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

Appeal Number C/71/2009
(Arising out of Order-in-Appeal No. 30/2008 V CH, dated 20.10.2008 passed by CCCE&ST (Appeals), Visakhapatnam)

J K Paper Limited **…..Appellant(s)**

Vs.

CCE, C&ST, Visakhapatnam **…..Respondent(s)**

Appearance
None for the Appellant.

Shri Ganeshwar, Superintendent /AR for the Respondent.

Coram:

Hon'ble Mr M V RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr C J Mathew, MEMBER(TECHNICAL)

Date of Hearing: 21.02.2018
Date of Decision: 25.04.2018

FINAL ORDER No. A/30489/2018

[**Order per: M V Ravindran, Member (Judicial)]**

1. This appeal is directed against Order-in-Appeal No. 30/2008 V CH, dated 20.10.2008.

2. None appeared on behalf of appellant nor there is any request for adjournment. Since the appeal is of 2009, the same is take up for disposal, even in the absence of any representation.

3. Heard Ld. DR and perused the records. DR reiterates the findings of the lower authorities.

4. On perusal of records, it transpires that the issue is regarding rejection of the refund claims of an amount of Rs.13,98,120/- which is arising due to finalisation of provisional assessments. It is seen from the records that appellant had imported the consignment of Digester House Equipment, screens etc. and filed bill of entry dated 03.12.1996 which was provisionally assessed pending submission of final documents by the appellant. Appellant importer submitted original documents for finalisation of the assessments with the authorities and Dy. Commissioner of Customs adjudicated the matter by Order-in-Original No. 8/2000, dated 07.12.1999 and held against the appellant and enhanced the value of the goods but included cost of insurance etc. Aggrieved by such a decision, an appeal was preferred, the first appellate authority allowed the appeal by Order-in-Appeal dated 31.05.2006 and held that the value of insurance paid and the classification of the goods are to be held under 8439 and not 7326, with consequential relief, remanded the matter back to the adjudicating authority for finalising and for consideration of doctrine of unjust enrichment. The said Order-in-Appeal is accepted and no appeal was preferred, accordingly importer appellant filed application for refund of excess duty paid of an amount of Rs. 13,98,120/- alongwith certificate of Chartered Accountant and other documents. The adjudicating authority sanctioned the refund of

Rs. 13,98,120/- but ordered it to be credited to the Consumer Welfare Fund as hurdle of doctrine of unjust enrichment has not been crossed. On an appeal, the first appellate authority also held so.

5. In the grounds of appeal, appellant submits that the entire refund claim has arisen out of finalisation of provisional assessment which was done so in respect of the goods which were imported in 1996 and prior to amendment of Section 18 that provided clause of unjust enrichment needs to be satisfied, for the refund arising out of finalisation of provisional assessments. They referred to the judgment of Hon'ble High Court of Gujarat in the case of Hindalco Industries [2008(89) RLT 283].

6. On careful consideration of the submissions made by Ld. DR, who reiterated the findings of the first appellate authority and perusal of records, it is undisputed that finalisation of provisional assessment of bills of entry took place prior to 13.07.2006 in the form of Commissioner Appeal holding that goods are classified under 8439.10 as parts of pulp making machinery, due to which the differential duty paid by the appellant needs to be refunded to them. We find merits in the submissions made by the appellant in the appeal Memorandum that the issue is now squarely covered in favour of appellants by the judgment of Hon'ble High Court of Gujarat in the case of Hidalco Industries (supra), wherein the Hon'ble High Court has settled the law that if the provisional assessments ordered before 13.07.2006, question of doctrine unjust enrichment will not arise. I find that Revenue is

contesting the said grounds in the submissions filed by them stating that the judgment of Hon'ble High court of Bombay in the case of Bussa Overseas and Properties Pvt. Ltd. [2003(158) ELT 135 (Bombay), we find that Hon'ble High Court of Gujarat has considered all these judgments and subsequently held in favour of the respondents therein i.e. Hindalco Industries. The same view has also been taken by the Larger Bench of the Tribunal in the case of Hindustan Zinc Limited [2009(235) ELT 629 (Tri.-LB)] and considered all the judgments related to the issue and held that the doctrine of unjust enrichment will not apply to the provisional assessment ordered prior to 13.07.2006 and any refund arising out of such provisional assessment being finalised subsequently, has to be refunded to the importers. Respectfully following the same, we hold that the impugned orders of the lower authorities are unsustainable and liable to be set aside and we do so.

7. Impugned orders are set aside and appeal is allowed with consequential relief.

(Pronounced in open Court on 25.04.2018)

(C J MATHEW)	**(M V RAVINDRAN)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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