2016 (335) E.L.T. 120 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

[COURT NO. IV]

Shri S.K. Mohanty, Member (J)

SAINT GOBIN GYPROC INDIA LTD.

Versus

COMMISSIONER OF C. EX., DELHI-III

Final Order No. A/50090/2016-SM(BR), dated 22-1-2016 in Appeal No. E/55914/2014-SM

Refund of excess duty - Arising from finalization of provisional assessment - Unjust enrichment - Proof of burden of duty not passed on to customers - Since monthly/quarterly discounts given to customers/dealers towards sale of finished products, initially Central excise invoices raised by assessee reflected provisional assessable value and Excise duty payable thereon - Credit notes issued to customers upon finalization of quantum of discounts and discounts amount adjusted in books of account - Refund arising from finalization shown as 'claims receivable' under head 'Loans & Advance' in account books not forming part of finished goods cleared during relevant period - Authority informed vide letter that discount amount not recovered from customers - Said facts endorsed by certificates of Chartered Accountant and certificates issued by customers regarding non-availment of Cenvat credit of Excise duty charged in invoices - Enough proof that refund claim not hit by unjust enrichment - Assessee eligible for refund amount - Section 11B of Central Excise Act, 1944. *[paras 3, 4]*

Appeal allowed

REPRESENTED BY : Shri Dinesh Verma, Advocate, for the Appellant.

Shri B.B. Sharma, (DR), for the Respondent.

[Order]. - The brief facts of the case are that the appellant is engaged in the manufacture of Gypsum Board falling under Chapter 68 of the First Schedule to the Central Excise Tariff Act, 1985. During the period 1-7-2012 to 31-12-2012, the appellant resorted to provisional assessement in terms of Rule 7 of the Central Excise Rules, 2002 on the ground that they were unable to determine the value of excisable goods in terms of Section 4 of the Central Excise Act, 1944 on account of monthly/quarterly discounts and other occasional discounts provided by them to their various dealers/customers towards sale of the finished products. Consequent upon finalization of quantum of discounts, the appellant requested the jurisdictional Central Excise authorities for finalization of the provisional assessment. Upon verification of the documents submitted by the appellant, the Department finalized the provisional assessment. Thereafter, the appellant filed the applications before the jurisdictional Central Excise Authorities, claiming refund of excess Central

Excise duty as a consequence of finalization of provisional assessment on account of discounts provided to various dealers/customers on the provisional value.

1.1 The refund applications filed by the appellant were disposed of vide the adjudication orders both dated 28-1-2014, wherein while sanctioning the refund claim of Rs. 9,39,176/- and Rs. 10,05,855/- filed by the appellant, the original authority had credited the said refund amount to the Consumer Welfare Fund (CWF) established by the Central Government under Section 12C of the Central Excise Act, 1944. The reason assigned in the adjudication orders for transferring the refund amount to the Consumer Welfare Fund (CWF) instead of paying the same to the appellant was that mere issuing of credit note to the buyer does not prove that burden of duty has not been passed on to the dealers/consumers. It has further been observed in the said orders that the appellant had not produced any documentary evidence that they have not collected any duty from their buyers on the value reflected in the Central Excise invoice through which the goods were initially dispatched/cleared to their buyers.

1.2 Feeling aggrieved with the above adjudication orders, the appellant had preferred appeal before the Commissioner (Appeals) which were disposed of vide impugned order dated 30-9-2014 upholding the views taken in the adjudication order. In the impugned order, it has been held that the appellant had charged and recovered the amount of duty paid as reflected in the invoices raised at the time of clearance of the goods. Hence this present appeal before the Tribunal.

2. Heard the ld. counsel for both the sides and perused the records.

3. I find from the available documents on record that the appellant had initially raised the Central Excise invoices reflecting the assessable value and the Central Excise duty leviable thereon, which were paid by its customers. However, upon finalization of discounts/incentives on the schemes prevailed during the relevant period, the appellant had issued the credit notes to their customers, in adjusting the discount amount from the books of account. Further, I also find that the appellant vide their letter dated 26-7-2013 had categorically informed the jurisdictional Range Superintendent that the refund claimed amount has been shown as "claims receivable" in the books of account, under the head "Loans & Advances" and that such claimed amount do not form part of finished goods cleared during the relevant period. Besides, the appellant had also informed the refund sanctioning authority vide their letter dated 13-6-2013 that the duty amount on account of discount have not been recovered from the dealers/customers. The above facts have also been endorsed by the independent practicing Chartered Accountants, who on verification of the books of account of the appellant, vide certificates dated 20-12-2012, 28-2-2013, 23-7-2013 and 2-12-2014 have certified that the refund claimed amount do not form part of the finished goods, and thus, the appellant had not passed on the duty incidence to the dealers/customers or any other person. Furthermore, I also find that the customers of the appellant have also issued the certificates, certifying that they have not availed any Cenvat credit of Central Excise duty charged by the appellant in their invoices and that final payment on account of goods have been made to the appellant after adjusting the amount mentioned in the credit notes raised by them. Though, the above referred documents were produced by the appellant before the lower authorities, but the same have not been considered in their proper prospective for adjudication of the refund claim.

4. In view of above, I am of the firm opinion that the above *modus operandi* adopted by the appellant clearly demonstrate that they have neither recovered any amount in respect of discount from their buyers/dealers, nor have recovered any amount representing duty of Central Excise on such incentive amount. Hence, the refund claim of the appellant is not hit by the doctrine of unjust enrichment.

5. Therefore, I do not find any merits in the impugned order, and thus, the same are set aside and the appeal is allowed in favour of the appellant with consequential benefit of refund.

(Pronounced in open Court on 22-1-2016)

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