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

APPEAL NO.E/127/2011 & E/841/2011

(Arising out of Order-in-Appeal No.PKS/379/BEL/2010 dated 20/10/2010 & PKS/528/BEL/2010 dated 24/02/2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

Savita Oil Technologies Ltd., : **Appellant**

VS

Commissioner of Central Excise Belapur : **Respondent**

<u>Appearance</u>

Shri.Mehul Jivani, CA for Appellant
Ms.Anuradha S Parab, Asst. Comm. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 04/02/2019
Date of decision : 04/02/2019

ORDER NO. A/85268-85269/2019

Per : P Anjani Kumar

These two appeals, E/127/2011 & E/841/2011 have been filed by M/s.Savita Oil Technologies Ltd., the appellant.

2. Briefly stated, the issue involved in both the appeals is that the appellants have filed refund claims on the ground that they have extended certain discounts on the goods on clearance from the depot.

The contention of the department was that the appellant did not provide the details of the discounts passed on and that they could not produce evidence/documents to indicate the quantity of discounts passed on and to prove that the duty incidence has not been passed on.

3. Learned Counsel for the appellant submits that there was no requirement to provide break up of discounts/invoice in order to claim deduction, so long as the discounts structure is known to the buyer. He relied upon the following cases:

a) Andhra Pradesh Paper Mills Ltd., - 2000 (117) ELT 648 (Tri)
b) Bee Pee Coating Ltd., - 2004 (177) ELT 816 (Tri-Del)
c) Gujarat Borosil Ltd., - 2010 (253) ELT 610 (Tri-Ahmed)
d) Gujarat Borosil Ltd., - 2012 (284) ELT A163 (SC)
e) Rogers & Co. Pvt. Ltd. – 1993 (67) ELT 249 (Bom)
f) Rogers & Co. Ovt. Ltd. – 1997 (94) ELTA255 (SC)
g) Bombay Tyres International Pvt. Ltd. – 1984 (17) ELT 329 (SC)

3.1 He also submitted that once the goods are cleared from the factory to depot on payment of duty on the basis of price prevailing at the depot, at the time of removal from the factory there is no need to chase the goods and to see at what price the same are actually sold. He also relied upon the decision in the case of *Nahar Spinning & Weaving Mills Ltd., - 2009 (247) ELT 708 (Tri-Del).* He further submitted that once the amounts have been shown as receivable in the books of accounts, the principles of unjust enrichment are not applicable to the refund claims, such amount treated as being passed on. He relied upon the following decisions:

a) Savita Oil Technologies Ltd. – 2017 (358) ELT 331 (Tri-Mumbai)
b) Ericsson India Pvt. Ltd. – 2016 (332) ELT 697 (Del)

c) *Shree Krishna Nylon Pvt. Ltd. – 2015 (327) ELT 626 (Tri-Mumbai)*
d) *Larsen & Toubro Ltd. – 2015 (330) EKT 749 (Tri-Mum)*

3.2 He further submitted that for the subsequent period, the issue has been decided in favour of the appellant in their own cases (supra) and has been accepted by the department. The learned Counsel further submitted that in respect of Appeal No.E/127/2011 though an amount of Rs.44,707/- was rejected by the Order-in-Original their appeal is limited to Rs.19,835/- for the period from October 2008 to March 2009.

4. Learned AR for the department has reiterated the findings of the order-in-original/order-in-appeal.

5. Heard both sides and perused the documents.

6. We find that the issue is no longer *resintegra*. It is seen that the issue has been settled in the appellant's own case (supra) and has been followed by the department for a later period. On perusal of the invoices, it is seen that the duty has been paid at the time of clearance from the factory. However, on perusal of the case records, we find that the appellants have submitted the following:

1) Central Excise Invoices on which goods cleared from the factory gate and duty is originally paid.

2) Commercial Invoices raised by the C&F agents

3) Credit Notes and Debit Notes raised by the assessee

4) Ledger Account of C & F Agents

The following documents were submitted by the Range Superintendent along with his verification report:

a) Balance Sheet for the year 2008-2009

b) Letter dated 09/11/2009 enclosing CA certificate

c) A CD containing Sales Invoices raised ex-C&F Deport, Credit notes, excise Invoices and sale data and discount schemes

d) Letter No.CEX/Refund-Section 4/08-09 dated 18/01/2010 submitting the following documents

i) Copy of Schedule 10 – Loan and advances to the Balance sheet for the year 2008-2009

ii) Statement of Excise duty refund and export rebate claim receivable as on 31/03/2009

iii) General Ledger - Excise Duty Refund Receivable Account from the date August 07 to March 2009.

7. On perusal of the records, it is evident that the discounts are pre-notified to their customers and have been passed on as evidenced from the invoice and accounts. The certificates given by the Chartered Accountant, who also indicate the discounts have been passed on and wherever duty was liable to be refunded, the same has been shown as receivable in the books of accounts. We find that the appellants have adhered to the requirements of provisions related to valuation of goods under Central Excise Act, 1944 and made there under. We find that the discounts are known to their distributors before the clearance of the goods and the same have been passed on. Therefore, in view of the case laws cited by the appellant and the ratio of the decisions of this Bench in respect of the appellants themselves (supra), we find force in the arguments put forth by the appellants. Accordingly, we find that the appeals on merit to be allowed.

8. In view of the above in respect of Appeal No.E/841/2011 is allowed in toto and the appeal in respect of Appeal No.E/127/2011 is allowed to the extent of Rs.19,835/-.

(Pronounced in court)

(D.M. Misra) ***(P Anjani Kumar)***
Member (Judicial) ***Member (Technical)***

PJ