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

Appeal No. E/432/2012

(Arising out of Order-in-Appeal No. YDB/281/Th-I/2011 dated 27.12.2011 passed by Commissioner of Central Excise (Appeals), Thane I)

Padmavati Enterprises **Appellant**

Vs.

Commissioner of Central Excise, Thane I **Respondent**

Appearance:

Shri R.V. Shetty, Advocate for appellant
Shri M.R. Melvin, Supdt. (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 06.07.2018

FINAL ORDER NO...**A/87434/2018**

Per: S.K. Mohanty

Rejection of refund application of the appellant on the ground of limitation as well as doctrine of unjust enrichment, is subject matter of present dispute.

2. Brief facts of the case are that on the basis of intelligence gathered by the department, the Preventive wing of the Central Excise Department searched the go-down premises of one M/s

Lalji Mulji Transport Company at Biwandi, Thane and found 730 gunny bags containing 30,000 MT of ‘Gutka’ of ‘Goa-1000’ brand were lying therein. On further investigation into the matter, it was observed by the department that the said goods were non-duty paid and in contravention of provisions of Central Excise statute, the same were removed from the factory of the manufacturer, M/s Meenakshi Food Products Pvt. Ltd., Gandhi Nagar. Since the transport documents indicated the name of the present appellant as consignee, Preventive Wing of the Central Excise Department proceeded against the appellant and recorded the statement from the authorized signatories. Since the goods were seized by the department, appellant vide its letter dated 20.07.2009 had approached the Asst. Commissioner of Central Excise, Thane-I for release of the said seized goods. The appellant had also stated in the said letter that it will pay the Central Excise duty and the interest in respect of the seized goods. Accordingly, the appellant deposited the Central Excise duty amounting to Rs.31,61,771/- vide GAR 7 challan dated 20.07.2009. Upon release of the seized goods on payment of the said amount, the department initiated show cause proceedings against the appellant, seeking for confirmation of the duty demand and for imposition of penalty. The show-cause notice dated 30.10.2009 was adjudicated vide order dated 24.12.2010, in dropping the proposals made in the show-cause notice. Since the show cause proceedings initiated by the department for confirmation of the duty demand was dropped, the appellant had filed the refund application, claiming refund of Rs.31,26,771/- before the jurisdictional Central Excise authorities. The refund application was disposed of vide order dated 13.06.2011, in rejecting the same, on the ground that the refund application is barred by limitation of time and the claim is hit by the doctrine of unjust enrichment.

2.1 With regard to time bar aspect, the adjudicating authority had held that the appellant was required to file the refund application within one year from the date of payment of duty; that since the claim application was filed beyond the stipulated time of one year, the same is not maintainable as per the mandates of Section 11B of the Central Excise Act, 1944.

2.2 With regard to the applicability of doctrine of unjust enrichment, he had held that the excise duty paid by the appellant was collected from the buyers of the goods. Thus, the adjudicating authority has held that incidence of duty had been passed on and accordingly, the refund claim is hit by the doctrine of unjust enrichment.

2.3 Feeling aggrieved with the adjudication order dated 24.12.2010, the appellant had filed appeal before the learned Commissioner (Appeals), which was disposed of vide order dated

27.12.2011, in upholding rejection of refund application in the adjudication order. Thus, the appellant has preferred this appeal before the Tribunal.

3. Learned Advocate appearing for the appellant submits that since the appellant is a dealer of excisable goods and is not engaged in manufacture of the same goods, duty liability cannot be fastened against it. Thus, he submits that interpreting the correct legal provision, the adjudicating authority had dropped the show-cause notice initiated by the department. He further submits that based on the favorable order dated 24.12.2010 passed by the Addl. Commissioner, since the appellant had filed the refund application within two months from the date of such order, such claim application is within time and cannot be rejected on the ground of limitation.

