

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH, CHANDIGARH  
COURT NO. I**

**Appeal Nos. C/61573 to 61577/2018-Cus (DB)**

**Arising out of OIA No.LUD-CUS-001-APP-1304-1308-18, Dated: 21.06.2018  
Passed by the Commissioner of Central Excise Central Revenue Building,  
Plot No.19, Sector  
17C, Chandigarh**

**Date of Hearing: 02.04.2019**

**Date of Decision: 02.04.2019**

**MONTE CARLO FASHION LTD  
G T ROAD, SHERPUR, LUDHIANA**

**M/s OSWAL WOOLEN MILLS LTD  
G T ROAD, SHERPUR, LUDHIANA**

**Vs**

**COMMISSIONER OF CUSTOMS  
LUDHIANA, REVENUE BUILDING  
PLOT NO 19, SECTOR 17C, CHANDIGARH**

**Appellant Rep by: Shri Surjit Bhadu, Adv.  
Respondent Rep by: Shri M S Dhindsa, AR**

**CORAM: Ashok Jindal, Member (J)  
C L Mahar, Member (T)**

**Cus - The assessee is in appeal against impugned orders rejecting their refund claims as assessee have failed to pass the bar of unjust enrichment - It is a fact on record that the assessee have paid CVD under protest and the letter of protest has not denied by the Revenue - Moreover, the invoice also confirms that they have not charged any CVD from the buyer - It is also mentioned in the invoice itself that all duties of excise exempted vide Notfn 30/2004-CE - The chartered accountant also certifies that the amount of CVD has not been recovered from the customers and to that effect, the assessee has produced a certificate dt.25.03.2017 on record - The Commissioner (A) in the impugned order has also confirmed that the CVD has been paid and the same was recoverable from the department when the assessee got a favourable order from this Tribunal - Assessee have passed the bar of unjust enrichment - Merely, the assessee have made debit entry in Profit and Loss Account as expenditure and not shown in balance sheet as dues recoverable from the department cannot be the reason to deny the refund claim for the reason that assessee have not passed the bar of unjust enrichment as held by Bombay High Court in case of *Sandvik Asia Limited* - Assessee is entitled to refund of CVD paid under protest at the time of clearance of the imported goods - In the result, the impugned orders set aside: CESTAT**

**Appeal allowed**

**Case laws cited:**

***Yamuna Gases & Chemicals Ltd.-2017 (347) ELT 291 (Tri.-Chd.)... Para 3***

***CCE, Pune vs. Sandvik Asia Ltd.-2015 (323) ELT 431 (Bom)... Para 3***

**FINAL ORDER NOS. 60376-60380/2019**

**Per: Ashok Jindal:**

**The appellants are in appeal against the impugned orders rejecting their refund claims as the appellants have failed to pass the bar of unjust enrichment.**

**2. The facts of the case are that the appellants are engaged in the import of polyester blankets/polyester mink blankets made out of 100% polyester spun yarn. During the period May 2013 to July, 2015, these imports were made by the appellant from China. The goods were assessed to basic excise duty and CVD leviable under Section 3 of Central Excise Tariff Act, 1975 along with other duties payable under the Act. The appellant was of the view that the goods imported by them does not attract Countervailing Duty (CVD) leviable under Section 3 of the Tariff Act because the excise duty on the like articles if manufactured in India is exempted by Notification No.30/2004-CE dt.9.7.2004. But for clearance of the goods, the appellant paid CVD under protest and later on contested the same before this Tribunal. This Tribunal held that the appellants were not required to pay CVD. Consequent to the order of this Tribunal, the appellants have filed refund claims of CVD paid by them for clearances of the imported goods. As during the period in question, the appellant debited the CVD in the Profit and Loss Account and in the books of accounts not shown recoverable from the department, therefore, the refund claims were rejected holding that the appellants have not passed the bar of unjust enrichment. Therefore, the appellants are in appeal before us.**

**3. Ld. Counsel for the appellant submits that the appellants have paid duty under protest and a protest letter has been filed in the month of May, 2013 relying on various judicial pronouncements that they are not liable to pay duty but the Revenue forced to pay the same. He further submits that the appellant has not recovered duty on account of CVD from the buyers. Moreover, in the invoice itself shown that all duties of excise exempted vide Notification No.30/2004-CE dt.9.7.2004, therefore, the question of recovery of duty from the buyers does not arise. The only reason to hold that the appellant has not passed the bar unjust enrichment is the amount of duty paid by the appellant has been debited in the Profit and Loss Account as expenditure and not shown in the balance sheet as dues recoverable from the department. That cannot be the reason that the appellant has not passed the bar of unjust enrichment. In fact, they have got favourable order from this Tribunal that the amount is recoverable from the department. In that circumstance, they have passed the bar of unjust**



**8. We further take note of the fact that the Commissioner (Appeals) in the impugned order has also confirmed that the CVD has been paid and the same was recoverable from the department when the appellant got a favourable order from this Tribunal.**

**9. We also take note of the fact that in the case of Yamuna Gases & Chemicals Ltd (supra), this Tribunal has observed that as the invoice itself clearly shows that the appellant has not recovered duty from the buyers and the buyers have not paid duty, therefore, the appellant has passed the bar of unjust enrichment.**

**10. Further, we take note of the fact that the decision of Hon'ble Bombay High Court in the case of Sandvik Asia Ltd. (supra), wherein the Hon'ble Bombay High Court has observed as under:-**

***"4. 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."***

**11. Admittedly at the time of clearance of the imported goods, the appellants have paid CVD under protest as the said duty was not recovered from the customers evidencing invoiced issued by the appellants. Therefore, we hold that the appellants have passed the bar of unjust enrichment. Merely, the appellants have made debit entry in the Profit and Loss Account as expenditure and not shown in the balance sheet as dues recoverable from the department cannot be the reason to deny the refund claim for the reason that the appellants have not passed the bar unjust enrichment as held by the Hon'ble Bombay High Court in the case of Sandvik Asia Limited (supra).**

**12. Further, we find that the certificate issued by the chartered accountant certifying that the appellants have not passed the duty incidence to the customers. Therefore, we hold that the appellants and have passed the bar of unjust enrichment and they are entitled to claim refund of CVD paid under protest at the time of clearance of the imported goods.**

**13. In the result, we set aside the impugned orders and allow appeals with consequential relief, if any.**