IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75868 of 2015

(Arising out of Order-in-Appeal No.Kol/Cus.(Port)/AM/032/2015 dated 30.06.2015 passed by Commissioner (Appeals) of Customs, Kolkata)

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s Dredging Corporation of India Ltd.
Dredge House, Port Area, Visakhapatnam-530035

Respondent

APPERANCE :

Shri S.Chakraborty, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO……75353/2023

DATE OF HEARING : 03 .05.2023
DATE OF DECISION : 03 .05.2023

Per Ashok Jindal :

The Revenue is in appeal against the impugned order.

2.1 The facts of the case are that the Appellant Company had acquired and imported a second hand vessel for dredging purposes, called CSD Aquarius along with accessories, from Holland. This vessel had sailed from Holland on its own stead and the vessel when it reached at Kolkata Port, three Bills of Entry were filed and a Customs duty of Rs.11,32,81,147.78 was paid. The Bills of Entry Sl.Nos.1746 dated 28.01.1991, 1856 dated 29.01.1991 and 01 dated 01.02.1991 respectively, were filed and the duty of which was paid vide Duty

Receipt Nos.1-1062, 1-1024 and 1-1023, all dated 21.03.1991. The vessel was exempt from Customs duty but the other equipments, like

Floating Pipes, Anchor Pontoons etc. were charged to duty on the grounds that the same were not part of the dredger vessel, and accordingly duty amounting to Rs.11,32,81,147.78 was paid on these items, as detailed above, and assessment order was issued.

2.2 Being aggrieved by this assessment, the appellant had then filed an appeal before the Commissioner (Appeals) but vide Order No.Cal/Cus/119/93 dated 31.03.1993, the Commissioner (Appeals) had confirmed the lower adjudicating authority's order. The appellant then filed an appeal before the Tribunal, and the Tribunal vide its order No.A-891/Kol/2001 dated 13.09.2001, had allowed the appeal by holding that the accessories and spares brought with the dredger vessel should also be assessed at the rate applicable to the dredger, since they formed a part of the dredger. Consequent to this, the appellant filed a claim for refund of the duty amount paid by them.

2.3 However, by Order No.40/03 dated 21.03.2003, the Assistant Commissioner, ARS, rejected the claim on the ground of limitation and on the ground of unjust enrichment. The appellant then challenged this rejection before the Commissioner (Appeals). The Commissioner (Appeals) vide his order No.Kol/Cus/93/CKP/2003 dated 19.09.2003, directed the appellant to pursue their claim for consequential relief with the Commissioner (Port) as per the directions of the Tribunal. Consequently, the Assistant Commissioner, ARS, vide Order-in-Original

No.09/04 dated 14.01.2004, sanctioned the refund of Rs.11,32,81,147/-, however, he ordered the amount to be credited to the Consumer Welfare Fund.

2.4 The appellants challenged this order before the Commissioner (Appeals), who vide Order No. Kol/Cus/167/CKP/04 dated 11.06.2004 directed the lower authority to pass a judicious and cogent order, regarding applicability of the principle of unjust enrichment. The lower authority vide Order No.2/05 dated 17.01.2005, again credited the refund to the Consumer Welfare Fund. Appellant again filed an appeal before the Commissioner (Appeal), who vide Order No.Kol/Cus/68/2005 dated 23.03.2005, directed the lower authority to examine the case in accordance with the provisions of law. Once again, vide order dated 01.08.2006, the lower authority credited the refund to the Consumer Welfare Fund on the ground that the present contract price is higher than the previous one, after importation of dredger, and held that it has passed duty to the incidence to other. The order was challenged before the Commissioner (Appeal), who remanded the case to the lower authority to decide after taking into consideration all the case laws cited by the appellant. This order was taken in appeal by the appellant before the Tribunal, which has now been remanded for final decision.

3. In remand, the ld.Commissioner (Appeal) held that the respondent has passed the bar of unjust enrichment and sanctioned refund claim of the respondent. Against the order, the Revenue is before us.

4. None appeared on behalf of the respondent.

5. Heard the ld.A.R. for the Revenue, who reiterated the grounds of appeal.

6. We have gone through the impugned order. In the impugned order, the ld.Commissioner (Appeal) has observed as under :

> *"……………………………..The moot fact remains that the vessel is still in use and has not been sold. This fact has been reiterated by the appellants time and again, and has also been certified by the Chartered Accountant, Shri C.N.Raja, vide Certificate issued dated 11.06.2015, wherein he has again certified that all the goods brought under cover of the impugned 3 Bills of Entry are still in use by the Dredging Corporation of India. Further, I note that the Director (Operations & Technical) of the appellant firm, vide letter dated 11.06.2015, has also certified the same. When the goods are still in use, the question of passing the burden of duty does not arise. Therefore, the clause of unjust enrichment is clearly not applicable, as enunciated in the cited orders of the Hon'ble Apex Court."*

7. The above findings have not been controverted by the Revenue with documentary evidence. Merely saying that the Chartered Accountant's Certificate cannot be relied upon to hold that the bar of unjust enrichment is passed. We find that in this case, the goods brought under the impugned Bills of Entry are still in use by the respondents themselves and the Director (Operations & Technical) of the respondents, has also certified the same. In that circumstances, we hold that the respondent has passed the bar of unjust enrichment as the goods are in the possession of the respondent/importer.

8. We, therefore, do not find any infirmity in the impugned order, accordingly, the same is upheld.

9. In the result, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

mm