

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

**Excise Appeal No. 795 of 2012**(Arising out of **Order-in-Appeal** No.80/2011(H-IV) CE dated 14.12.2011 passed by  
Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

**M/s Shantha Biotechnics Ltd.,** .. **APPELLANT**  
3<sup>rd</sup> & 4<sup>th</sup> Floors, Vasantha Chambers,  
H.No. 5-10-173, Fatech Maidan Road,  
Basheergagh, Hyderabad,  
Telangana – 500 004.

*VERSUS*

**Commissioner of Central Tax** .. **RESPONDENT**  
**Medchal - GST**  
Kendriya Shulk Bhavan,  
L.B. Stadium Road,  
Basheerbagh, Hyderabad,  
Telangana – 500 004.

**AND****Misc Application No. E/MISC/30261/2025  
in****Excise Appeal No. 796 of 2012**(Arising out of **Order-in-Appeal** No.81/2011(H-IV) CE dated 15.12.2011 passed by  
Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

**M/s Shantha Biotechnics Ltd.,** .. **APPELLANT**  
3<sup>rd</sup> & 4<sup>th</sup> Floors, Vasantha Chambers,  
H.No. 5-10-173, Fatech Maidan Road,  
Basheergagh, Hyderabad,  
Telangana – 500 004.

*VERSUS*

**Commissioner of Customs,** .. **RESPONDENT**  
**Central Excise & Service Tax**  
**(Appeal-IV), Hyderabad**  
Kendriya Shulk Bhavan,  
L.B. Stadium Road,  
Basheerbagh, Hyderabad,  
Telangana – 500 004.

**APPEARANCE:**

Shri Mihir Deshmukh, Advocate for the Appellant.

Shri A Rangadham, Authorised Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**  
**HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)****FINAL ORDER No. A/30258-30259/2025**Date of Hearing:15.04.2025  
Date of Decision:08.08.2025

**[ORDER PER: A.K. JYOTISHI]**

In Appeal No. E/796/2012, miscellaneous application has been filed by the appellant for change in the name of Respondent due to re-organisation of Respondent's Commissionerate from earlier Hyderabad Commissionerate to "Commissioner of Central Tax, Medchal - GST". This application is allowed and Registry is directed to make necessary corrections to this effect on the records and appeal paper book.

2. M/s Shanta Biotechnics (hereinafter referred to as appellant) are in appeal against the Order-in-Appeal dated 14.12.2011 & 15.12.2011, whereby Commissioner (Appeals) has modified the order of the Original Refund Sanctioning Authority (impugned order).

3. The issue, in brief, common to both the appeals is that the appellant filed a refund claim on the grounds that the payment of duty on their clearance to Domestic Tariff Area (DTA) was based on Maximum Retail Price (MRP) instead of transaction value. It was noticed by the Department, that they were initially paying duty on their DTA clearance based on transaction value for Basic Customs Duty (BCD) purpose and availed exemption under Notification No. 4/2006 dated 01.03.2006 (Sr. No. 47). However, in the course of Audit during April 2008, for the period April 2003 to March 2008, an objection was raised by the Department that the same should have been done in accordance with the MRP as the said goods were notified under Section 4A of Central Excise Act and it is alleged that the appellant had agreed to the audit objection of under valuation due to improper valuation method adopted and have also paid differential duty voluntarily. However, subsequently the appellant filed refund claim for said payments as per details as under:

For period April 2007 to Aug 2009 Rs. 6,06,796/- + interest of Rs. 7,584/- and Rs. 2,11,86,010/- and + interest of Rs. 67,485/- in Appeal No. E/796/2012 and E/795/2012 respectively.

4. Thereafter, the original Refund Sanctioning Authority examined the claim in terms of Section 11B and interalia, held that out of total refund in respect of amount paid during the relevant period, the refund claim for Rs. 1,56,12,031/- was beyond one year and therefore hit by limitation, whereas, the refund for Rs. 62,51,931/- was within the time limit and therefore it was examined on merit and it was held to be admissible holding that the MRP based valuation was not required to be followed by appellant. However, based on certain observations, including reflection of the said amount, refund of differential duty as expenses in Balance Sheet for the year 2008-09 and 2009-10, the Department felt that if the said amount was to be a receivable from the Department, the assessee was required to show the said amount as receivables in their Balance Sheet. Since, they have not shown the said amount as receivable in their Balance Sheet, the Original Refund Sanctioning Authority felt that the assessee has passed on the incidence of such duty and interest to other persons and therefore the same was denied on the grounds of undue enrichment and thereafter the said amount was sanctioned on merit but credited to the Consumer Welfare Fund, as per sub-section 2 of Section 11B of Central Excise Act.

5. On the issue of duty paid under protest, which was claimed by the appellant in support that the demand was not hit by limitation, they have relied on letter dated 15.01.2009 and 23.03.2009, it was observed that the office copies of the appellant was not enclosed nor shown at the time of personal hearing. Thus, the claim for having paid the duty under protest

was not entertained and the claim for Rs. 1,56,12,031/- rejected by them on the ground of limitation as well as unjust enrichment whereas Rs. 62,51,931/- was sanctioned on merit but credited to the Consumer Welfare Fund on the ground of unjust enrichment.

