CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Excise Appeal No. 85643 of 2015

(Arising out of Order-in-Appeal No.PUN-EXCUS-003-APP—128-14-15 dated 31.12.2014 passed by Commissioner of Service Tax (Appeals) Pune)

Vitthalrao Shinde SSK Ltd. **.....Appellant**
Gangamainagar Post - Pimpalner, Tal – Madha,
District – Solapur - 413 250.

VERSUS

Commissioner of Custom, Excise and Service Tax, Pune-III **.....Respondent**
ICE House, 41-A, Sasson Road,
Opposite Wadia College, Pune 411001.

Appearance:

Shri Sachin Chitnis, Advocate for the Appellant
Shri Xavier P.M. Mascarenhas, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85825/2024

Date of Hearing: 13.08.2024
Date of Decision: 13.08.2024

PER : S. K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture and clearance of sugar and molasses falling under Chapter 17 of the Central Excise Tariff Act, 1985. The appellant had also setup the power plant within the factory for generation of electricity, which is used captively for manufacture of the final products. The excess generated power is also sold to M/s. MSEDCL as per the agreement entered into between them. Since,

electricity is an exempted product, the appellant was required to reverse the cenvat credit at the rate of 5%/6% as per the requirement under Rule 6 of the Cenvat Credit Rules, 2004. In the present case, the appellant had reversed the amount twice in its Cenvat Account and since the reversal was required to be made only once in respect of the electricity wheeled out from the factory, they had claimed refund of the excess reversal made by them in the cenvat register. The refund application filed by the appellant was rejected by the original authority. Against such rejection order, the appellant had filed appeal before the learned Commissioner (Appeals), which was disposed off vide the impugned order dated 31.12.2014, in sanctioning the refund of the amount reversed twice by the appellant. However, instead of crediting the refund amount to appellants' account, the learned Commissioner (Appeals) has transferred the same to the Consumer Welfare Fund, holding that if the refund is sanctioned to the appellant, then they will be unjustly enriched at the cost of some other person. Feeling aggrieved with the impugned order dated 31.12.2014, the appellant has preferred this appeal before the Tribunal.

3. On examination of the case records, we find that the learned Commissioner (Appeals) has credited the refund amount to the Consumer Welfare Fund on the ground that the appellant did not submit the balance sheet to demonstrate that the amount of refund has been shown under the head "claims receivable" in the balance sheet for the relevant period.

4. Learned Advocate appearing for the appellant drew our attention to the balance sheet enclosed in the appeal records to show that the refund claim in question has not been considered as an expenditure in the profit and loss account and the same has been reflected in the balance sheet under the head 'loans and advances' as claims receivable from the department. However, on going through the annexure 15 to the balance sheet, we find that the amount shown in annexure 15 is Rs.61,36,901.60, whereas the appellant has claimed refund amount of Rs.60,99,048/-. Since there is mis-match in the figure reflected in the annexure to the balance

sheet vis-à-vis the refund application filed by the appellant, we are of the view that the appellant is required to explain the exact amount of refund shown in the balance sheet for consideration of their claim that the doctrine of unjust enrichment is not applicable and they shall be entitled for the refund. Therefore, we are of the view that the matter should go back to the original authority for verification of the books of account to ensure that the amount of refund claimed by the appellant has exactly been reflected in the annexure to the balance sheet as amount receivable from the Central Excise department.

5. In view of the above discussions, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for the limited purpose of examination of the books of accounts, more particularly the balance sheet to appreciate that the amount of refund claim by the appellant has been reflected therein under the head claims receivable. If the original authority is satisfied that the refund amount has been reflected in the balance sheet under the head claims receivable, then instead of crediting the refund amount to the Consumer Welfare Fund, the same should be refunded to the appellant. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

6. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

(M. M. Parthiban)
Member (Technical)

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