CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

CUSTOMS APPEAL NO. 86618 OF 2022

(Arising out of Order-in- Appeal No. MUM-CUS-KV-IMP-186/2021-22/NCH dated 25.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai-I.)

M/s AKASAKA ELECTRONIC LTD Appellant
(Now M/s. MIRC Electronics Limited)
Onida House, G-1, MIDC,
Mahakali Caves Road, Andheri (E)
Mumbai-400093.

VERSUS

COMMISSIONER OF CUSTOMS(IMPORT) MUMBAI Respondent
New Custom House, Bellard Estate,
Mumbai-400001**.**

APPERANCE:

Shri Hans Raj Garg, Advocate for the Appellant
Shri C.S. Vinod, Asstt. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85552/2026

Date of Hearing : 03.02.2026
Date of Decision: 10.04.2026

In this second round of litigation, appellant has assailed the legality of the rejection of refund order passed by the Commissioner (Appeals) sought against refund of Anti-Dumping Duty (ADD), 1995 that was mandatorily required under Rule-21 Sub-Rule 3 of the ADD Rules, to be refunded if provisional imposition of duty was to be withdrawn subsequently, without being confirmed.

2. Factual aspect of the case that gives rise to this appeal is that in respect of nine Bills of Entry filed for importation of Copper Clad Laminates between the period 19.09.2003 and 22.01.2024, when ADD was provisionally imposed and was subsequently withdrawn/rescinded on 22.01.2004. A total amount of Rs. 27,51,395/- was paid by the appellant. It did wait about a year for such refund of the duty as per Rule-21 sub-rule-3 but Respondent had not followed the Rule. Appellant, thereafter, had filed refund application under Section 11B of the Central Excise Act but that was rejected on the ground of being hit by unjust enrichment and the only justification available in the first and second round of litigation for such rejection was that the said amount was shown in the Appellant's Profit & Loss Account as expenditure and not an amount receivable. Appellant is before this Tribunal challenging the legality of the said order after the direction contained in the order passed by this Tribunal in the first round of litigation was not duly followed.

3. I have heard from both the sides and perused the case record. Vide order passed by the Tribunal on dated 17.03.2017, the following direction was given while remanding the matter back for re-adjudication;

> I find that only issue involved is unjust enrichment in respect of refund claim filed by the appellant against the payment of Anti *Dumping Duty. Both the lower authorities held that the incident of duty has been passed on only on the basis that duty has been accounted in Profit and Loss Account. I completely disagree with the said contention for the reason that only on the basis of duty amount accounted for in profit and loss account alone is not conclusive that the incidence of duty has been passed on. Appellant submitted before the Commissioner (Appeals) that opportunity may be given to explain their case on the basis of various documents despite amount accounted in profit and loss account, incidence of duty has not been passed on. I do not find any reason for denial of this request as the same will not cause prejudice to the Revenue as it is a case of refund claim. It is settled law that every litigant should be given ample opportunity for defending their case. I therefore, of the view that appellant should get*

one more opportunity to substantiate their case that the incidence of duty has not been passed on.

(underlined to emphasise)

In furtherance of the said remand proceedings Refund Sanctioning Authority-cum-Adjudicating Authority passed his order on dated 21.09.2017, the operating portion of which reads as follows;

" In view of direction by the Hon'ble Tribunal the importer was given sufficient time to submit documents to prove their contention that no incidence of duty was passed on to the buyers of imported goods. I find that the importer has orally repeated the arguments which were earlier made before former Adjudicating Authority in this regard. The importer has not submitted any document to prove their contention. On going through C.A. certificate dated 18.12.2004, which was submitted by importer before former Adjudicating Authority, it is seen that even the said C.A. certificate is not prominently conclusive to prove that duty incidence was not passed on.

In view of above I agree with the discussion and findings recorded by the then Adjudicating Authority vide order in original No. 902/AC/GrIV/RKM/06 dated 29.12.2006 and in the absence of submission of fresh evidence by the importer to prove that incidence of duty has not been passed on to any other person. I pass the following order."