3.1 With regard to applicability of doctrine of unjust enrichment, the learned Advocate submits that the excise duty paid by the appellant during the course of investigation had not been collected from the buyers of the goods and such excess payment had been duly reflected in the balance sheet under the accounting head ‘Loans and Advances’, showing the disputed amount receivable from the Central Excise department. He also produced the certificate dated 25.06.2016 of Shri Divyesh V. Doshi of Doshi Thakkar & Associates, Chartered Accountants, to demonstrate that the excise duty paid by the appellant had been reflected in the books of accounts, and as such, the incidence of such duty has not been passed on to any other person.

4. On the other hand, learned D.R. appearing for Revenue reiterates the finding recorded in the impugned order and further submits that the relevant date for consideration of refund application should be construed as the date of payment of Central Excise duty. He further submits that since the appellant had filed the refund application beyond one year from such relevant date, the same is barred by limitation of time. With regard to the applicability of doctrine of unjust enrichment to the facts on the present case, he submits that since the appellant had recovered the sale proceeds from its buyers on the basis of MRP, it is evidenced that excise duty paid by the appellant is a part of such MRP. Thus, incidence of duty had been passed on to the buyers of the goods. He further submits that the appellant did not produce any evidence to show that the incidence of duty had not been passed on to any other person and the same had been borne by it. Thus, he contended that the authorities below have rightly denied the refund benefit to the appellant.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that the appellant is not engaged in manufacture of excisable goods viz. 'Gutka-1000' brand. Since the Central Excise statute fastened the duty liability on the manufacturer of excisable goods, the adjudicating authority, while adjudicating the show cause notice, had appropriately held vide order dated 24.12.2010 that Central Excise duty cannot be collected from the appellant, who acted in the capacity of dealer of excisable goods. Since pursuant to the favorable adjudication order dated 24.12.2010 passed by the Additional Commissioner of Central Excise, the appellant had filed the refund claim on 25.02.2011, such claim application, in my considered opinion, cannot be rejected on the ground that the same is barred by limitation of time. In other words, the refund application having been filed well within the prescribed time limit provided under the statute, the same is maintainable for consideration of the refund benefit, if otherwise due.

6.1 Section 11B of the Act deals with the provisions for claim of refund of duty and interest paid on such duty. Sub-section (3) of Section 11B read with explanation clause (B)(ec) appended thereto provides that *in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction* should be construed as the relevant date for computation of the limitation period. In the present case, the show-cause notice dated 30.10.2009 issued by the department, seeking for confirmation of the duty liability was adjudicated vide order dated 24.12.2010 by the Addl. Commissioner of Central Excise. Since the adjudicating authority had passed such order in the capacity of quasi judicial authority, his order should fall under the purview of Clause (ec) of the Explanation appended to Section 11B of the Act. Admittedly, since the refund application was filed on 25.02.2011; which is within the stipulated time frame, rejection of refund application by the authorities below is not sustainable and will not stand for judicial scrutiny.

6.2 With regard to applicability of the doctrine of unjust enrichment, I find that in Schedule 6 under the Head 'L*oans & Advances'* in the Balance Sheet, the appellant had reflected the refund claim amount as 'excise deposit'. The said entry was made in the balance sheet prepared for the period 2009-10 and the same position also continued and reflected in the balance sheet prepared as on 31.03.2016. Further, the certificate dated 25.06.2016 issued by the C.A. firm M/s Doshi Thakker & Associates have also confirmed that in respect of the excise duty paid by the appellant, benefit has not been passed on to any other person. The documents available in the case records satisfies the requirements of the proviso attached to sub-section (2) of Section 11B of the Act that the incidence of excise duty as per the refund application, has not been passed on by the appellant to any other person and such incidence has all along been borne by it. Therefore, the refund application will not be hit by doctrine of unjust enrichment.

7. In view of foregoing discussion and analysis, I do not find any merits in the impugned order, so far as it upheld the adjudication order, in rejecting the refund application filed by the appellant. Accordingly, after setting aside the impugned order, the appeal is allowed in favour of the appellant, with consequential benefit of refund.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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