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

REGIONAL BENCH – COURT NO.2

**Excise Appeal No.76386 of 2018**
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.16/CE/BBSR-GST/2018 dated 30.01.2018 passed by Commissioner (Appeals) of CGST & Excise, Customs, Bhubaneswar)

**M/s UAL Odisha**
(Prop.UAL Industries Ltd.), P.O.-Korian, Dist.-Dhenkanal, Odisha-759013

**Appellant**

*VERSUS*

**Commissioner of CGST & Excise, Customs,Bhubaneswar**
C.R.Building, Rajaswa Vihar, Bhubaneswar-7, Odisha

**Respondent**

**APPERANCE :**

Shri S.P.Majumdar, Advocate for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**

**FINAL ORDER NO.77654/2023**

DATE OF HEARING : 12 .12.2023
DATE OF DECISION : 12.12.2023

**Per Ashok Jindal :**

The appellant is in appeal against the impugned order wherein the ld.Commissioner (Appeals) held that as the appellant has failed to pass the bar of unjust enrichment, therefore, they are not entitled for refund of excess duty paid provisionally at the time of clearance of goods.

2. The facts of the case are that the appellant is a manufacturer of asbestos sheets and as the selling price of the goods was not known, therefore, the appellant opted for provisional assessment. The appellant cleared the goods from the Depots to the buyers by paying duty provisionally. Later on, provisional assessment was made final. In

some cases, it was found that the appellant has paid short duty and in some cases, the appellant has paid excess duty. The case of the appellant has paid the excess duty is to be adjusted against the duty demand, so the balance duty was paid by the appellant. Instead of doing so, the Adjudicating Authority held that the appellant is entitled to take refund of the excess duty paid by them and the short duty is to be paid along with interest. The appellant paid the differential duty along with interest and sought refund of excess duty paid by them. But the ld.Commissioner (Appeals) has held that the appellant has not pass the bar of unjust enrichment. Therefore, they are not entitled for refund claim. Against the said order, the appellant is before me.

3. The ld.Counsel for the appellant, appears before me and submits that in this case, the assessment initially was done provisionally and in some cases, they have short paid duty and in some cases, they have paid excess duty where they have paid short duty, there is no dispute. But in case, where they have paid excess duty, the buyers are not registered with the Central Excise Department, therefore, the bar of unjust enrichment is not applicable to the facts of this case. Hence, they are entitled for excess duty paid at the time of provisional assessment.

4. On the other hand, the ld.A.R. for the Revenue opposes the contention of the ld.Counsel for the appellant and submits that in this case, the appellant initially paid the excess duty and recovered the same from the buyers of the goods. In that circumstances, the burden casts on the appellant to prove that whether they have passed the bar of unjust enrichment or not ? but they have failed to do so. Therefore,

the ld.Commissioner (Appeals) has rightly held that the appellant has not passed the bar of unjust enrichment.

5. Heard both the parties and considered the submissions.

6. On going through the records before me and the arguments advanced by both sides, I find that the appellant cleared the goods provisionally and paid the duty thereon. In some cases, the excess duty has been paid at the time of clearance of goods provisionally. It is also a fact on record that the appellant has also issued credit note of excess duty paid by them to the buyers. Further, the buyers of the appellant are not registered with the Central Excise Department and they cannot take cenvat credit of duty paid by them. To that effect, an Affidavit has also been filed by the appellant and the same is also on record.

7. In that circumstances, I hold that the issue of bar of unjust enrichment does not arise as the appellant has able to pass the bar of unjust enrichment by issuing credit note to the buyers, who are not registered with the Central Excise Department and cannot take credit of duty paid by the appellant.

8. In that circumstances, I hold that the appellant is entitled for refund claim.

9. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

**(Ashok Jindal)**
**Member (Judicial)**

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