Appellant challenged the above referred order before the Commissioner (Appeals) who noted his findings on dated 25.03.2022 at para-9 as follows:

" *The CA certificate dated 18.12.2004 submitted by appellant states that it appears that the appellant has not recovered the amount of duty from its customers by revision in the selling price and the CA is also not statutory auditor of the appellant. Therefore the said Chartered Account's certificate which merely indicates that the duty liability appears not to have been passed on cannot be accepted as evidence in support of non-passing of the burden of incidence of duty. This*

issue has been settled by the Apex Court in the case of Allied Photographic India Ltd [2004 (166) E.L.T. (S.C.).”

4. During course of hearing of the appeal, Ld. Counsel for the Appellant Mr. Hans Raj Garg argued with force that Sub-rule-3 of Rule-21 of the Anti Dumping Duties Rules, 1995 clearly stipulates that provisional ADD already imposed and collected, if any, shall be refunded to the importer, if in accordance to sub-Rule 4 Rule 18 of the said ADD Rules, 1995 duty is withdrawn by the Central Government such collection shall be refunded, which means he is not required to file the refund claim otherwise the language would have been " *the importer shall be entitled to a refund*" for which he relied upon the decision of this Tribunal passed in the case of M/s. Caprihan India Ltd – 2001 (3) TMI 126-CEGAT, Court No. 1, New Delhi and M/s. Savita oil Technologies Ltd 2024 (2) TMI 665- CESTAT Mumbai. He further submitted that despite their best efforts and after production of C.A. Certificate justifying and establishing absence of unjust enrichment, in conformity with CBIC circular No. 06/2008-Customs dated 28.04.2008 that directs the field formation of Respondent Department for acceptance of such certificate as conclusive evidence that is further supported by the decision passed in the case of M/s. Savita Oil Technologies Ltd 2024 (2) TMI 665-CESTAT Mumbai, cited supra and M/s. SBI Life Insurance Company Limited reported in 2024 (1) TMI 1161 – CESTAT Mumbai, no relief was granted to the appellant only on erroneous observation made relying on Tribunal that when the amount is shown as expenditure in the Profit & Loss Account, the burden of unjust enrichment is not discharged, which is un-supported by any Accounting Principle and this aspect has been clarified by this Tribunal in several other judgments passed in the case of M/s. Panduranga SSK Ltd, 2018 (12) TMI 1169- CESTAT Mumbai, M/s. Ring Plus Aqua Ltd -2019 (7) TMI 1478- CESTAT Mumbai and M/s. Ema Lubes Pvt Ltd – 2023 (12) TMI 674- CESTAT Mumbai.

4.1 He further submitted that Ld. Commissioner (Appeals) had referred to the Hon'ble Supreme Court order passed in the case of Allied Photography Ltd. cited supra and Hindustan Petroleum Corporation Ltd Vs. the Commissioner Central Excise that had borrowed inference from Allied Photographics India Ltd which one not at all applicable to the case in hand for the reason that in Allied Photographics India Ltd [2004 (166) E.L.T. (S.C.) only observation was made to the effect that uniformity of price (No change of price) cannot lead to inevitable conclusion that incidence of duty has not been passed on but on the other hand Hon'ble Supreme Court has in clear terms held in the case of M/s. Organan India Ltd –(2008(9) TMI 62-(SC) that on the basis of C.A. Certificate and the CBIC circular, it can be conclusively held that those two findings are sufficient to establish that incidence of duty was not passed on, for which the order passed by the Commissioner (Appeals) is required to be set aside.

5. Per contra, Authorised Representative Mr. C.S. Vinod argued in support of reasoning and rationality of the order passed by the Commissioner (Appeals) and has drawn attention of this Bench to para-9 of the order vide which C.A. certificate was held to be not un-acceptable piece of evidence. Further in placing reliance on the decision passed in the case of Hindustan Petroleum Corporation Ltd as reported in 2015 (317) ELT 379 Tri.Mum, he argued that it was clearly held in the said judgment that Assessee itself has treated the amount as expenditure and not as claims receivables, it cannot be said to have passed the test of unjust enrichment (this was also relied upon by the Commissioner (Appeals) in his order), for which he sought no interference in the order passed by the Commissioner (Appeals).

