IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.12 OF 2025

Goldwin Medicare Limited .. Appellant

Versus

The Assistant Commissioner, Palghar .. Respondent

Mr.Bharat Raichandani i/b Akanksha A. Mishra, Advocates for the Appellant.

Mr.Soutrik Kar i/b Harshad Shingnapurkar a/w Ram Ochani, Advocates for Respondents.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : FEBRUARY 11, 2026

P. C.

1. The above Appeal is filed by the Assessee challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal (**CESTAT**) dated 31st January 2024. The impugned order can be found at page 44 of the paper book. According to the Appellant-Assessee the impugned order gives rise to the following substantial questions of law:-

> "(I) Whether in the facts and circumstances of the case, the Honorable Appellate Tribunal was correct in rejecting the appeal, when substantial evidence was

placed on records and the same was appreciated by the Hon'ble Tribunal in its Order dated 21.01.2017 but remanded for proper verification which was not carried out, but rejected the appeal merely citing the buyers who were not part of refund application?

(II) Whether in the fact and circumstances of the case, the Hon'ble Tribunal was correct in upholding contravention of proviso to Section 11B of the Central Excise Act, 1944 only referring to the Buyers whose Central Excise Duties were not part of the refund claim?

(III) Whether in the facts and circumstances of the case, the Honorable Appellate Tribunal has erred in rejecting the appeal and upholding crediting of the Refund Claim to Consumer Welfare Fund, causing injustice to the Appellant?"

2. Briefly stated, the facts reveal that the Appellant is engaged in the manufacture of excisable goods, viz "Surgical Dressing", falling under Chapter 30 of the Schedule to the Central Excise Tariff Act, 1985. Initially, the Appellant filed a refund claim for Rs.29.30 Lakhs on 6th August 2007 on the ground that they had wrongly paid the Central Excise Duty on Retail Sale Price (Maximum Retail Price -MRP) during the period of January – February 2007. According to the Appellant, it was liable to pay excise duty only on the transaction value, and not on the MRP. It was on this basis that a refund claim was made.

3. The said refund claim was adjudicated by the Assistant Commissioner (Adjudicating Authority) who rejected the claim of the Appellant. The order of the Assistant Commissioner was thereafter subjected to an appeal before the Commissioner (Appeals), who upheld the order of the learned Assistant Commissioner. Accordingly, the Appellant approached the Tribunal. The Tribunal came to the conclusion that the matter requires to be remanded back to the Assistant Commissioner to examine the issue afresh after taking into account *inter alia* the buyer's ledgers to be produced by the Appellant. Accordingly, the matter went back to the Assistant Commissioner (the Adjudicating Authority) for deciding the issue afresh.

4. In the second round, considering the order passed by the Tribunal, the Adjudicating Authority called upon the Appellant herein to produce the buyer's ledgers (separate for each buyer) to examine whether there was any unjust enrichment on the part of the Appellant. In other words though the Authorities had come to the conclusion that the Appellant would be entitled to the refund on account of having made excess payment of the excise duty, it still had to be ascertained whether incidence of tax was passed on to the customers, or otherwise. It is for this reason that the Adjudicating Authority, as per the directions of the Tribunal in the first round, called upon the Appellants to produce the buyer's ledgers (separate for each buyer) to determine this aspect.

5. Despite the aforesaid opportunity being given, the Appellants were unable to produce the buyer's ledgers. Accordingly, the Adjudicating Authority held that though the Appellant is entitled to a refund, under the provisions of Section 11B(2), the aforesaid refund was to be credited to the Consumer Welfare Fund established under Section 12C of the Central Excise Act, 1944. This order of the Adjudicating Authority was upheld by the Commissioner (Appeals), and this is how the Appellant approached the Tribunal the second time.

6. The Tribunal, after noting the facts and the findings of the Commissioner (Appeals), came to a factual finding that despite a number of opportunities being given to the Appellants to produce the relevant documents for proving that there was no unjust enrichment on their part, and particularly since it was the Appellant's case that the incidence of higher excise duty paid had not been passed on, the same was not produced before the authorities, even after remand of the matter. In these circumstances, the Tribunal dismissed the Appeal filed by the Appellant.

7. After going through the order of the Tribunal as well as the authorities below, we find that the entire issue is fact based. After examining the facts, the Tribunal came to the conclusion that the Appellant was not able to establish that it would not be unjustly enriched if the refund was granted to them. In other words, it was unable to establish that the incidence of tax of which it was claiming a refund, was not passed on to its buyers/customers. Once this is the factual finding, and considering that the buyer's ledgers were never produced before the Authorities below, we are of the view that the above Appeal does not give rise to any substantial question of law as projected in the above Appeal.

8. The Appeal is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Utkarsh