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

APPEAL NO. E/85522/18

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0681/2017-18 dated 14.11.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune.)

M/s Bridgestone India P Ltd. **Appellant**

Vs.

CCE & ST, Pune-I **Respondent**

Appearance:

Shri R.S. Sharma, Advocate for Appellant
Shri A.B. Kulgod, Assistant Commissioner (AR) for Respondent

CORAM:

HON'BLE SHRI S K MOHANTY, MEMBER (JUDICIAL)

Date of Hearing: 11.06.2018
Date of Decision: 11.06.2018

ORDER NO. **A/86729 / 2018**

Per: S K Mohanty

This appeal is directed against the impugned order dated 14.11.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune.

2. Brief facts of the case are that the appellant herein is engaged in the manufacture of tyres and tubes, falling under Chapter heading Nos. 4011 & 4013 of the schedule to the Central Excise Tariff Act,

1985. During the disputed period, the appellant had sold such excisable goods from the premises of its consignment agent. The said goods were removed from the factory at a higher value, than the same sold from the consignment agent's premises. Accordingly, the appellant had filed the refund application, claiming excess excise duty paid by it at the time of removal of goods from the factory. The refund application filed by the appellant was rejected by the authority below on the ground that no excess duty had been paid by the appellant in respect of the excisable goods removed from the factory and sold to the ultimate consumer. The authorities below also took the view that the refund application is hit by doctrine of unjust enrichment.

3. The learned Advocate appearing for the appellant submits that the goods sold by the appellant from its C & F agent's premises should be governed under the provisions of Rule 7 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000 and accordingly, the excess duty paid at the factory gate by the appellant should be eligible for refund. In this context, the learned Advocate has produced the sample copy of invoice issued by the appellant from its factory and the invoices issued by the C & F agents to the ultimate buyer. Such invoices reflected that the goods were sold at a lesser price from the C & F agents premises, than the goods removed from the factory at a higher price. The learned Advocate further submits that the doctrine of unjust enrichment is not applicable to the facts and circumstances of the case in as much as incidence of the duty all along had been borne by the appellant and the same has not been transferred to any other person. To support of

such stand, learned Advocate has produced the certificate dated 25.06.2015 issued by the Chartered Accountant firm, M/s Singh Joshi & Associates LLP.

4. On the other hand, learned DR appearing for the Revenue reiterates the findings recorded in the impugned order. He further submits that the appellant had passed on the incidence of duty to the ultimate consumer and to support such stand, the learned DR has referred to invoice dated 21.06.2014 issued by the C & F agent to the buyer of the goods. Thus, the learned DR submits that the principles of unjust enrichment are squarely applicable to the disputed refund claim.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that the case of the appellant is governed under the provisions of Rule 7 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000. It is also undisputed fact that the appellant had paid excess central excise duty on removal of excisable goods from its factory, then the goods sold by it through the consignment agents to the ultimate consumers. Thus, it's evident that the appellant had paid excess excise duty, than the duty amount actually payable on the goods ultimately sold to the consumers. The invoice and other documents available in the case records, clearly show that the excess duty has been paid by the appellant. So far as the applicability of doctrine of unjust enrichment is concerned, I find that the Chartered Accountant

firm in its certificate dated 25.06.2015 has certified that the Balance Sheet maintained by the appellant clearly showed that excise duty has not been claimed from the buyer of the goods and the same has been reflected in "Excise Duty Refund Receivable Account". The said certificate demonstrates that the incidence of excess duty has not been passed on by the appellant to its buyer or any other person and the same has been borne by it. Thus, under the circumstances, if the refund claim is denied on the ground of unjust enrichment, the appellant should be put to financial loss in as much as the loss and injury on account of excess duty has been borne by it. Therefore, the refund claim will not be denied on the ground of doctrine of unjust enrichment.

7. In view of the above discussions and analysis, I do not find any merit in the impugned order, so far as it denied the refund benefit to the appellant. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant, with consequential benefit of refund.

(Pronounced in open Court)

(S K Mohanty)
Member (Judicial)

Prasad