

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**  
**PRINCIPAL BENCH - COURT NO. II**

**Customs Appeal No. 51235 of 2022(SM)**

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/IMP/ICD/PPG/1458/2021-22 dated 07.12.2021 passed by the Commissioner of Customs (Appeals), New Delhi.)

**M/s D.D. International Pvt Ltd**

Kutail Road, Kutail Karnal,  
Haryana, 132037

**Appellant**

*VERSUS*

**Commissioner of Customs, New Delhi**

Near IGI Airport,  
New Delhi

**Respondent**

**APPEARANCE:**

Mr. Anubhav Goel, Chartered Accountant for the Appellant

Mr. Gopi Raman, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 50127 / 2023**

**vDate of Hearing: 30.09.2022**

**Date of Decision: 15.02.2023**

**ANIL CHOUDHARY:**

The issue in this appeal is whether the sanctioned amount of refund has been rightly credited to the Consumer Welfare Fund.

2. The brief facts are that the Appellant is engaged in processing and export of rice. They were issued- "Agri Infrastructure Incentive Scrips" (AIIS) under the Foreign Trade Policy 2009-14. The Appellant thereafter, imported rice polisher machine with spare parts and colour sorter machine, against these scrips vide the Bills of Entry during March 2012 to August 2013. By using the Agri Infrastructure Incentives Scrips the Appellant saved duty of Rs. 10,78,050/-.

3. That in August 2015, DRI Ludhiana Zonal Unit started investigation in the matter of aforementioned import of machinery by use of the incentive scrips. On the direction of DRI, the Appellant deposited Rs. 6,81,304/- vide demand draft dated 02.03.2017. Thereafter, show cause notice dated 09.03.2017 was issued alleging that the machinery goods were not qualified for import under the subject scrips. Show Cause Notice was adjudicated on contest and vide Order-in-Original dated 09.05.2018, the duty benefit availed at the time of import Rs. 10,78,050/- was confirmed along with equal penalty under Section 114A and Rs. 2 lakhs under Section 114AA.

4. Being aggrieved the Appellant preferred appeal before the Commissioner (Appeals), who vide order in appeal dated 22.01.2020 was pleased to allow the appeal and set aside the Order-in-Original. This Order-in-Appeal was accepted by revenue and no further appeal was filed. Thereafter, the Appellant filed refund claim on 03.02.2020 as follows: –

- a) Rs. 6,81,304/- deposited on 6 March 2017 at investigation stage
- b) Rs. 17,01,269/- deposited on 20 June 2018 during pendency of appeal
- c) Rs. 23,82,573/- total amount of refund claim.

5. In response to deficiency memo dated 28.04.2020 and 2<sup>nd</sup> deficiency memo dated 18.08.2020, the Appellant filed reply and filed the documents as requisitioned. The Deputy Commissioner observed that the bank confirmed the deposits of Rs. 17,01,269/- and Rs. 6,81,304/-. Further, Appellant has submitted CA Certificate certifying that clause of unjust enrichment is not applicable. Vide

Order-in-original dated 31.12.2020, the refund claim was adjudicated on contest observing that the amount is found to be refundable but the Appellant have not satisfied as to the bar of unjust enrichment. Appellant have been unable to prove that the duty burden has not been passed on by them. Thus, amount was credited to Consumer Welfare Fund.

6. Being aggrieved the Appellant preferred appeal before the learned Commissioner (Appeals). It was urged that the machines imported being capital goods and not raw materials, no such machines are sold by way of trade, hence, there was no occasion to pass on the custom duty paid at the time of import. Further, the amount was paid under protest as they had deposited during investigation and also during pendency of the appeal. No unjust enrichment is attracted when the amount has been deposited after out of charge was given, more than 2 to 3 years after import. Further, as the Appellant have contested the demand, the payments were made under protest, *ipso facto*. Accordingly, on such payment/deposit the clause of unjust enrichment is not attracted they relied on the ruling in the case of Commissioner of Customs vs. High Tech Hospital Ltd [2018-361-E.L.T-355(Kerala)] and Commissioner of Customs vs. Venkateshwara Hospitals [2015-323-E.L.T-359 (Madras)].

7. The learned Commissioner (Appeals) observed that the amounts deposited by the Appellant have been claimed as expense in the profit and loss account, and have not been shown as amount recoverable in the books of account. Accordingly, he held the burden

of duty have been passed on indirectly and hence, the Appellant has not rebutted the doctrine of unjust enrichment. Accordingly, the appeal is rejected.

8. Being aggrieved the Appellant is before this Tribunal. The learned Counsel for the Appellant Mr. Anubhav Goel, Chartered Accountant urges that admittedly, the amounts under refund were deposited partly during investigation, after more than 2 years of import of the machinery and partly during pendency of the 1<sup>st</sup> appeal before the Commissioner (Appeals). In this view of the matter, the amounts had been deposited by way of pre-deposit. Admittedly, Appellant have not sold the imported machines nor cleared the same, hence, there is no way by which the Appellant could have passed on the burden of custom duty. Further, the clause of unjust enrichment is not attracted in case of a deposit during investigation or pre- deposit during appeal. Reliance is placed on the ruling in C.C.E vs Pricol Ltd [2015-320- E.L.T-703( Madras)] wherein, it has been held that the principle of unjust enrichment was not applicable to deposit made during investigation, the High Court relied upon the ruling of Hon'ble Supreme Court in the case of Union of India vs. Suvidhe Ltd. 1997 (94) E.L.T. A159 (S.C.). The Apex Court have held that unjust enrichment is not attracted where amount is deposited during investigation and pendency of appeal, as such deposits are under protest or in the nature of pre-deposit. Accordingly, he prayed for allowing the appeal with consequential benefits.

9. Learned AR for revenue Mr. Gopi Raman relies on the impugned order.

10. Having considered the rival contentions, I find that the order of court below is erroneous and in the teeth of the ruling of Hon'ble Supreme Court in the case of Suvidhe Ltd (supra). Admittedly, the amount under refund claim were deposited partly during investigation and partly during pendency of the 1<sup>st</sup> appeal. Further, it is evident that the Appellant did not agree with revenue and have contested the SCN as well as the adjudication order. The amount deposited are found to be deposited under protest, *ipso facto*. Further, these amounts are also in the nature of pre-deposit. Accordingly, I hold that the burden of unjust enrichment is not attracted.

11. In view of my findings and observations, I allow this appeal with consequential benefits. The Adjudicating Authority is directed to grant the refund with interest @ 12% per annum from the date of deposit till the date of refund, as held by a division bench of this Tribunal in the case of Parle Agro Ltd. The refund alongwith interest should be disbursed within a period of 45 days from the date of receipt of a copy of this order.

12. Appeal allowed.

(order pronounced in the open Court on .....)

**Anil Choudhary**  
**Member(Judicial)**