## IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
### WEST ZONAL BENCH AT MUMBAI
### COURT No. I

**APPEAL No. E/85240/2018**

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-531/2017-18 dated 31.10.2017 passed by Commissioner of Central Tax (Appeals), Pune-I)

**KSB Pumps Ltd.** **Appellant**

Vs.

**Commissioner of Central Excise & ST, Pune-I** **Respondent**

Appearance:

Shri M.P. Joshi, Advocate, for appellant
Shri D.S. Chavan, Superintendent (AR), for respondent

**CORAM:**

**Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Date of Hearing: 1.8.2018
Date of Decision: 1.8.2018

ORDER No. **A/87016/2018**

Brief facts of the case are that the appellant is engaged in the manufacture of power driven (PD) pumps and parts thereof, falling under Chapter Heading No.8413.00 of the First Schedule to the Central Excise Tariff Act, 1985. During the disputed period, the appellant had supplied four numbers of P.D. pumps for the industrial pollution prevention project of M/s. Balrampur Chini Mills. The said parts are exempted from payment of central excise duty in terms of Notification No.108/95 dated 20.8.1995, subject to procurement of certificate from the project implementing authority. However, without availing the duty exemption provided under the said notification, the appellant had paid central excise duty on supply of PD pumps to M/s. Balrampur Chini Mills. Accordingly, the appellant had filed refund application, claiming refund of central excise duty of Rs.1,69,600/- paid by it. The refund application was rejected by the original authority by order dated 28.2.2002. On appeal, the learned Commissioner (Appeals) also upheld the rejection of refund application. Against the order dated 30.12.2005 of Commissioner (Appeals), the appellant had preferred appeal before the Tribunal. The appeal was disposed of by the Tribunal vide order dated 27.1.2017, in remanding the matter to the Commissioner (Appeals) for passing of fresh order, after consideration of the findings of the adjudicating authority recorded in the order dated 28.2.2012. When the matter was sub-judice before the appellate forum, the DGCEI investigated into the matter regarding the issuance of project certificate by M/s. Balrampur Chini Mills. It was observed by the officers of DGCEI that the certificates on the basis of which the exemption was claimed by the manufacturers, were forged. On the basis of such investigation, the DGCEI initiated show cause proceedings against various manufacturers of PD pumps, including the appellant herein. The show cause notice dated 3.11.2004 issued by the DGCEI was adjudicated vide order dated 28.2.2002 by the Commissioner of Central Excise, wherein the proposals made in the show cause notice dated 3.11.2004 were dropped, holding that Balrampur Chini Mills had already deposited the excise duty on behalf of the manufacturers, as real beneficiary. In the meantime, pursuant to the remand direction of the Tribunal vide order dated 27.1.2017, the Commissioner (Appeals) took *de novo* proceedings and rejected the appeal of the appellant vide order dated 31.10.2017. Being aggrieved with the said order dated 31.10.2017, (impugned, herein), the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submits that on the basis of the certificate issued by the project sanctioning authority, the appellant had claimed refund in respect of central excise duty paid by it. He further referred to page 48 in the adjudication order, wherein it has been accepted by the adjudicating authority that M/s. Balrampur Chini Mills Ltd. has already deposited the excise duty on behalf of the manufacturers, as the real beneficiary. Thus, learned Advocate submits that since on account of supply of PD

pumps, both the appellant as well as the purchaser of the goods, M/s. Balrampur Chini Mills Ltd., had discharged the central excise duty liability, the duty paid by the appellant should be eligible for refund.

3. On the other hand, learned DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. On perusal of the adjudication order dated 28.2.2012, it transpires that the purchaser of the goods, M/s. Balrampur Chini Mills Ltd., had discharged the central excise duty on PD pumps supplied by the appellant. The fact is also not under dispute that the duty exemption provided under Notification dated 28.8.1995 has not been claimed by the appellant, resulting in payment of central excise duty by it. Thus, in this case, the goods manufactured and supplied by the appellant, suffered duty twice, one by the appellant and other, by the buyer, M/s. Balrampur Chini Mills. Therefore, the duty paid by the appellant, without claiming the exemption benefit, should be available as refund. However, there is no material available on record to show that M/s. Balrampur Chini Mills Ltd. had discharged the central excise duty liability on the

PD pumps supplied by the appellant. Hence, for ascertaining the correct factual position, I am of the view that the matter should go back to the original authority.

6. Therefore, by setting aside the impugned order, I remand the matter to the original authority for the fact finding as to whether, the purchaser M/s. Balrampur Chini Mills Ltd. had discharged the central excise duty liability in respect of the PD pumps supplied by the appellant. On verification of documents/records, if the original authority satisfies himself that the duty liability had been discharged by the purchaser M/s. Balrampur Chini Mills, then the refund benefit as claimed by the appellant in its application dated 19.03.2003, should be extended by the original authority.

7. In the result, the appeal is allowed by way of remand to the original authority.

(Pronounced in court)

**(S.K. Mohanty)**
**Member (Judicial)**

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