records.

3. The issue involved in this case is regarding refund claim of excess duty paid by the appellant herein alongwith interest is eligible for refund or otherwise.

4. Appellant is a manufacturer of bulk drugs, imported some raw materials and declared the value. That value was rejected by the assessing officer and the value was re-determined. The enhanced value was challenged by the appellant successfully before the first appellate authority and the transaction value declared was accepted. During the intervening period, appellant discharged customs duty based upon re-determined value but under protest. On successfully challenging the enhancement of the value being wrong, he filed refund claim for such an amount paid in excess. The said refund claim was allowed by the adjudicating authority but credited the same to the Consumer Welfare Fund. Appeal against such an order was also rejected.

5. It is noticed from the impugned order that the first appellate authority is not disputing the fact that appellant is eligible for the refund of the amount of differential duty alongwith interest paid by them. He is not also disputing that the appellant has consumed the imported goods for production of final products but held that appellant might have passed on the amount for which refund is claimed on the price of the final products.

6. Adjudicating authority as well as first appellate authority has also not accepted the contention of the appellant that they are eligible for refund of the interest paid in excess on the ground that interest liability was not refunded by the adjudicating authority.

7. On careful consideration of the submissions made, I find that rejection of refund claim by lower authorities on the ground that the doctrine of unjust enrichment is not satisfied, is an erroneous conclusion arrived at. It is seen that the appellant had produced Chartered Accountant's certificate before the lower authorities and the said Chartered Accountant has categorically stated that the amount of differential customs duty and interest paid thereon is shown as receivable from the Customs department, in the books of accounts and that the said amount has not been passed on to any person or availed as CENVAT credit. On the face of such categorical certificate issued by the Chartered Accountant , I find that the lower authorities have not put forth any evidence to controvert that the Chartered Accountant certificate was incorrect. In the absence of any other contrary evidence to show that the excess amount paid by the appellant is recovered from anyone, I find that the impugned order holding that the doctrine of unjust enrichment has not been satisfied, is incorrect and impugned orders are liable to be set aside and I do so.

8. As regards the amount of refund of interest, I find that both the lower authorities have not considered the issue in its correct perspective, as the amount of interest which has been paid by the appellant is due to faulty assessment of imported goods. In order to mitigate the urgent requirement of production, appellant had

discharged the differential customs duty with interest "under protest" and succeeded in the matter, which held that the transaction value which is declared was the correct value. On the face of records, the interest liability which has been demanded when the consignment was cleared was not due and is not correct.

9. In view of this, I hold that even the interest paid by appellant which has been charged by Revenue, needs to be refunded to appellant.

10. In short, impugned orders are set aside and appeal is allowed holding that appellant has been able to justify that he has not passed on the burden of the amount claimed as refund to any other person.

11. Appeals are allowed with consequential relief.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(M.V. RAVINDRAN)
MEMBER(JUDICIAL)

VRG