CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 86622 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-PREV-APP-1141-2018-19 dated 26.02.2019 passed by Commissioner of Customs (Appeals), Mumbai-III)

M/s Madhucon Binapuri JV .....**Appellant**
Madhucon House, Plot No.1129/A, Road No.36, Hitec Road, Jubilee HLLS, Hyderabad, Telangana-500033.

VERSUS

Commissioner of Customs (Preventive), Mumbai (Prev) .....**Respondent**
New Custom House, Ballard Estate, Mumbai-400001.

Appearance:

Shri Vishal Agarwal, Advocate along with Ramnath Prabhu, Advocate for the Appellant
Shri S. K. Hattangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85984 / 2022

Date of Hearing: 20.10.2022
Date of Decision: 20.10.2022

PER : S.K. MOHANTY

Heard both sides and perused the records.

2. Applicability of the doctrine of unjust enrichment in respect of refund claim is the subject matter of present dispute. The appellant in this case, was granted with the refund benefit of Rs.24,90,000/- paid

as revenue deposit for provisional release of the imported goods. Consequent upon refund sanctioned by the Department in favour of the appellant, proceedings were initiated for recovery of the refund amount erroneously granted with applicable interest. In this regard, the matter was adjudicated vide original order dated 16.01.2015, wherein the original authority had ordered for refunding the amount in question along with applicable interest. On appeal against the said order, the learned Commissioner of Customs (Appeals), Mumbai-III vide impugned order dated 26.02.2019 has disposed of the appeal filed by the appellant, holding that the refund amount credited to the account of the appellant is hit by the doctrine of unjust enrichment and accordingly, the said amount is required to the transferred to the Consumer Welfare Fund, instead of crediting the same to the appellants bank account. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Learned Advocate appearing for the appellant submitted that the Revenue deposit for an amount of Rs.24,90,000/- made by the appellant during the disputed period was all along borne by them and such incidence had not been passed on to any other person. Accordingly, he submitted that the doctrine of unjust enrichment has no application to the case of the appellant and the amount already sanctioned by the Department cannot be termed as erroneous refund, for the purpose of transferring of such amount to the Consumer Welfare Fund. To strengthen the claim that the appellant should be entitled for refund of the disputed revenue deposit made by

them, the learned Advocate has referred to the Balance Sheet prepared by the appellant during the dispute period. Further, the learned Advocate has relied upon the following judgments in support of grant of the refund amount in favour of the appellant:-

i. Eveready Industries India vs. Commissioner of C.E.X Lucknow 2015 (323) E.L.T. 612 (Tri-Delhi)
ii. Commissioner of C.Ex, Lucknow vs. Eveready Industries India 2017 (357) E.L.T. 11 (All)
iii. Swastika Suitings Ltd. vs. Commissioner of Central Excise, Jaipur-II 2018 (359) E.L.T. 415 (Tri.-Del)
iv. Sona Processors India Pvt. Ltd vs Commissioner of C.Ex., Jaipur-II 2017 (347) E.L.T. 651 (Tri.-Del.)
v. Salve Pharmaceuticals Pvt. Ltd. vs Commissioner of C.Ex., Delhi-I 2016 (339) E.L.T. 297 (Tri.-Del.)
vi. Saint Gobin Gyproc India Ltd. vs Commissioner of C.Ex., Delhi 2016 (335) E.L.T. 120 (Tri.-Del.)

4. On perusal of the Balance sheet prepared by the appellant for the relevant disputed period, I find that the refund amount in question was reflected therein under the heads of Account of "Loans and Advances", with the narration that "Deposit-Commissioner of Customs". Further, I also find that such entry made in the Balance Sheet also continued for the succeeding period, till the amount was finally sanctioned as refund by the Department. It is not the case of Revenue that the refund amount in question was reflected as expenditure in the Profit and Loss account prepared by the appellant during the disputed period. Thus, I am of the view that the incidence of revenue deposit has been borne by the appellant by themselves and the same had not been transferred to any third party. Therefore,

under such circumstances, the appellant should be eligible for grant of refund of the disputed amount and the same cannot be transferred to the Consumer Welfare Fund on the ground that such refund is hit by the doctrine of unjust enrichment. The above relied upon judgments support the case of the appellant that there is no application of the doctrine of unjust enrichment in the circumstances of the present case.

5. In view of the foregoing discussions, I do not find any merits in the impugned order passed by the learned Commissioner (Appeals). Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

Sm/ys