(2015) 08 BOM CK 0022

In the Bombay High Court

Case No : Central Excise Appeal No. 136 of 2014

Commissioner of Central Excise, Pune-I — APPELLANT

Vs

Sandvik Asia Ltd. — RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B

Citation : (2015) 323 ELT 431

Hon'ble Judges : S.C. Dharmadhikari, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : Vijay H. Kantharia and Jitendra B. Mishra, for the Appellant; Prakash Shah and Jas Sanghavi instructed by M/s. PDS Legal, Advocates for the Respondent

Judgement

1. This Appeal of the Revenue challenges the order dated 4th December 2013 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai [2014 (303) E.L.T. 138 (Tribunal)] . By the said order, the Revenue''s Appeal has been dismissed. The Revenue was in appeal against the order of the Commissioner (Appeals). He held that the request of the Assessee/ Respondent for refund is not hit by the bar of unjust enrichment. That bar or that principle will have no application since the Assessee had paid the amount at the time of hearing of stay application. It was a pre-condition imposed by the competent Court/Authority for grant of stay pending disposal of the main proceeding. Therefore, Section 11B of the Central Excise Act 1944 is not attracted to such a case.

2. Mr. Kantharia, learned counsel appearing in support of this Appeal submits that the conclusion of the Tribunal would raise substantial questions of law and particularly as formulated by the Revenue at page 6 of the paper-book.

3. On perusal of the impugned order and considering the arguments of both learned counsel, we are unable to agree with Mr. Kantharia. The Tribunal was not concerned with the treatment given to the amount and as deposited in the

Assessee''s profit and loss account. It is immaterial and irrelevant for the Tribunal and equally for us as to what the Assessee terms this amount in his Books of Account. Even if it is shown on the ''expense side'' that does not mean that the presumption that the burden has been passed to the consumer can be raised.

4. Repeatedly the Hon''ble Supreme Court has clarified that section 11B, which deals with the claims of refund of duty, will not apply to a case where the amount in question was deposited in compliance with the interim order. If the amount is directed to be deposited not towards duty liability but as a condition for grant of interim relief or interim stay, then this question of unjust enrichment would not arise at all.

5. Mr. Shah, learned counsel appearing on behalf of the Respondent -- Assessee has rightly relied upon the judgment of the Supreme Court recently passed in Civil Appeal Nos. 1633 to 1638 of 2004 Commissioner of Customs (Import) Vs. Finacord Chemicals (P) Ltd. and Others(2015) 5 ABR 73 : AIR 2015 SC 2752 : (2015) 3 AJR 841 : (2015) 319 ELT 616 : (2015) 32 GSTR 370 : (2015) 6 SCALE 168 .

6. The principle in this decision is the same which is to be found and applied by this Court in the case of Suvidhe Ltd. Vs. Union of India, (1996) 82 ELT 177 . A Special Leave Petition against this judgment of this Court was dismissed by the Hon''ble Supreme Court of India on 7th August 1996 [1997 (94) E.L.T. A159 (S.C.)].

7. It is this very principle which has enabled the Tribunal to conclude that the Revenue cannot invoke the plea or principle of unjust enrichment to the undisputed facts and circumstances of the present case. Such a conclusion recorded in paragraph 5 of the impugned order therefore does not require any interference by this Court in its further appellate jurisdiction. Once the point is decided and stands concluded by two decisions of the Hon''ble Supreme Court of India, then this Appeal does not raise any substantial question of law. The Appeal is thus devoid of any merits and is dismissed.

