CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH

Excise Appeal No. 87488 of 2013

(Arising out of Order-in-Appeal No. BC/22/BEL/2013-14 dated 25.04.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s. Savita Oil Technologies Ltd.
Plot No. 17-17A,
TTC Industrial Area,
MIDC, Pawane,
Navi Mumbai-400 703.

........Appellant

VERSUS

........Respondent

Commissioner of CGST And Central Excise,
Belapur.
1st Floor, CGO Complex,
CBD Belapur,
Navi Mumbai-400 614

<u>APPERANCE:</u>

Shri Mehul Jivani, Chartered Accountant for the Appellant.

Shri Xavier P. M. Mascarenhas, Superintendent, Authorised Representative for the Respondent.

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85074/2024

Date of Hearing: 10.01.2024
Date of Decision: 08.02.2024

PER: DR. SUVENDU KUMAR PATI

Confirmation of the order of the Refund Sanctioning Authority in not crediting the refund amount of Rs.14,77,688/- to the Appellant's account on the ground of Unjust Enrichment after sanction of refund in respect of difference of payment made during clearance done with provisional assessment to the depot that was finally assessed after the clearance to the Customers, by the Commissioner(appeals) *vide* his above referred order, is assailed in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is a manufacturer of excisable goods including lubricants oils being sold in packs of 10, 20,25… up to 210 Liters. The packs of 10 and 20 Liters were assessed on MRP basis, while tax amount more than 20 Liters were assessed under Section 4 of the Central Excise Act, 1944 read with Rule 7 of the Valuation Rules, 2000. While different packs were sold through their C & F Agents with various cash and special discounts, clearance price of which could not be ascertained at the factory gate, for which those were being provisionally assessed with due intimation and permission to the Department. After final assessments were made, for the period between July 2011 and November 2011 excess payment of duty amounting to Rs.14,77,688/- was noticed in respect of some clearances, while short payment of duty amounting to Rs.9,03,154/- was also noticed in respect of some other clearances. Appellant was instructed to file refund application for refund of the excess amount that was subsequently refused to be paid to the Appellant by the Refund Sanctioning Authority on the ground that Appellant failed to discharge the burden of Unjust Enrichment. Its unsuccessful attempt before the Commissioner (Appeals) for getting the refund has brought the dispute to the present Forum.

3. During course of hearing of the appeal, Learned Counsel for the Appellant Shri Mehul Jivani Chartered Accountant, submitted that the

issue is no more *res-Integra* in view of the decision of this Tribunal made in respect of Appellant's own case on identical facts and issues for the period from June 2011 to November 2011, as reported in *2023 (12) TMI 432-CESTAT, Mumbai,* for the period 2010-11 as reported in *2017-TIOL-279-CESTAT-Mum.,* for the period from December 2011 to March 2013 by the Commissioner (Appeals) himself and for the period from October 2009 to March 2010 again *vide* its order No. A/86656-86657/2019 dated 30.07.2019 by CESTAT itself for other periods also which relief on the same issue of refund accrued after final assessment was also granted by the Refund Sanctioning Authorities or Commissioner (Appeals) and Appellant is before this Tribunal claiming refund for the period from July 2011 to November 2012 to its account instead of the same being credited to the Consumer Welfare Fund.

He further argued that facts of all those periods being identical and Respondent-Department having accepted the orders of refund passed in favour of the Appellant, as noted above, it cannot take a divergent stand in view of the settled position of law settled through several decisions including that of *Birla Corporation Ltd. [2005 (186) E.L.T. 266 (SC)], Jain Vanguard Polybutlene Ltd. [2010 (256) E.L.T. (Bom.)], Sunbel Alloys Co. of India Ltd. [2015 (316) E.L.T. 353 (Bom.)].* Placing reliance on the Chartered Accountant certificate, copy of General Ledger Account Book relevant entry and other financial statements, he also argued that those documents would go to demonstrate that refund that has been claimed towards differential duties are not been recovered from the customers, nor passed on to the customers or any other person separately as could be seen from the invoices raised at the C & F Agents/

Depots and more importantly that the amount has been all alone shown as "excise duty refund receivable amount" in their books of account for the entire period 2012 onwards till date for which the order passed by Commissioner (Appeals) is unsustainable in both law and facts. In putting forth example of the *Modus operandi* carried out by the Appellant in reaching at the assessable value after extending discount etc. to the buyers, he took us to the last para of his written submission to substantiate that in actuality duty of Rs.16/- was actually paid by the Appellant on every Rs.100/- while it had collected only Rs.114/- inclusive of duty for clearance of goods from C & F Agencies for which recovery of duty amount from others and claiming refund of the same simultaneously that would attract the doctrine of unjust enrichment is completely ruled out.

