CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87104 of 2019

(Arising out of Order-in-Appeal No.MUM-CUS-RN-IMP-01/2019-20 dated 24.04.2019 passed by the Commissioner of Customs (Appeals), NCH, Mumbai)

Commissioner of Customs (Import), Mumbai-I .... **Appellant**
New Custom House, Ballard Estate, Mumbai – 40001

Versus

M/s Konkan Synthetics Fibres .... **Respondent**
Plot No. C-61, Part-A, MIDC Area,
Mahad, Distt. Raigad- 402 309

Appearance:

Shri S. K. Hatangadi, Authorized Representative for the Appellant

Shri Mihir Mehta a/w Shri Mohit Raval, Advocates for the Respondent

CORAM:

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

FINAL ORDER NO. A/86208/2023

Date of Hearing: 26.07.2023
Date of Decision: 26.07.2023

Per: S.K. Mohanty

Revenue has filed this appeal against the impugned order dated 24.04.2019 passed by the Commissioner of Customs (Appeals), Mumbai-I. Vide the impugned order, the learned Commissioner (Appeals) has set aside the original order and sanctioned the refund in favour of the respondent herein, holding that the doctrine of unjust enrichment would not be applicable to the refund claim filed by the respondent. Revenue has assailed the impugned order on the ground that no documentary evidences were submitted by the respondent to demonstrate that the incidence of duty has been borne by them and the same has not been transferred to the buyer or any other person.

2. Heard both sides and perused the case records.

3. On perusal of the case records, we find that the original authority vide order dated 27.03.2017, though had sanctioned the refund claim amounting to Rs. 68,88,060/-, but instead of paying the same amount to the respondent herein, had credited the same to the Consumer Welfare Fund (CWF), holding that the certificate obtained from the Chartered Accountant is not sufficient and the respondent has not submitted any proper or valid documents to claim that they should be legally entitled to get the benefit of refund. The said original order was negated by the learned Commissioner (Appeals) vide the impugned order, holding that refund claim in question was reflected by the respondent in the Balance-Sheet under the head "other non-current assets". As per the generally accepted accounting principles, when an amount is expensed in the Profit & Loss Account, it is evident that the said amount is recovered from the buyer(s) either directly or indirectly i.e., the person has factored the said amount in the cost of goods sold. On the contrary, when such amount is shown as recoverable or receivable in the books of accounts, then such reflection would conclusively prove that the burden of such amount has been borne by that person himself and not passed to any other person. Insofar as the doctrine of unjust enrichment is concerned, it is the statutory requirement that the person claiming refund should adequately demonstrate that incidence of duty or tax amount has not been passed on to the buyer or any other person(s); and that the

same has been borne by the claimant all along, during the entire period of dispute. The respondent herein is a division of Century Enka Ltd., which is a public limited company. Maintenance of proper books of account is a statutory mandate and subject to audit and verification by both the promoters/shareholders as well as the authorities functioning under different statutes. Since the refund amount in question was not considered as an expenditure during the relevant period and was directly reflected in Balance-Sheet as claims receivable from the department, we are of the considered view that the doctrine of unjust enrichment would not be applicable and the refund amount in question should be paid to the claimant, instead of being credited to the CWF.

4. In view of the above discussions, we do not find any infirmity in the impugned order, insofar as it has sanctioned the refund in favour of the respondent. Accordingly, appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha