CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86657 OF 2021

[Arising out of Order-in-Appeal No: NSK/EXCUS/000/APPL/08/2021-22 dated 20th April 2021 passed by the Commissioner of GST & Central Excise (Appeals), Nashik.]

Bhaurao Chavan SSK Ltd
Unit I, Laxminagar, Tal. Arthapur, Dist: Nanded … ***Appellant***

versus

Commissioner of CGST & Central Excise
N-5 Town Centre, CIDCO, Aurangabad ***…Respondent***

WITH

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versus

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N-5 Town Centre, CIDCO, Aurangabad ***…Respondent***

APPEARANCE:

Shri Nikhil Desai, Advocate for the appellant

Shri Xavier M Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: __85341-85342 /2025

DATE OF HEARING: 06/03/2025
DATE OF DECISION: 06/03/2025

These appeals lie against orders[1] [2] of Commissioner of GST & Central Excise (Appeals), Nashik upholding order of the original authority, directing appropriation of ₹ 1,07,036, sanctioned as refund under section 11B of Central Excise Act, 1944, towards existing liabilities, for not reconsidering documents and other evidences adduced in their challenge thereto.

2. Learned Counsel for the appellant submitted that appropriation of the amount refunded as duty not leviable was erroneous inasmuch as no dues were pending against them and that liabilities of M/s HutatmaJaiwantrao Patil SSK Ltd, whose undertaking had been taken over, was not liable to be discharged by them. It was clarified that the assets had been taken over in auction conducted by the bankers of M/s HutatmaJaiwantrao Patil SSK Ltd *i.e.* MSC Bank Ltd and, consequently, did not amount to takeover of the said entity.

3. Learned Authorised Representative reiterated the findings in the impugned order.

[1] [order-in-appeal no. NSK/EXCUS/000/APPL/07/2021-22 dated 20th April 2021]
[2] [order-in-appeal no. NSK/EXCUS/000/APPL/08/2021-22 dated 20th April 2021]

4. From the records, it appears that the appellant is before the Tribunal solely on the ground that the first appellate authority could have set aside the appropriation on the basis of documents submitted therein, and, particularly so, as the same, though furnished to the original authority, had not been taken cognizance of.

5. Though the said documents had been produced before the first appellate authority, as empowerment is vested in Deputy/Assistant Commissioner of Customs to sanction refund as well as adjust such sanctioned amounts towards other dues, and, hence, appropriation to be considered by original authority. Furthermore, disinclination to take responsibility for discharge of statutory empowerment in accordance with the law, is not to be rendered by compliance with upward delegation. There is no reason to interfere with the said order.

6. Accordingly, the appeal is dismissed and the appellant is directed to comply with the impugned order of the first appellate authority in making the submissions before the original authority.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*