IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Excise Appeal No. 75589/2018

(Arising out of Order-in-Appeal No.41/KOL-I/2017 dated-30/10/2017 passed by the Commr. of CGST & CX (Appeal-I), Kolkata)

M/s. Herbs India

Applicant (s)/Appellant (s)

Versus

Commr. of CGST & C. Ex., Kol. North

Respondent (s)

Appearance:

Shri S.P. Siddhanta, Consultant for the Appellant (s)

Shri K. Chowdhuri, Supdt. (A.R.) for the Respondent (s)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

Date of Hearing/Decision :- 07.09.2018

ORDER NO: FO/77316/2018

PER SHRI P.K. CHOUDHARY

The facts of the case in brief are that the appellant M/s. Herbs India paid Central Excise Duty on MRP without claiming abatement under Notification No. 49/2008-CE (NT) dated 24/12/2008 as amended for the period from April, 2014 to November, 2014. The appellant/assessee filed a refund claim for excess payment of Central Excise Duty amounting to Rs.1,17,148/- alongwith relevant documents i.e. Central Excise Sale Invoices, Bills for processing charges, ER-I Returns, copies of PLA and Duty calculation sheet. The Adjudicating authority after scrutiny of the documents held that the appellant/assessee had paid excess Central Excise Duty as claimed and as such are eligible for the refund. The Adjudicating Authority ordered for crediting refund amount to the Consumer Welfare Fund as constituted under Section 12(C) of the Central Excise Act, 1944 on the ground that the appellant/assessee failed to conclusively substantiate that the amount claimed for refund by them was not passed on to others. On appeal before the lower Appellate Authority, the Ld. Commissioner (Appeals) rejected the appeal filed by the assessee. Hence the present appeal before the Tribunal.

2. The Ld. Consultant appearing on behalf of the appellant submits that on perusal of the documents enclosed with the Refund application, it can be seen that the appellants have neither claimed the excess duty paid from their customers M/s. Shree Baidyanath Ayurvaed Bhawan Pvt. Ltd. nor have received any amount from them on this account. It is his submission that the refund claim rejected on the ground of 'unjust enrichment' is unwarranted, illegal and against the principles of natural justice. He also made the Bench go through the certificate dated-27/11/2015 issued by the Chartered Accountant.

3. Ld. D.R. reiterates the orders of the lower authorities.

4. Heard both sides and perused the appeal record.

5. I find that the appellant was required to calculate the Central Excise Duty @ 2% of 65% on MRP value of the goods despatched covering the period from April, 2014 to November, 2014 whereas they have calculated 2% Central Excise duty in the Central Excise invoices of 100% MRP value of the goods despatched and therefore, excess payment of Central Excise duty of Rs.1,17,148/- occurred in Central Excise invoices covering the aforesaid period and the same has been duly accounted for in the books of the appellant/assessee. On perusal of the certificate issued by the Chartered Accountant M/s. Ashwini Nagar & Associates, it is observed that the

Chartered Accountants have certified that the excess amount of Central Excise Duty has neither been claimed nor have been received by the appellant/assessee from M/s. Shree Baidyanath Ayurvaed Bhawan Pvt. Ltd. The entire set of documents are part of the appeal paper book at pages 146 to 198. The appellant/assessee have also filed copies of their financial statements and Income Tax return filed for the financial years 2014-15, 2015-16 and 2016-17 wherein the amount of Rs.1,17,148/- being the Central Excise Duty refundable, has been shown in their balance sheet all through out as receivable. Had this amount been received by the appellant/assessee from M/s. Shree Baidyanath Ayurvaed Bhawan Pvt. Ltd., it could not have figured in the balance sheet as receivable year after year.

6. In view of the above discussions, it is my considered view that the refund claim of the appellant/assessee is not hit by bar of 'unjust enrichment' and they are entitled to receive the refund amount as has been sanctioned by the Assistant Commissioner of Central Excise. The impugned order is set aside and the appeal filed by the appellant is allowed with consequential benefits.

(Operative part of the order already pronounced in the court)

Sd/-

P.K. CHOUDHARY
(JUDICIAL MEMBER)

k.b/-