IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. C/88015/17

(Arising out of Order-in-Appeal No. 606(CRC-1A)/2017(JNCH)/Appeal II dated 23.09.2017 passed by Commissioner of Customs, Raigad Dist.)

M/s Rajputana Stainless Ltd. **Appellant**
Vs.

Commissioner of Customs **Respondent**
Nhava Sheva

Appearance:

Shri H.G. Dharmadhikari, Advocate for appellant
Ms. Trupti Chauhan, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing & Decision: 19.03.2018

FINAL ORDER NO. A/86220/2018

Per: M.V. Ravindran

This appeal is directed against order-in-appeal No. 606(CRC-1A)/2017(JNCH)/Appeal II dated 23.09.2017.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding refund of customs duty amounting to Rs.1,28,979/- paid in excess on 31.03.2012. Adjudicating authority rejected the refund claim on the ground of unjust enrichment. Appellant had produced Chartered Accountant's Certificate and copy of

balance sheet indicating that they had not passed on to the customers hence they are not hit by unjust enrichment. First appellate authority, in the impugned order in paragraph 11 has recorded the following finding:-

> *"11. The applicant has also, during personal hearing, submitted a Chartered Accountant Certificate dated 10.07.2017 and copy of balance sheet of the applicant for the FY 2011-12, 2012-13, 2013-14 and 2014-15. The duty was paid on 31.03.2012 and from the extract of the balance sheet for 2011-12 it is seen that the amount was not shown as recoverable from the govt. and it was expensed to P & L account in the financial year 2011-12. The C.A Mr. Alpesh Patel M No. 123850 of M/s A.J. Patel & Co. in the said certificate has certified that the amount of excess customs duty paid has not been debited in profit and loss Account and has been shown as amount due as refund of excess duty on the asset side of the balance sheet. It was also certified that the amount reflecting under the head of Amount Due As Refund of Excess Duty is to the tune of Rs.3,54,546/- and the said refund claim of Rs.1,28,979/- forms part of the same. On cross checking the said submission with the entries of balance sheet, it is found that the said amount of Rs.3,54,546/- exists in balance sheet of FY 2012-2013 under heading 3.15 Short Term Loans and Advances sub-heading (f) Balance from Government authority as Amount due as refund of excess duty paid. However no such entry exist in the balance sheet of FY 2013-2014 and 2014-2015 submitted by the appellant which indicates that the appellant has already received the said amount of Rs.3,54,546/- in the FY 2013-14 and it was not related with the issue in the case of the above circumstances, I am of the opinion that the appellant has failed to prove that they have not passed the excess duty paid to their consumers and they will be unjustly enriched if the refund is granted to them."*

4. On perusal of Chartered Accountant certificate annexed at page 28 of the appeal memoranda, I find that the Chartered

Accountant has categorically stated that the amount of Rs.1,28,979/- is excess of customs duty paid and not being passed on to any buyers. The finding of the first appellate authority that in the balance sheet for the period 2013-14, the said figure has not reflected, I find them factually incorrect finding of the first appellate authority as the photocopy of the balance sheet, annexed in the appeal memoranda (page 30), under column "particulars" sl.No.(f), an amount of Rs.3,54,646/- is indicated against "Amount due as Refund of excess duty paid." First appellate authority has not appreciated the factual position in the balance sheet which was produced before me. In view of the above, it is conclusively evidenced that the appellant had not passed on the amount to the buyers, I hold that the impugned order is unsustainable and liable to be set aside and I do so.

5. Impugned order is set aside and the appeal is allowed with consequential relief.

(Order dictated in Court)

(M.V. Ravindran)
Member (Judicial)

nsk