6. I have gone through the Appeal Paper Book and written submissions viz.a.viz. relevant provision of law and the relied upon decisions cited by adversaries. At the outset, it can be said that going by Rule-21 of the ADD Rules, 1995 there is no requirement of

filing refund application for refund since the Respondent was obligated under the Rule to refund the same as it says such collection, if any, between imposition and withdrawal shall be refunded but appellant was compelled to file the same within one year of such withdrawal notification since refund was not *suo-muto* granted to it and the only ground of rejection on both the rounds of litigation was that it was shown as expenditure, which is un-supported by any Standard Accounting Principles published by Institute of Chartered Accountant, a Statutory Public Authority. In this connection, thread bore analysis of such non-reflection of the said amount as 'receivable' in the Books of Account and its unrelated link to the 'Principle of Unjust Enrichment' has been discussed. It would be, worthwhile, to reproduce para-4 to para-7 of the order passed by the Me as Member (Judicial) of this Tribunal in the case of M/s. EMA Lubes Pvt. Ltd. versus Commissioner of Central Excise and Service Tax, Pune-I [2023 (12) TMI 674-CESTAT MUMBAI, cited supra, that covers the issue as well precedent decision on it would provide the answer also to the present litigation. It runs as follows;

> *4. Going through the available literature produced by advisories mainly the study papers on unjust enrichment published by the Institute of Chartered Accountant and submitted by the Learned Counsel for the Appellant, it is noticeable that in the case of Commissioner of Customs, Air Cargo Unit, New Delhi Vs. Maruti Udyog Ltd. reported in 2003 (155) ELT 523 (Tri-Del) there was observations by the Delhi Bench of this Tribunal that duty incident was held not to have been passed to consumers if a) Duty that was paid was disclosed as amount receivable under all other Current Assets in the Balance Sheet; b) A Chartered Accountant certificate is produced to the effect that incidence of duty was not passed on to the customer and c) Invoices for relevant period would show that there was no change in price of goods.*
>
> *4.1 Apparently, basing on this judgment, Adjudicating Authorities have blindly refused to credit*

the refund amount to the assesse's account, if the amount was not shown as 'recoverable' in the Balance Sheet or in the Profit/Loss Account. After going through the Study Papers on unjust enrichment released by the Institute of Chartered Accountants of India vis-à-vis Compendium on Accounting Standard of Institute of Chartered Accountant of India released in 2017, it is manifestly clear as to under what circumstances any amount is to be shown in the Financial Statement of any Company as 'receivable' or 'expenses'. To begin with, the Accounting Standard prescribed by the Institute, which is a Government of India concern set up by an Act of the Parliament, amount receivable in future is normally termed as 'Contingent Asset' since the availability of such asset would be Contingent/ conditional to fulfillment of certain other conditions. In the definition chapter called Provisions, Contingent Liability and Contingent Assets, under Para 10.5 it has been clearly mentioned that a Contingent asset is a possible asset that arises from past event, the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise. Similarly, under Para 30 of the said chapter, it is mentioned that an Enterprise should not recognize a Contingent asset and Para 33 states that it should not disclose it in the Financial Statement. This being the Accounting Principal there is a requirement to examine as to how the Appellant had maintained its Financial Statement during the relevant period to find out, if exclusively alone from this statement, unjust enrichment is established or bypassed!

5. In a written note, Appellant has submitted a chronology of dates and events in which under serial no. 9 it has mentioned that after Order-in-Original was passed on 30.03.2015 conforming the demand and appropriating the amount, Appellant had written off the conformed duty amount on 31.03.2015 showing it as 'expenses' in its balance sheet. Again upon submission of refund claim consequent upon its acceptance of appeal by the Commissioner setting aside the Order-in-Original in 2017 and the said order attaining finality by

rejection of appeal of Department by the CESTAT on 29.12.2017, it had brought back the said amount by reversing the entry and shown the same as refund receivable, that was written off as expenses in 2014-15. Therefore, entry in relation with account book was flawless though it is no way offering any justification that the doctrine of unjust enrichment is established/not established thereby. The contention of Learned Counsel for the Appellant is well accepted for the reason that maintenance of Accounts Statement, as per the Accounting Standard prescribed by the Institute Chartered Accountant and proof of recovery of duty paid by the Appellant are altogether different from each other. In this connection, I would be tempted to reproduce a portion of my observation made in the order passed in respect of M/s Ring Plus Aqua Ltd. Vs. Commissioner of Central Excise & Customs, Nasik reported in 2019 (370) ELT 1364 (Tri.-Mumbai) to justify that unjust enrichment would not automatically get established by showing amount as 'receivable' in the Financial Statement or as 'expenditure'. Relevant portion of Para 5 of the said order reads;

