CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Custom Appeal No. 85874 of 2013

(Arising out of Order-in-Appeal No. 941/MCH/AC/CRARS/2012 dated 29.11.2012 passed by the Commissioner of Customs (Appeals), Mumbai)

M/s Essar Steel (I) Ltd. ....Appellant
27 KM Surat-Hazira Road
Hazira- 394 270

VERSUS

CC (EXPORT),MUMBAI ....Respondent
New Customs House, Ballard Estate,
Mumbai 400 001

APPERANCE:

Shri Roshil Nichani, Advocate for the Appellant
Shri Dharmendra Singh, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86897 / 2019

Date of Hearing: 20.08.2019
Date of Decision: 24.10.2019

PER: AJAY SHARMA

This appeal has been filed by the Appellant challenging the impugned order dated 29.11.2012 passed by the Commissioner of Customs (Appeals), Mumbai in Order-in-Appeal No. 941/MCH/AC/CRARS/2012.

2. The issue to be decided is whether redemption fine and penalty are subject to the doctrine of *unjust enrichment*?

3. The facts leading to the filing of the instant appeal are as follows. The appellants had filed Bill of Entry for import of second hand, old and reconditioned engine with a declared value of Rs.15,78.009/-. But according to the authorities the said engine was 're-manufactured' and as such prohibited for import. The Adjudicating Authority vide its order dated 7.2.2008 held the goods to be prohibited goods and ordered for confiscation of the same with an option to the appellants to redeem the same on payment of redemption fine of Rs.11,00,000/- u/s. 125 of the Customs Act, 1962 and also of penalty of Rs.1,50,000/- u/s. 112(a) ibid. The Appellant paid both redemption amount and penalty totaling Rs.12,50,000/-. They also filed Appeal and the Commissioner (Appeals) vide Order-in-Appeal dated 27.5.2008 allowed the Appeal filed by the appellants and held that there was no contravention of Foreign Trade Policy.

4. On the basis of the Order-in-appeal dated 27.5.2008, the appellants filed refund claim for the refund of Rs.12,50,000/- paid by them as per the direction of the adjudicating authority. The concerned authority vide Order-in-Original dated 13.8.2009 although allowed the refund but credited the same to the Consumer Welfare Fund by applying the principle of *unjust enrichment*. On Appeal, the learned Commissioner (Appeals) vide impugned order dated 29.11.2012 upheld the Order-in-Appeal and rejected the Appeal filed by the Appellant on the ground of unjust enrichment and held that the appellants had not submitted any documentary evidence before the adjudicating authority to show that the incidence of the amounts in question has not been passed on to anybody else.

5. I have heard learned counsel for the appellant and learned authorised representative for the revenue and perused the Appeal paper book alongwith the written submissions and the case law placed on record by the learned counsel. Learned counsel for the appellants submitted that the learned Commissioner erred in rejecting the appeal by relying upon the decisions of the Hon'ble Supreme Court in the matter of *Sahakari Khand Udyog vs. CCE; 2005(181) ELT 328 (SC)* and *Mafatlal Industries vs. UOI; 1997(89) ELT 249 (SC)*. He also submits that the principle of *unjust enrichment* does not apply in case of refund of redemption fine, penalty etc. He also submitted that the decisions of the Hon'ble Supreme Court which were relied upon by the learned commissioner, do not apply on the facts of the case since the same are in context of refund of duty and not refund of redemption fine, penalty etc. He submits that the Appellant did submit the Chartered Accountant's certificate in support of its contention that the amount has not been passed on to the consumer therefore the learned commissioner's finding is erroneous that the appellants had not submitted any documentary evidence before the adjudicating authority to show that the incidence of the amounts in question has not been passed on. Per contra, learned Authorised Representative for the revenue reiterated the findings recorded in the impugned order and prayed for dismissal of appeal.

6. The issue involved in the matter is no longer *res integra* in view of the decision of the Hon'ble Supreme Court in the matter of *CC, Raigad vs. M/s. Finacord Chemicals (P) Ltd. & Ors.; 2015-TIOL-*

104-SC-CUS which consists of three Appeals. The said decision is in respect of three different Appeals and the Hon'ble Supreme Court in one of the Appeals viz. in *Civil Appeal No. 6541 of 2010, United Spirits Ltd., vs. CC* affirmed the view of the Hon'ble High Court of Judicature at Bombay reported in *2009(240) ELT 513 (Bom.)* that the principle of *unjust enrichment* would not be attracted in case of fine or penalty. The Hon'ble Supreme Court has further laid down that the *doctrine of unjust enrichment* is not attracted in case of refund of pre-deposits. The Hon'ble High Court in the matter of *United Spirits Ltd. (supra)* after considering the decisions of the Hon'ble Supreme Court in the matters of *Sahakari Khand Udyog Mandal (supra)* as well as *Mafatlal (supra)* [*which were relied upon by the learned Commissioner while rejecting the Appeal of the Appellants]* held that the principle of unjust enrichment is not attracted in case of fine and the same was approved by the Hon'ble Supreme Court in *2015-TIOL-104-SC-CUS*. In my view the learned Commissioner ought to have gone through both the decisions of Hon'ble Supreme Court in order to see whether the said decisions are applicable on the facts of the case or in other words whether the same can be applied for rejecting the claim of refund of redemption fine and penalty on the ground of *unjust enrichment*. According to me the Customs Act, 1962 provides restriction only in case of duty, cess, tax, fee and the like but not on fine or penalty or pre-deposit.

7. In view of the decision of the Hon'ble High Court in the matter of *United Spirits Ltd. (supra)* which was later affirmed by the Hon'ble Supreme Court in the matter of *M/s. Finacord Chemicals (P) Ltd.*

(supra), I am of the considered view that the principle of *unjust enrichment* is not applicable so far as the redemption fine or penalty is concerned. Therefore the Appeal filed by the appellants is allowed, with consequential relief as per law.

(Order pronounced in the open Court on 24.10.2019)

(Ajay Sharma)
Member (Judicial)

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