CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 86451 of 2021

(Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-004-2021-22 dated 29.06.2021 passed by the Commissioner of CGST & Customs (Appeals), Goa.)

M/s. Betts India Pvt. Ltd. ....Appellant
L-78, Verna Industrial Estate,
Verna Salcette Goa – 403 722

VERSUS

Commissioner of CGST & Central Excise, Goa ....Respondent
2nd Floor, GST Bhawan,
Plot No. 6, EDC Complex,
Patto Plaza, Panzi

APPERANCE:

Shri Saurabh Bhise, Advocate for the Appellant

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

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85791/2024

Date of Hearing: 18.07.2024
Date of Decision: 22.08.2024

Adjustment of entire refund amount of ₹13,50,000/-, against outstanding duty dues and interest confirmed by this Tribunal and reconfirmed by the Hon'ble High Court of Bombay in another case, initially deposited against denial of Service Tax paid on inputs that was set aside by this Tribunal on 25.11.2019 consequent upon which the said refund had accrued, is assailed by the Appellant in this appeal.

1.1 Additional amount of ₹4,88,774/- that was deposited *vide* Challan dated 30.06.2009 on the basis of order passed by the Hon'ble High Court of Bombay at Goa on 22.04.2009 is also sought to be refunded by the Respondent-Department, in respect of which no order is passed, is brought into the purview of appeal as subsequent development of occurrence.

2. Bereft of unnecessary detail, Appellant company, which is a manufacturer of plastic laminated tubes, was demanded for a complete refund of CENVAT Credit on excise duty paid amounting to ₹39,57,765/-, taken on capital goods that was removed after use against which duty at depreciated value of ₹29,80,217/- was paid. The dispute covered a chequered path after Adjudicating Authority confirmed the demand, Appellate Authority set aside the demand, Tribunal again confirmed the demand and Tribunal's order had sustained in the High Court, against which right to appeal being exercised by the affected parties at each stage. In respect of another proceeding concerning deposit made against denial of inputs Service Tax credit, Appellant was sanctioned a refund of ₹13,50,000/- by this Tribunal by way of setting aside the order of the Commissioner (Appeals) that confirmed the order of Adjudicating Authority. When Appellant sought for refund of the same amount paid earlier while treating the same as pre-deposit, it received a show-cause notice dated 22.04.2020 from the Refund Sanctioning Authority with a proposal to adjust the previous confirmed duty against the refund claim of ₹13,50,000/-. Appellant contested the

same by saying that it had preferred SLP before the Hon'ble Supreme Court of India but the Refund Sanctioning Authority effected the said adjustment by saying that no stay of the operation of the order was granted by the Hon'ble Supreme Court against such realisation of dues. The said order of adjustment was confirmed by the Commissioner (Appeals) also in following Board Circular No. 1053/02/2017-CX dated 10.03.2017 holding that such recovery proceeding after 60 days of issue of the order was permissible unless stay was granted by CESTAT or the High Court, before whom appeal was preferred. While matters stood thus and appeal against such order of the Commissioner (Appeals) is pending before this Tribunal (present appeal), Appellant succeeded in its appeal filed before the Hon'ble Supreme Court in the other matter, the operating portion of which reads as follows:

> *"We accordingly allow this appeal and quash and set aside the impugned judgment and order of the High Court. The question of law as framed by the High Court is held in favour of the Appellant. The demand issued by the Revenue is quashed and set aside."*

Thereafter, Appellant sought for refund of the said ₹13,50,000/- together with ₹4,88,774/- that was paid on the direction of Hon'ble Bombay High Court at Goa during admission of the appeal and put a request through letter before the Assistant Commissioner of CGST Margao, Goa on dated 12.12.2023 that is still pending for a decision by the said Authority. This appeal is being heard in this background in which legality of the order of Commissioner (Appeals) justifying adjustment of sanctioned refund against duty due is questioned.

3. I have heard submissions from both the sides, I am of the view that going back to the legality of issue of adjustment of refund against duty demand, that has become infructuous in view of the order passed by the Hon'ble Supreme Court as no amount, by way of reversal of CENVAT Credit on removal of capital goods, is held to be payable after the same is paid on its depreciated value. What remains here to be seen is that on the basis of Appellant's request letter dated 12.12.2023 the entire amount of ₹18,38,774/- (13.5 lakhs + 4.88 lakhs paid earlier) is required to be refunded to the Appellant within 15 days of receipt of such request letter in view of Board Circular dated 10.03.2017, falling which interest under Section 11BB is also payable but as could be noticed here, no order was passed by the Refund Sanctioned Authority in that respect. The most important point that would be required to be determined by this forum is concerning its jurisdictional competency to deal with such an issue that occurred subsequent to passing of order by the Commissioner (Appeals), which is assailed herein. To my considered view, the Supreme Court (Decrees and Orders) Enforcement Order, 1954 i.e. C.O. 47 provides the necessary answer to such a contingency. It would be worthwhile to reproduce the said order that reads as follows:

> *"In exercise of the powers conferred by clause (1) of article 142 of the Constitution of India and of all*

other powers enabling him in that behalf, and in supersession of the Supreme Court (Decrees and Orders) Enforcement Older, 1950, the President is pleased to make the following Order, namely:—

1. *(1) This Order may be called the Supreme Court (Decrees and Orders) Enforcement Order, 1954.*

(2) It shall come into force at once.

2. *Notwithstanding anything contained in any other law in force at the commencement of tins Order, any decree passed or order made by the Supreme Court, whether before or after such commencement, including any order as to the costs of, and incidental to, any proceedings in that Court, shall be enforceable:-*

(a) where such decree or order was passed or made in exercise of its appellate jurisdiction,— in accordance with the provisions of law for the time being in force relating to the enforcement of decrees or orders of the Court or Tribunal from which the appeal to the Supreme Court was preferred or sought to be preferred; and

(b) in any other case,- in accordance with the provisions of law for the time being in force relating to the enforcement of decrees or orders of such Court, Tribunal or other authority as the Supreme Court may specify in its decree or order or in a subsequent order made by it on the application of any party to the proceeding."

(Underlined to emphasise)

4. In view of the above provision containing direction of the Hon'ble President of India, this Tribunal which has denied the relief granted by the Commissioner (Appeals) to the Appellant, is duty

bound to enforce the order passed by the Hon'ble Supreme Court as contained in order 2(a) of the said Enforcement Order 1954 and therefore, in exercise of the power conferred on this Tribunal under Rule, 41 of the CESTAT (Procedure) Rules, 1982, that provides in a way for implementation of order, the following order is passed.

<u>THE ORDER</u>

5. The appeal is allowed. Appellant is entitled to get refund of payment of ₹18,38,774/- against demand raised for inadmissible credit taken by the Appellant alongwith applicable interest and for this purpose the order passed by the Commissioner (Appeals) is hereby set aside. Consequential relief accrued after the order passed by the Hon'ble Supreme Court of India be complied within a month of receipt of this order by the concerned jurisdictional Commissioner.

(Order pronounced in the open court on 22.08.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad