CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench - Court – I

CUSTOMS APPEAL No. 30079 of 2019

(Arising out of **Order-in-Appeal** No. VIZ-CUSTM-000-APP-036-18-19 dated 27.09.2018 passed by Commissioner (Appeals), Guntur)

Jindal Stainless Ltd., .. **APPELLANT**
31, Kalinga Nagar Industrial Complex,
Danagadi, Jaipur,
Odisha – 755 026.

VERSUS

Commissioner of Customs & Service Tax Visakhapatnam - Cus .. **RESPONDENT**
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530035.

WITH

CUSTOMS APPEAL No. 30088 of 2019

(Arising out of **Order-in-Appeal** No. VIZ-CUSTM-000-APP-036-18-19 dated 27.09.2018 passed by Commissioner (Appeals), Guntur)

Jindal Stainless Ltd., .. **APPELLANT**
31, Kalinga Nagar Industrial Complex,
Danagadi, Jaipur,
Odisha – 755 026.

VERSUS

Commissioner of Customs & Service Tax Visakhapatnam - Cus .. **RESPONDENT**
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530035.

AND

CUSTOMS APPEAL No. 30279 of 2019

(Arising out of **Order-in-Appeal** No. VIZ-CUSTM-000-APP-036-18-19 dated 27.09.2018 passed by Commissioner (Appeals), Guntur)

Jindal Stainless Ltd., .. **APPELLANT**
31, Kalinga Nagar Industrial Complex,
Danagadi, Jaipur,
Odisha – 755 026.

VERSUS

Commissioner of Customs & Service Tax Visakhapatnam - Cus .. **RESPONDENT**
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530035.

Appearance

Shri N. V. Ramana Rao, Consultant for the appellant.

Shri C. Mallikarjun Reddy, Superintendent for the Respondent.

Coram: Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30990-30992/2019

Date of Hearing: 05.11.2019
Date of Decision: 05.11.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO]

1. All these appeals are against the impugned order no. VIZ-CUSTM-000-APP-036-18-19 dated 27.09.2018.

2. The appellant imported raw material for manufacture of the final product - steel. They could not declare the final prices of the imported goods and hence all bills of entry were assessed provisionally. Thereafter, they submitted the final invoices based on which the bills of entries are finally assessed and the differential duty was ordered to be paid to the appellant by the original authority. Revenue appealed against these orders on the ground that although the appellant is a manufacturer and has captively consumed the imported goods they have not discharged the burden of showing that the "unjust enrichment" does not apply to their case. It was the contention of the Revenue before the First Appellate Authority that the appellant has not proven that they have not indirectly added the excess duty paid to their customers by adding it as the cost of raw materials. Agreeing with the Revenue, the First Appellate Authority, by the impugned order, set aside the orders of the lower authority sanctioning the refund. Learned Counsel for the appellant submits today that they have, accounted the differential of customs duty paid as "receivables" as they were expecting the amount to be received as refund from the department. They have only added the final amount of customs duty assessed to the cost of raw materials and therefore they are entitled for refund of the differential duty and are not hit by the clause of unjust enrichment. In support of this, he filed an affidavit by the Assistant Manager of the company and cost

accountant certificates along with an abstract of the balance sheet. The balance sheet does show as a heading "balance with excise sales tax authorities". The certificate of the cost accountant indicated that the differential custom duty was included in this receivables account. I do not find any evidence to the contrary in the records before me. Evidently, the amount is added in the books of accounts as "amount receivables" and not as "cost of raw materials" and it could not have been passed on indirectly to the customers. In view of the above, I find that the appellant is entitled to refund of the differential duty and their claim is not hit by the clause of unjust enrichment.

3. In view of the above, the appeals are allowed and the impugned order is set aside with consequential relief, if any.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Jaya