6. On appeal, Commissioner (Appeals) has examined the facts and other records and has, interalia, held that since the said produced letter dated 16.01.2009 is in relation to the payment of duty paid on 15.01.2009 and the produced letter dated 23.03.2009 was in relation to the duty paid on 18.03.2009 and similarly in respect of interest also a letter dated 25.03.2009 was submitted, whereas, the payment was made on 23.03.2009 and further noted that apart from these letters, they had not made any endorsement in Profit & Loss Account and ER-2 returns for the lump sum amount of duty payments indicating that they had paid duty under protest as was required under supplementary instructions issued by CBEC nor they had followed the procedure prescribed by the CBEC in as much as the Profit & Loss Account extracts, ER-2 returns and GAR challans submitted by them along with their refund claim did not indicate any evidence that they have paid the differential duty under protest. He has also relied on the judgment of Hon'ble Supreme Court in the case of CCE, New Delhi Vs Hari Chand Shri Gopal[2010 (260) ELT 3 (SC)] and Orient Traders Vs CTO, Tirupati [2009 (237) ELT 447 (SC)] to come to the conclusion that the appellant had failed to fulfil the conditions prescribed for abatement of duty under protest which are mandatory in nature. He, however, held that only Rs. 44,87,001/- was hit by limitation and not Rs. 1,56,12,031/-.

7. On the issue of unjust enrichment, Commissioner observed that they had not furnished any documentary evidence, except sample invoices, in

support of their contention that they had not passed on the burden of duty paid subsequent to the clearance of the goods either directly or indirectly. He also noted that while the appellant have submitted that they have not charged their customers the excess duty amount in the invoices, however, there was no evidence that their consignment agents/customers have not been passed on the same. Moreover, the said duty has been shown as expenditure in their books of accounts/Balance Sheet and therefore it can be inferred that the appellant has passed on the burden to their customer. He has relied on the judgment of (i) Poona Rolling Mills Vs CCE, Pune [2009 (140) ELT 85 (Tri-Mum)], (ii) Rajasthan Spinning & Weaving Mills Ltd., Vs Jaypur-II [2006 (194) ELT 254 (Tri-Del)], (iii) Philips Electronics India Ltd., Vs CCE, Pune-I [2010 (257) ELT (Tri-Mum)] and (iv) Modgil Fashion Experts Vs CC, Amritsar [2009 (236) ELT 322 (Tri-Del)]. He has relied on various judgments including Tamilnadu Electricity Board Vs CCE, Trichy [2008 (227) ELT 170 (Tri-Chennai)].

8. Learned Advocate has mainly contested that in this case, for the amount denied on the ground of time bar, the same cannot be applied in view of the fact that the said differential duties were paid under protest. Further, the application of doctrine of unjust enrichment for not sanctioning the refund to them is also not tenable in view of they have not passed on the incidence. On the issue of time bar, he is relying on the following judgment:

- i) Shree Ram Food Industries Vs Union of India  
[2003 (152) ELT 285 (Guj)]
- ii) Andhra Sugars Ltd., Vs CCE, Guntur  
[2007 (207) ELT 534 (Tri-Bang)]

9. Learned AR on the other hand points out that there is a clear cut provision and procedure required to be followed in respect of duty to be paid under protest in terms of Part III, Para 3.2 of the Chapter 13 of the Supplementary Rules which admittedly they have not complied and therefore the payments made cannot be considered as paid under protest. On the issue of unjust enrichment, he submits that the appellant had given only an affidavit signed by CFO, with which Refund Sanctioning Authority was not satisfied about their not having passed on the duty. He also relies on the case of Shoppers Stop Ltd., Vs CC (Exports), Chennai [2018 (8) GSTL 47 – Madras] and also submitted that the appellants have themselves stated that they were not in a position to give any further documents required to substantiate their claim that they have not passed on or to prove one-one co-relation.

10. Heard both the sides and perused the records. Since the issue is common in both the appeals, we intend to dispose both the appeals together by common order.

11. The short issue for determination is whether (a) the refund is hit by time bar under Section 11B and (b) whether refund is hit by unjust enrichment.

