CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 5

CUSTOMS APPEAL NO. 87310 OF 2023

(Arising out of Order in Appeal No. MUM-CUS-MA-IMP-70/2023-24 NCH dated 07.07.2023 passed by the Commissioner of Customs (Appeals), New Custom House, Mumbai-I.)

COMMISSIONER OF CUSTOMS-IMPORT,
MUMBAI IMPORT-I
NEW CUSTOMS HOUSE, BELLARD ESTATE,
MUMBAI-400001.

Appellant

Vs.

M/S. ABAN OFFSHORE LTD. (ERSTWHILE KNOWN AS M/S.ABAN LLOYD CHILES LTD.)
8, VIKAS CENTRE, ,1ST FLOOR,
S.V. ROAD, SANTACRUZ (WEST),
MUMBAI-400054.

Respondent

Appearance:
Shri D.S. Maan, Dy. Commissioner, Authorised Representative, present for the Appellant.
Shri Yogesh Patki, Advocate with Shri Simon Mascarenhas, Advocate present for the Respondent.

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

FINAL ORDER NO. A/86280/2025

Date of Hearing : **15/07/2025**
Date of Decision : **12.08.2025**

PER : BENCH

In this third round of litigation, Appellant Commissioner of Customs assailed the legality of the order passed by the Commissioner (Appeals) in granting refund of deposit of Rs. 50 lacs. made after deduction of redemption fine at Rs. 10 lacs, confirmed through CESTAT order from total deposit of Rs. 60 lacs. made during investigation.

2. Fact of the case travelled through a checkered path. Respondent/Importer M/s. Aban Offshore Ltd. was alleged to have imported a rig on 09.12.1998 that was seized on 27.03.1999 through proper seizure list for alleged contravention of the Customs Act which Rig, Respondent/Importer stated to have entered territorial water of India only for repairing and return. Respondent/Importer sought for provisional release of the said rig that was seized on the ground that import had taken place without payment of customs duty and the same was allowed to be provisionally released by the Commissioner (Imports) NCH, Mumbai on 25.08.1999 after furnishing bank guarantee of Rs. 40 lacs and revenue deposit of Rs. 60 lacs. Parallely, show cause cum demand notice was issued on 23.09.1999 demanding customs duty, proposing confiscation with imposition of penalty and redemption fine. Matter was adjudicated and Order-in-Original was passed confirming duty of Rs. 27,91,33,963/-, with redemption fine and penalty of Rs. 50 lacs, as proposed in the Show cause notice, which was challenged by the Respondent/Importer before this Tribunal and vide its order dated 30.06.2003. Respondent/Importer received considerable relief as duty and fine imposed were set aside and redemption fine was reduced to Rs. 10 lacs only. Against this order, both sides went to the Hon’ble Supreme Court challenging the extent of order adversarial to them but none of their appeals sustained and vide their order dated 03.02.2017. Hon’ble Supreme Court had confirmed the order passed by this Tribunal in its totality. In the meanwhile, after this Tribunal passed its order on dated 30.06.2003, Respondent/Importer sought for refund of its amount of Rs. 60 lacs. deposited vide application dated 15.09.2003 after adjustment of redemption fine of Rs. 10 lacs. Refund of Rs. 50 lacs. was sanctioned by

the Refund Sanctioning Authority namely Assistant Commissioner of Customs, Group 5-B, of NCH Mumbai but it was directed to be credited to the Consumer Welfare Forum in terms of Sub-Section(2) of Section 27 of the Customs Act, 1962 on the ground that Importer had failed to meet the requirement of unjust enrichment. Respondent/Importer's appeal before the Commissioner yielded no fruitful result for which he approached this Tribunal again which had remanded back matter vide its order dated 27.04.2017 to the Adjudicating Authority for reconsideration . In the remand proceedings, Respondent/ Importer claim for refund received similar fate by the Adjudicating Authority cum Refund Sanctioning Authority but it succeeded in getting the refund order passed in its favour from the Commissioner (Appeals) before whom he preferred the appeal, legality of the said order is assailed by the concerned Commissioner in this appeal.

