

**In The Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

**Appeal No. ST/413/2010-DB**

[Arising out of OIA-COMMR-A-/30/VDR-I/2010 dated 26.02.2010 passed by Commissioner of  
Central Excise-VADODARA-I]

M/s General Motors India Pvt. Ltd

Appellant

Vs.

C.C.E. & S.T.,- Vadodara-i

Respondent

**Represented by:**

For Appellant: Shri Jigar Shah (Advocate)

For Respondent: Shri A. Mishra (A.R.)

**CORAM:**

**HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**

**HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

Date of Hearing/Decision: 04.12.2018

**Final Order No. A / 12800 /2018**

***Per: Ramesh Nair***

The issue involved is of refund of service tax paid on reverse charge basis on the service received from the abroad for the period prior to 18.04.2006.

2. Sh. Jigar Shah Ld. Counsel appearing on behalf of the appellant submits that the refund of the service tax were sought for the reason that during the period prior to 18.04.2006, the service tax was not payable on reverse charge basis in respect of service received from abroad, a provision for payment of tax on reverse charge basis came into effect by enactment of Section 66A w.e.f. 18.04.2006 therefore, the refund on merit is clearly admissible. The original authority has rejected the claim only on the ground of unjust enrichment. He submits that the appellant have submitted the CA Certificate and balance sheet before the Commissioner (Appeals). On query of the Bench, he fairly accepts that these documents have not been submitted before Original

authority. It is his submission that as per the balance sheet for the year 2007-2008, the amount of refund has been shown as receivable, therefore incidence of service tax paid, was not passed on to any other person. Hence, refund is not hit by provision of unjust enrichment. He placed reliance on the following judgments:

- ITD-ITD-CEM joint Venture Vs. CSR 2017 (12) TMI 1032-CESTAT, New Delhi
- Rajasthan Electronics & Instruments Ltd. Vs. CCE 2018 (1) TMI 1015-CESTAT-New Delhi
- Icomm Tele Ltd. Vs. CCE 2016 (6) TMI 779-CESTAT Hyderabad
- Needle Industries (I) Pvt. Ltd Vs. CCE 2016 (46) STR 489 (T)
- Radicura Pharmaceuticals Pvt. Ltd Vs. CST 2015 (39) STR 485 (T)

3. Sh. Amit Mishra Ld. Deputy Commissioner (AR) appearing on behalf of Revenue reiterates the finding of impugned order. He submits that service tax was paid for the period July, 1997 to August, 2002. As per the appellant, though it has not been verified properly, the refund amount was shown as receivable in the balance sheet in the year 2007-2008. This amount was not appearing as receivable in the balance sheet for the period right from payment of service tax till 2007-2008. Therefore, even if the amount was first time shown as receivable in balance sheet in 2007-2008, the same is not evidence that the incidence of refund amount has not been passed on to any other person. He submits that from the facts of the case refund is time bar, however, the same was not raised in the SCN.

4. We have carefully considered the submissions made by both the sides and perused the record, we find that necessary documents to prove that there is no unjust enrichment has not been submitted by

appellant before original authority. Before Commissioner (Appeals) also they only submitted balance sheet and CA certificate, however, no further details like, Ledger, Schedule, etc. in support of the balance sheet were submitted before Commissioner (Appeals). Therefore, in absence of such documents, it is not possible to ascertain that whether the incidence of service tax paid and claimed as refund was passed on to any other person or otherwise. Moreover, it is seen that the appellant have not produced Balance Sheet, Ledger, CA Certificate, etc. of the period of 1997-2002 when the service was provided. The documents of 2007-08 provided by appellant are not relevant for this examination.

5. We are therefore of the view that in interest of justice an opportunity can be given to the appellant to satisfy the sanctioning authority regarding the issue of unjust enrichment by producing all the necessary documents. Therefore, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority to pass afresh order in accordance with law. The appeal is allowed by way of remand to adjudicating authority in above terms.

*(Dictated & pronounced in the open court)*

**(Raju)**  
**Member (Technical)**

**(Ramesh Nair)**  
**Member (Judicial)**

Seema