12. There is no dispute on the merit of the case in as much as the appellants were not required to pay duty as per MRP, which was suggested by the Audit Team, however, the appellants paid the differential amount pointed out by the Department along with interest. We have perused the letter dated 16.01.2009 which has been duly acknowledged by the office of Deputy Commissioner of Central Excise on the same day. In the said letter, while they have indicated that they have to discharge excess duty on MRP

value after availing abatement, they are paying the differential duty demand raised by Audit under protest vide Challan No. 2 and 3 dated 15.01.2009 and also requested for some time for making further payment. Similarly, in their letter dated 23.03.2009, they have mentioned that the same is being made under protest. While the Commissioner (Appeals) has observed that they have sent this letter subsequent to the payment, we find that a delay of a day or two in intimating their intention that the said payment has been made under protest does not take away the essence that the said payments were not under protest. It is also not in dispute that Department has acknowledged the said letter. Therefore, if they had any reservation about their being no grounds for making the payment under protest, they could have objected the same or could have disposed it of by rejecting their claim on merit. While, we note that there is a procedure prescribed for payment of duty under protest under Rule 33B under the erstwhile Central Excise Rules, essentially it is a procedure. Whereas for the relevant period the instructions contained in Para 32 of Supplementary instructions basically requires that the assessee should inform the Superintendent in writing giving reasons for paying duty under protest and that he shall make invoice or monthly/quarterly returns indicating the goods on which the duty is paid under protest and if it is on a lumpsum basis in respect of past demand, he may record the fact of payment of duty under protest in personal ledger account against debit or cenvat account against debit. We find that these procedures have indeed not been followed in strict sense; but the intent has been clearly conveyed to the Department that the said duty has been paid under protest. Receipts of said letters have not been disputed except that the office copy was not shown. Therefore, for the period which was within the normal time period, they themselves have been paying regularly and

they have not claimed the same under protest. We also note that this payment had been made pursuant to observation of the Audit that the valuation method adopted by them was not correct and it should have been under MRP basis. However, later on, the Department itself held that the method adopted by them was correct. Therefore, when the background of making the differential duty was intimated and the said being "under protest" was also indicated and Department having not rebutted their claim as to the fact that there was no ground for protest, it will have to be considered as intimation of their having paid the said duty pursuant to audit objection "under protest". We find force in the reliance placed on the judgment in the case of India Cements Ltd., Vs Collector of Central Excise [1989 (41) ELT 358 (SC)] wherein Supreme Court had interalia, accepted a mere letter as a letter of protest and allowed the appeal by not accepting the grounds for invocation of limitation. We also note that in this case, while the initial demands were made under protest, afterwards they have been paying on a regular basis and claim for refund was also made under normal period, and hence not hit by time bar. We find that their reliance in the case of Girish Foods & Beverages Pvt Ltd., Vs CCE, Pune [2007 (211) ELT 388 (Tri-Mum)] also supports their contention that payment of duties were under protest. We also find that in the case of Indian Pistons Ltd., Vs Collector of Central Excise [1990 (46) ELT 3 (SC)], in para 10, the Hon'ble Supreme Court observed that Rule 33B of Central Excise Rules does not prescribed any particular form of protest. Similarly, in the case of CCE, Chennai-I Vs ITC Ltd., [2005-TIOL-59-HC-MAD-CX] the Hon'ble High Court observed that *"it is a well settled law that meaning of the word "under protest" must not be taken in a narrow and pedantic manner. An overall view of the matter has to be taken, and hence we are of the opinion that the Tribunal*

*has taken correct view considering the facts and circumstances of the case”.*

Therefore, we find that apart from the cited cases, there are catena of judgments that substantive right cannot be taken away because of procedural error. We find in the given fact, the appellants had clearly brought out the fact that they were not voluntarily paying differential duty. Thus, in the facts of the case, we do not agree with the findings of the Commissioner (Appeals) that a part of refund claim is hit by limitation under Section 11B as we consider that the payments were made under protest and therefore on the grounds of rejection of refund limitation would not be applicable.

13. On the issue of unjust enrichment, we find that admittedly, the appellants have not been able to satisfy the Refund Sanctioning Authority that they had not passed on the duty incidence to the ultimate customer. Both the sides have cited catena of judgments in their support. However, what remains common to these arguments that the provision of Section 11B is clear that refund sanctioned on merit by default is required to be credited to the Consumer Welfare Fund unless it falls under the exclusion category. In this regard, the satisfaction of the Sanctioning Officer is paramount. We find that the documents submitted were not sufficient for the Refund Sanctioning Authority to come to the conclusion that they had not passed on, specially in the backdrop of the fact that the said amount has been reflected as expenses in their books of accounts. We also find force in the order of the Commissioner (Appeals) that since they had not shown any evidence to the effect that they have not issued any supplementary invoice or recovered the duty incidence from their ultimate customers, undue enrichment was applicable. Thus, we find that in the factual matrix, assessee has failed to satisfy the Refund Sanctioning Authority that the incidence has

not been passed on and therefore it was rightly denied to the appellant and instead credited to the Consumer Welfare Fund. The subsequent view of Commissioner (Appeals) as regards payment under protest is not correct, as discussed supra, but the plea of non-applicability of unjust enrichment has been correctly rejected by him.

14. In essence, the order of the Commissioner holding a part of the refund claim being hit by time bar is set aside. However, the entire refund claim is hit by the doctrine of unjust enrichment and therefore the appellants are not entitled to get any refund and interest and the amount admissible/sanction is required to be credited to the Consumer Welfare Fund as per law.

15. Appeals dismissed.

(Order Pronounced in open court on 08.08.2025 )

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**