3. During the course of hearing of the appeal, Ld. Authorised Representative for the Appellant Commissioner Mr. D.S. Maan, Dy. Commissioner argued that revenue is in appeal on the ground that doctrine of unjust enrichment is applicable in case of all refunds and Respondent/Importer had not passed the test of unjust enrichment by providing documentary proof to that effect. He further submitted that as had been held by Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. reported in 2005 (181) ELT 328(S.C.), doctrine of unjust enrichment can be invoked to deny benefit to which a person is not otherwise entitled and even in the absence of statutory provisions, no person can claim/ retain undue benefit and therefore, in case of refund of the deposit made by the Respondent/Importer which Ld. Commissioner (Appeals) held to be a security deposit for provisional release of goods and not a duty deposit, unjust enrichment would be applicable for which order passed by the Commissioner (Appeals), is required to be set aside.

5. Contradicting the said submission, Ld. Counsel for the Respondent/Importer Mr. Yogesh Pratik, Advocate had argued that there was no importation for home consumption attempted or made by the Respondent/Importer as only for the purpose of repairing, Rig was brought into the territorial water of India and since there was no buyer of the imported goods available in India, receipt of any amount from any other person that would attract the principle of unjust enrichment is completely absent in the present case apart from the fact that Hon'ble Supreme Court in Finacord Chemicals Private Ltd reported in 2015 (319) ELT 616, had set aside Hon'ble Bombay High Court's order passed in the case of Bussa Overseas case as well considered Sahakari Khand Udyog Mandal Ltd. case cited supra that has been relied upon by the Ld. Authorised Representative for the Appellant and, had given its clear finding that doctrine of unjust enrichment could not apply to redemption fine and penalty but would apply to the duty demand only and since there is no importation of goods for home consumption, the amount deposited by Importer M/s. Aban Offshore cannot be termed as duty, for which order passed by the Commissioner (Appeals) need not be interfered with. He further submitted that concerning non receipt of any amount from any quarter, C.A. (Chartered Accountant's Certificate) was placed before the Refund Sanctioning Authority alongwith decided case laws but he had not considered any of them while passing the said order.

6. We have gone thought the case record, written submissions made by the adversaries and relied upon decisions filed on the issue. At the outset it is imperative to have a look at the observation made by this Tribunal in its order dated 30.06.2003, in the first round of litigation, whereby it had set aside the duty demand in its totality with an observation, that is also noted in para-7 of the order passed by the Commissioner (Appeals), that the Rig

had entered the territory water of India only for the purpose of repairs, the import was not complete and therefore, it was not imported goods for home consumption and consequently for no importation of goods, no duty was leviable. The said order has been appealed before the Hon'ble Supreme Court who vide their order dated 02.02.2017 confirmed the same. This being the facts on record, when goods were not released into the territorial water of India, it is not sold to any other person and recovery of the amount paid towards provisional release of Rig for being imported would not arise and therefore it would be improbable option given to the Respondent/Importer to produce documentary proof that it had not collected the said amount from any other person, which in instant case should be customer of goods who is supposed to purchase goods under proper invoice. Since no such thing happened, it cannot be expected that Respondent/Importer would provide documentary proof to substantiate that it was not unjustly enriched when transaction was not in existence. Further, it has to be noted that even though Hon'ble Supreme Court considered its own decision in Sahakari Khand Udyog Mandal Ltd, and opined in Finacord Chemicals Private Ltd. case, cited supra that doctrine of unjust enrichment would not apply to redemption fine and penalty, it would also be worthwhile to look at the ratio of Sahakari Khand Udyog Mandal Ltd decision wherein it was clearly noted that to claim a refund, Assessee had to show that he had paid the amount for which relief is sought (which in the instant case is a admitted fact by both the parties), has not passed on the burden on consumers (which in the instant case is an improbability since goods were not released to Indian territories for home consumption) and if no relief of refund was granted, the assessee would suffer loss, which in the instant case is unbearable since it was huge amount of Rs. 50 lacs, on which it might be losing interest and investment returns on the amount lying with the

Appellant Department since 25.08.1999 because of protracted litigation that continued without a just cause.

7. We are, therefore, of the considered view that appeal filed by the Department is devoid of any merit and the same is required to be set aside with consequential relief to the Respondent to which it is entitled. Hence the Order;

THE ORDER

8. The appeal is dismissed and Order-in-Appeal No. MUM-CUS-MA-IMP-70/2023-24 NCH dated 07.07.2023 passed by the Commissioner of Customs (Appeals), is hereby confirmed.

(Order pronounced in the open court on 12.08.2025)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

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