4. In response to such submissions, Learned Authorised Representative for the Respondent-Department Shri Xavier P. M. Mascarenhas AR, argued in support to the reasoning and rationality of the order passed by the Commissioner (Appeals) and took us through his order at Para 12 to justify that certificate of Chartered Accountant/ Cost Accountant is just a corroborative piece of evidence which will have no effect in the absence of invoices and other records, for which the order passed by the Commissioner (Appeals) needs no interference by this Tribunal.

5. We have gone through the case record and the order passed by the Refund Sanctioning Authority and Commissioner (Appeals) and also

perused the relied upon decisions. At the outset it is required to be pointed out that only in respect of assessable goods cleared for sale ex-place of removal which is not the factory gate (e.g. C & F Agents/Depot/Consignment agent, the assesse had gone for provisional assessment as there was a requirement to re-determine the transaction value on the basis of selling price at which a maximum quantity of goods was sold. Ex-factory gate on that day of clearance or nearest to the day of clearance and it is in respect of those clearances, final assessment was done by the Jurisdictional Assistant Commissioner after relevant information was provided to him. Therefore, it can be concluded that at the time of clearance of the goods from the factory, Appellant Manufacturing Company itself had provisionally assessed the value of goods and paid the duties itself on the basis of its provisional assessment. So the duty incident was borne by it alone. Then comes clearance from the actual place of removal namely C & F or Depot to the customer, against which invoices were raised in which duty element is reflected but variation of duties were on account of clearance of various quantity of products at different prices even with discounts. The duty collected from those clearances were then calculated and submitted to the jurisdictional Assistant/ Deputy Commissioner who upon final assessment, noticed the fact of excess payment and passed necessary orders. Therefore, the refundable amount accrued in favour of the Appellant was on account of duty paid by it while making temporary clearance from the depot under Rule 7 and the duty actually received from the customers at the time of sale and clearance of goods to them. There is no dispute that the actual discount or sale at a lesser price was not extended to the customers since, the Assistant Commissioner has noted in his findings at Para 5 that Superintendent had verified the reports and statements concerning clearance of goods at the factory gate and at the C & F Agents and submitted his report that discounts were actually passed on by the C & F Agents to the dealers, as indicated in their invoices. This being so, the entire amount of excess payment of duty can be considered as borne by the Appellant alone, since duties from the customers/ dealers were actually realized at C & F Agents end and paid to the department. We are, therefore, of the considered view that in such fulfilment of the procedural requirement there would be hardly any scope that Appellant would be able to collect duty element separately from its customers & dealers to compensate the duties paid by it at the ex-clearance from the factory gate. It is apparently keeping these provisions in mind, the provision of refund of differential duty after financial assessment is codified in Rule 7 itself, in which Department would have refunded the amount on its own without any refund application being filed under Section 11(B) of the Central Excise Act, 1944 and burden of examination of passing/non-passing of duly element would have been done by itself.

6. On the Contrary, Appellant was asked to establish the burden itself and despite the fact that it had submitted its financial statement, duly verified certificate from the Chartered Accountant, which in view of several decision of this Tribunal including the one passed in the case of *Principal Commissioner CGST & Central Excise, Mumbai East Vs. M/s SBI Life Insurance Company* by the CESTAT, *Mumbai* vide its order No.

A/85046/2024 that Chartered Accountant report alone will form the basis of proving financial transaction without corroborative evidence, we have got no hesitation to say that Appellant has not passed the burden the duty element to any other person so as to unjustly enrich itself and it is entitled to get the refund as requested for. Therefore, in carrying forward the judicial precedent set by the Tribunal in its own case and having regard to the fact that this is a case where refund should have been granted immediately upon final assessment, the following order is passed.

THE ORDER

7. The appeal is allowed and the order passed by the Commissioner (Appeals) of Central Excise, Mumbai in Order-in-Appeal No. BC/22/BEL/2013-14 vide order dated 22.10.2021 is hereby setaside. Appellant is entitled to get a refund of Rs.14,77,688/- with applicable interest as per provision of law and the Respondent-Department is directed to pay the same within 3 months of receipt of this order with consequential relief, if any.

(Order pronounced in the open court on 08.02.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Kajal