…It is beyond one's capability to tress out after laps of a decade as to if such amount could be/was absorbed in the exact cost of manufacturing of final product since price of a product can't remain static in all those years. Moreover, as has been observed in the case of M/s Pandurang SSK Ltd. (supra), it is not invariably true that when any amount is shown as expenditure or any expenditure is required to be made, the same has to be absorbed in costing of final product unless there is a proof that pricing of the final product has specifically increased on that score, since there are various mechanisms available before the manufacturer to absorb the cost say by way of reducing profit margin of its sale, overhead expenditures of the company etc.

6. Before parting with the issue, it is imperative to have a look at the provision of unjust enrichment as reflected in Provisio (d) and (e) of Sub Section(2) of Section 11B of the Central Excise Act, 1994. It reads; d) the duty of excise and interest, if any, paid on such

duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person; (e) The duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

7. This Provision has not stated anywhere that any document is required to be produced before the Assistant Commissioner or Deputy Commissioner of the Central Excise to pass the burden of unjust enrichment but to his satisfaction he can call for and examine documents to arrive at a finding that such incident of duty was not passed on to any other person. Therefore, the general perception that burden of proof is on the assesse to establish that incidence of duty was not passed on to any other person is true to the extent that in the case where allegation is made concerning passing of such duty incidence to any other persons, then only he would be in a position to falsify the same through related documents. For example, when a person is accused of committing murder of another person Named 'B' then at least 'B' should have been dead so as to allege 'A' of culpable homicide. Therefore, the finding of the Refund Sanctioning Authority at para 21 of the Order-in Original that Appellant failed to produced documentary proof for not having passed on the incidence of duty of Excise to any other person, is ill founded till there is an allegation based on record that duty has/might have been passed to another person or any other person. It would also be erroneous on the part of Commissioner (Appeals) to refer to Para 17 of the Judgment of Hon'ble Supreme Court passed in the case of Union Of India Vs. Solar Pesticides Pvt. Ltd.-2000 (116) ELT 401 (SC) where there is only reference of indirect passing of duty incidence and not burden of proof. Further straight away arriving at a conclusion that because of the fact that the amount is shown in the Balance Sheet as Excise Duty paid, incidence of duty was transferred and thereby Appellant would be unjustly enriched if amount is refunded to him/it is not sustainable in both law and facts.

7. Apart from the above observation that would nullify the entire reasoning given in the order by the Refund Sanctioning Authority and Commissioner (Appeals) concerning linking of the " amount not shown as receivable" as unjust enrichment, it is also required to be placed on record that such refund viz-a-viz doctrine of unjust enrichment principle are related to refund sought under Section 11B of the Central Excise Rules which should not be established by the Department and in the instant case when Rule-21 Sub-Rule-3 of Anti Dumping Rule clearly says that such collection of 'ADD shall be refunded' by the Department, there was no scope available also before the Refund Sanctioning Authority to go beyond the Statute so as to scrutinise the test of unjust enrichment for which the entire order passed by the Commissioner (Appeals) can never be said to have been passed in conformity to the facts and law governing such crediting of ADD back to the Account of the Importer. Hence the order.

The Order

8. The appeal is allowed and the order passed by the Commissioner (Appeals) vide Order-in-Appeal No. MUM-CUS-KV-IMP-186/2021-22/NCH dated 25.03.2022, is hereby set aside with a direction to the Respondent Commissioner to refund the Anti Dumping Duty of Rs. 27,51,395/-with applicable interest as per law to the Appellant within two months of receipt of this order.

(Order pronounced in the open court on 10.04.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Arti