

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 12878 of 2018-DB

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEALS-PS-225-2017-18 dated 06.08.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Savita Oil Technologies Ltd

...Appellant

10/2, 10/1/1, Kharadpada, P.o. Naroli,
Silvassa, Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Daman

...Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:

Shri Mehul Jivani, Chartered Accountant for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 11947/2024

DATE OF HEARING: 16.05.2024
DATE OF DECISION: 05.09.2024

RAJU

This appeal has been filed by the M/s. Savita Oil Technologies Limited against denial of a refund claimed by the appellant.

2. Learner Counsel pointed out that during EA-2000 audit was conducted for the period November 2013 to May, 2015. It was observed that the appellant had issued supplementary invoices during the period December 2013 to May 2015, amounting to Rs. 40,51,034/- in respect of supplies of transformer oil made to various parties. These supplementary invoices were issued on account of post clearance variation in the price of oil. On being pointed out by the audit team, the appellant paid an interest amounting to Rs.

55,94,700/- for the same period in respect of supplementary invoices issued by them for such variation of price. Three different show cause notices were issued to the appellant demanding interest on such delayed payments. The appellant paid the said amount of interest under protest the said show cause notices.

2.1. The Learned Counsel pointed out that there after a show cause notice was issued seeking to deny the refund claim filed by the appellant and on the following grounds :-

- Refund claim is barred by limitation.
- SCN for demanding the said interest amount is pending for adjudication.

The matter was decided by the original Adjudicating Authority. The original Adjudicating Authority rejected the claim on the ground of limitation treating the payment made by the appellant as payment not made under protest. It was argued that no proper protest was lodged while paying the said amount. The original Adjudicating Authority rejected it on the ground of unjust enrichment and he observed that no documentary evidence has been submitted to discharge the onus put on the claimed by the law relating to unjust enrichment. The said order relies on the decision of the Hon'ble Apex Court in the case of Steel Authority of India 2015 (326) ELT 450 SC to hold that the issue regarding liability of interest on account of payment of duty due to revision of prices have not been finally settled and the matter has been referred to the larger bench. The order also relies on the fact that show cause notices demanding the interest were pending and not decided and therefore, the issue of refund of interest cannot be decided.

2.6. The learner Counsel pointed out that the matter was agitated before the Commissioner (Appeal) who relying on the decision of Hon'ble Apex Court in

the case of Steel Authority of India 2015 (326) ELT 450 SC has rejected the appellants claim.

2.7. The order of Commissioner (Appeal) has also goes into aspect of the unjust enrichment holding that the appellant has failed to establish that the burden arising on account the amount of interest so paid has not been passed on.

2.8. The Commissioner (Appeal) has not given any finding in respect of limitation and in respect of the pendency of demands on account of interest liability.

2.9. Learned Counsel for appellant argued that the impugned order has travelled beyond the show cause notice as the issue regarding unjust enrichment was not invoked in the show cause notice. He further submitted that principle of unjust enrichment is not applicable to the present case. He pointed out that the interest paid by the appellant under protest has not been recovered from the customer and therefore, principle of unjust enrichment is not applicable. He argued that since interest has been paid under protest after being pointed out by the revenue in the audit, same could not have been passed on by the appellant to the customer at the time of clearance of the goods. He further argued that the issue of unjust enrichment cannot be made to applicable to payments made under protest during pendency of adjudication proceeding or investigation. He further argued that the refund claim is not barred by limitation. He further argued that the interest liability has been waived in terms of SVLDRS Scheme.

2.2. He further pointed out that the demands of interest liability were adjudicated by the Assistant Commissioner vide Order-In-Original No. 07 /AC/ SLV-VII-DEM-1920 dated 20.06.2019, Wherein he has confirmed the demand of interest. The appellant had filed an application against the said order under the "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS)

against the order dated 28.06.2019. He pointed out that department has issued discharge certificate in form SVLDRS - 4 on 06.12.2019. He pointed out that the said discharge certificate the amount payable has been shown as zero. He pointed out that since the amount payable has been shown as zero it means that no further duty interest or penalty has to be paid. He argued that it amounts to waiver of interest.

3. Learner AR relies on the impugned order. Learner AR has argued that the Order-In-Original No. 07/AC/SLV-VII-DEM-1920 dated 28.06.2019 confirming the demand of interest has been settled in SVLDRS Scheme. He argued that in view of the said settlement in the SVLDRS Scheme issue of discharge certificate dated 06.04.2019, the interest has to be refunded.

4. We find that this is a very misleading claim. In the instant case demand was of interest. The matter was settled as entire amount of interest was paid by the appellant.

4.1. In this circumstances the penalty was waived. There was no interest liability on the interest demanded by the revenue. In this circumstances it cannot be said that since discharge certificate under SVLDRS Scheme has been issued, the demand of interest is stand set aside. SVLDRS Scheme is intended to recover dues not paid. It is not intended to refund legally paid dues.

4.2. It is seen that the show cause notice demanding this interest was confirmed by the original Adjudicating Authority. The said show cause notice was settled under SVLDRS Scheme in this circumstances the question of refund of the amount confirmed in the said show cause notice does not arise.

4.3. We find that the lower Authority has gone into the question of unjust enrichment which was superfluous at the stage when the same authorities have held that refund is not admissible. The question of unjust enrichment would only arise when the authorities come to the conclusion that refund is

admissible to the appellant on merits. Once the lower authority come to the conclusion that refund is admissible on merits only then they can go into the question of unjust enrichment. No order under unjust enrichment can be issued rejecting the refund claim, the only order which can be issued under unjust enrichment is sanctioning the refund claim and transferring amount to the Consumer Welfare Fund. From the above facts and circumstances, we do not find any merit claim made by the appellant.

5. The appeal is dismissed.

(Pronounced in the open court on 05.09.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Arpita