

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Single Member Bench
Court – I

Customs Appeal No. 30979 of 2018

(Arising out of Order-in-Appeal No. HYD-CUS-000-APP-010-18-19 dt.31.05.2018 passed by
CC & CT (Appeals-I), Hyderabad)

Pelican Rubber Ltd

15-1-560, Siddiamber Bazar,
Hyderabad, Telangana – 500 012

.....Appellant

VERSUS

**Commissioner of Customs,
Hyderabad - Customs**

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

Appearance

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

Shri P. Amaresh, DR for the Respondent.

Coram:

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30158/2023

Date of Hearing: 19.06.2023

Date of Decision: 23.06.2023

[Order per: A.K. JYOTISHI]

The Appellants have filed this Appeal against the Order of the Commissioner of Customs & Central Tax (Appeals-I). The Commissioner (Appeals) vide his impugned OIA has set aside the Order passed by the Original Authority granting them refund and allowed the Appeal filed by the Department.

2. Initially, in the first round of litigation, the Appellant's refund claim was rejected and subsequently, the Original Authority granted refund in the light of the Order passed by this Tribunal vide its Final Order No.A/30131/2017 dated 13.02.2017. However, the Department did not agree with this sanction of refund solely on the ground that the Original Authority has not examined the question of compliance of the Appellant to the principle of unjust enrichment as is required under the provisions of Sec.27(2)(a) & 28D of the Customs Act, 1962. The Commissioner (Appeals) has, *inter alia*, held that the Original Authority has not examined the legal requirements i.e., Section 27(2)(a) of the Customs Act, 1962. He also held that under Section 28D of the Customs Act,

unless the contrary is proved by the claimant, it is deemed that burden of duty is transferred to the buyer of the goods.

3. Further, after going through the submissions of the Appellants and the documents viz., CA Certificate, the Commissioner (Appeals) held that Appellants have failed to submit proper documents to prove that they had not passed on the burden of duty which was sought to be refunded.

4. The learned Advocate for the Appellant is primarily relying on the CA Certificate issued by the CA, M/s C. Narayan, wherein, he has certified that they have not passed on the Customs Duty amount of Rs.3,75,756/- to the customer against the Bill of Entry No.6649432 dated 25.04.2012. The learned Advocate also submits that in their Books of Account, they have shown this amount as "Taxes/duty recoverable". They have also submitted that the issue of unjust enrichment has not been raised or discussed by the Original Authority as the matter was only relating to non-claiming of exemption at the time of filing of Bill of Entry, non-submission of original Certificate of Origin and non-submission of specimen signature of Authorities who issued Certificate of Origin etc. As against these issues, this Tribunal has already, vide its Final Order dated 01.02.2017, set aside the Order passed by the Lower Appellate Authority. They have also submitted that while they were asked to submit the CA Certificate in the course of Personal Hearing held on 21.05.2018 within one week's time by Commissioner (Appeals), they could not do so because their Consultant was out of station and when they went to submit the CA Certificate, they came to know that Order was already passed in the subject case.

5. The learned DR, on the other hand, has reiterated the grounds taken by the Appellate Authority in the OIA and has also pointed out that in view of the provisions of Sec.28D, unless contrary is proved the Appellant would be deemed to have passed on the full incidence of such duty and that the principle of unjust enrichment is rightly invoked in the facts of the case.

6. Heard both the sides.

7. The short question for determination in the facts of the case is whether principle of unjust enrichment is applicable or otherwise and if so, whether Appellants have passed the bar or not. It is an admitted fact that the Original Authority has granted the refund based on this Tribunal's Judgment cited supra, without examining the same from the angle of unjust enrichment as provided under the Customs Act, 1962, against which the Department filed an Appeal

before the Commissioner (Appeals). The Commissioner (Appeals) has come to the conclusion that the Appellants did not succeed in establishing their case against the presumption provided under Sec.28D and in consequence, the amount of refund granted has to be held erroneously granted to the Appellants which is liable to be recovered from them as per law.

8. The entire issue of whether they were entitled to exemption or not, has already been decided by this Tribunal and the only limited issue was the consequential refund available to them. The Original Authority has granted the same without examining the principle of unjust enrichment, whereas, the Appellate Authority has set aside the said Order holding that Appellants have not been able to cross the bar of unjust enrichment by proving that they have not passed on the incidence of duty.

9. Appellants have tried to argue that even though they had submitted original CA Certificate regarding non-applicability of unjust enrichment on 28.12.2012 as indicated in Para 6 of OIO No.117/2018 dated 28.12.2012 (noted at para 5 by Commissioner (Appeals) in impugned Order-in-Appeal dated 31.05.2018), the ground was not taken up by Original Authority. However, the impugned OIA is with reference to OIO No. 237/2017 dated 01.09.2017. Thus, it is not apparent whether the CA Certificate was submitted to concerned authority while passing Order dated 01.09.2017 in which he has however not discussed this issue at all. Therefore, considering the fact that Appellants tried to submit the CA Certificate to Commissioner (Appeals) at appellate stage, which could not be submitted due to delay of few days and the fact that there has not been any occasion for them to defend their claim of not having passed the incidence of duty, so as not to be hit by the principle of unjust enrichment before the Original Authority, I find much merit in the arguments advanced by the learned Advocate for the Appellant. They have adduced a CA Certificate in support of their not having passed on the incidence. They have also submitted that the said amount was shown as "Taxes/duty recoverable" in their Books of Account.

10. It is also noted that in impugned OIA, the Appellate Authority doubted the bonafide of CA's Certificate dated 27.02.2017, as it was related to fine and penalty and not duty. However, I have perused CA Certificate dated 27.02.2017 from C. Narayan filed with Appeal and it does not indicate fine or penalty but duty. Therefore, in the interest of justice, the matter needs to be referred back to the Original Authority to go through the documents furnished by them and

any other additional evidence or documents which he might require to come to the conclusion whether the principle of unjust enrichment is invokable in the instant case or otherwise. It is however to be noted that merely CA Certificate per se cannot be the sole ground for proving that they have not passed on the incidence of duty, if the sanctioning authority is not satisfied with the documents and he may also rely in addition on any other documents in order to come to the conclusion as to whether duty incidence has been passed on to customer or not in the facts of the case. Therefore, the Original Authority will decide the matter within a period of three months from the date of passing of this Order, after giving them the opportunity to produce all the relevant documents which he might require and after giving them Personal Hearing pass the speaking Order.

11. Accordingly, I pass the following Order:

The Order of the Commissioner (Appeals) No.HYD-CUS-000-APP-010-18-19 dated 31.05.2018 is set aside and the matter is remanded back to the Original Authority.

12. The Appeal is allowed by way of remand to the Original Authority.

(Pronounced in the Open Court on 23.06.2023)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)