IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/870/2010

(Arising out of Order-in-Appeal No. YDB/80/M-III/2010 dt. 16.2.2010 passed by the Commissioner (Appeals) Central Excise (Appeals), Mumbai-II)

M/s. Glaxosmithkline Pharmaceuticals Ltd. : Appellant

VS

Commissioner of Central Excise, Mumbai-III : Respondent

<u>Appearance</u>

Shri R.G. Sheth, Advocate for Appellant

Shri V.K. Agarwal, Addl. Commr. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Sanjiv Srivastava, Member (Technical)

Date of hearing : 19/06/2018
Date of decision : 19/06/2018

ORDER NO. A/86779/2018

Per : Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. YDB/80/M-III/2010 dt. 16.2.2010 passed by Commissioner (Appeals) Central Excise (Appeals), Mumbai-II.

2. Briefly stated the facts of the case are that the appellant have filed refund claim for Rs.74,65,856/- claiming that they have paid

the duty twice on the imported finished formulations namely, Seretide Accuhalers and Seretide Evohalers for sale in India. On adjudication, the refund was sanctioned by the adjudicating authority. Aggrieved by the said refund order, the Revenue filed an appeal before the Ld. Commissioner (Appeals), who in turn, allowed the Revenue's appeal. Hence, the assessee is in appeal.

3. Ld. Advocate Shri R.G. Sheth for the appellant submits that the Ld. Assistant Commissioner Central Excise after considering the facts and evidence on record, including the Range Superintendent's report dt. 23.07.2008, sanctioned the refund claim. Also, the adjudicating authority has categorically observed that there was no unjust enrichment as the excess duty claimed as refund, was borne by the assessee and its incidence had not been passed on to their customers, since the goods were subjected to MRP based assessment. He has fairly admitted that the copy of the Range Superintendent has not been handed over to the assessee. It is his contention that the Ld. Commissioner (Appeals) by a cryptic order set aside the said order of the adjudicating authority and allowed the Revenue's appeal. Therefore, the order of the Ld. Commissioner (Appeals) be set aside and the order of the adjudicating authority be restored.

4. Per contra, the Ld. A.R. for the Revenue has submitted that since the adjudicating authority has not discussed in detail as to how the burden of duty, was borne by the assessee and had not

been passed on to others, the Ld. Commissioner (Appeals) without elaborating in detail and recording the reasons held that the assessee has failed to discharge the burden of unjust enrichment and observed that the refund amount has been recovered from their customers. It is his contention that therefore there is no infirmity in the order of the Ld. Commissioner (Appeals).

5. We have carefully considered the submissions advanced by both the sides. No doubt the impugned order is cryptic one but also at the same time, on going through the refund order passed by the adjudicating authority, we find that the adjudicating authority has not discussed in detail aspect of the each and every piece of evidence produced by the assessee in support of their claim that the refund is due to them and its burden has not been passed on to the customers. In absence of proper reasoning on the documents/evidences, the Revenue filed an appeal before the Ld. Commissioner (Appeals) disputing the finding of the Adjudicating Authority that the hurdle of unjust enrichment has not been passed by the assessee. Also, from the record we find that a report from the Range Superintendent was obtained by the Adjudicating Authority wherein the Range Superintendent had reported in favour of the assessee. Such report has also not been handed over to the assessee. In these circumstances, keeping in view the interest of justice, it is prudent to remand the matter to the adjudicating authority, to examine all the evidences in detail and record a specific finding on the issue of passing of the incidence of

duty paid and claimed as refund by the assessee. Needless to mention a reasonable opportunity be allowed to the appellant and a copy of the Range Superintendent's letter dt. 23.7.2008 also be handed over to the appellant. Both sides fairly agreed that the matter has been pending for more than 10 years, therefore a time frame may be fixed to dispose of the case by the adjudicating authority. Consequently, as far as practicable, the matter may be disposed of within 4 months from the date of communication of the order. Appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

SM.