CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 09/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. **A/70802-70803/2016-EX[DB]** dated **10/06/2016**</u>

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1)** of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2185-2186/2007	**T.T. L. LTD.** PLOT NO. 6, SITE-IV, INDL. AREA, SAHIBABAD, GHAZIABAD
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302

Other Appellants and Respondents as per Annexure

Copy To

3<u>Advocate(s) / Consultant(s):</u>

BHASIN SETHI & ASSICIATE
401, SATYAM CINEMA BUILDING,
RANJEET NAGAR,
DELHI

4 Bar Association, CESTAT, Allahabad
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/2185 & 2186/2007-EX(DB)

(Arising out of Order-in-Appeal No. 52-CE/GZB/2007 dated 18/05/2007 & 45-CE/GZB/2007 dated 11/05/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s T.T.L Ltd — **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad — **Respondent**

<u>Appearance:</u>

Shri J.P. Kaushik, Advocate — for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 10/06/2016
Date of Decision : 10/06/2016

FINAL ORDER NO.70802-70803/2018

Per: Anil Choudhary

These two appeals are filed by the appellant, a manufacturer of electronic energy meters, against Order-in-Appeals No. 52-CE/GZB/2007 dated 18/05/2007 & 45-CE/GZB/2007 dated 11/05/2007.

2. The issues in these appeals is whether the appellant have pased on the burden of Central Excise Duty and accordingly the amount found refundable to them have been rightly transferred to consumer welfare fund.

3. The brief facts in appeal No. 2185/07-EX are- Appellant is manufacturers of electronic (energy) meters. The same were sold to M/s Uttar Haryana Bjli Vitran Nigam Ltd. (UHBVNL). Under purchase order dated 31.10.2001 for supply of 65000 meters @ Rs.1120/- per meter inclusive of Excise duty, Sales tax and Freight. The entire quantity was to be supplied by 31.03.2002. The prices were firm. However, clause 9 of the said purchase order provided that it is subject to terms and conditions of memo no. Ch. 344/QD-14/XEN/MMI dated 03.04.2001 which provided for periodical revision of the price depending on the price prevailing in the market. Thus the rate of Rs.1120/- per meter was variable on periodical review in terms of clause 9 of the said purchase order. Similar are the facts in case of appeal No.2186/07-EX, the purchaser being M/s Dakshin Haryana Bjli Vitran Nigam Ltd. (DHBVNL).

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4. The quantitative details are:-

Sl.		E/2185/07	E/2186/07
a.	Purchase order record for (in No. of meters)	65,000/-	65,000/-
b.	Meters supplied by due date on 31.03.02	30,000/-	14,997/-
c.	As per purchaser Board-Balance duty to be supplied at interim price per meter, in clusine of E. duty, S. Tax, Freight+Ins. under the purchase agreement	1,064/-	1,064/-
d.	Offer accepted on	12/04/02	12/04/02
e.	Price settled per meter, by the Boards (in clusine of taxes, freight & Ins), after the supplies were completed	600/-	600/-
f.	Assessable Value (Basic Price) :	886.10/-	886.10/-
g.	Excise Duty	141.78/-	141.78/-
h.	C.S.T.	20.56/-	20.56/-
i.	Freight & Insurance	15.56/-	15.56/-
j.	**Total**	1064.00	1064.00

5. The meters were cleared to UHBVNL/DHBVNL by paying duty of Rs. 141.78 per meter from 23.04.2002 to 25.05.2002. UHBVNL finally fixed the rate of Rs. 600/- inclusive of excise duty, sales tax, freight & insurance vide their letter dated 21.01.2003. The breakup of price of Rs.600/- was as under :-

a) Assessable Value (Basic Price): Rs.493.33

b) Excise Duty Rs. 79.03

c) C.S.T. Rs. 11.46

d) Freight & Insurance Rs. 15.58

6. The above facts have been confirmed by UHBVNL in reply dated 11.09.2003 to Revenue's letter dated 27.08.2003, & by DHBVNL in reply dated 29.09.2003.

7. Accordingly, the appellant filed refund claims with the concerned Assistant Commissioner for refund of the excess Excise Duty paid amounting to Rs.15,68,647/- and Rs.12,54,856/- respectively stating therein that they had paid duty at the rate of Rs. 141.78 per meter instead of the duty payable at the rate of 79.03 per meter. On the basis of final price of Rs.600 per meter, actually paid by the buyers. The Assistant Commissioner vide O-I-O dated 01.09.06 admitted the amount refundable, but credited the same to the consumers welfare fund observing that –

> "I also find that party has shown the Central Excise duty on their invoices issued to M/s UHBVNL or DHBUNL and it appears that it has been realized from their customers. Party also could not establish that the said duty amount has been paid by them and the incidence of such duty had not been passed on by him. Sub-Section (2) of the Section 11-B of Central Excise Act, 1944 provides that the Assistant Commissioner, on being satisfied that the amount of the duty paid by the applicant is refundable, may make an order for the amount to be credited to the Consumer Welfare Fund. Hence, it comes under the purview of unjust enrichment. Therefore, I find that the refund claim filed for Rs. 15,68,647/- & Rs. 12,54,856 on the ground that incidence of duty for which refund claim has been filed stands passed on to the buyers is not admissible to the party and the same should be ordered for transfer to Consumer Welfare Fund as per provisions of Section 11B of Central Excise Act, 1944.
>
> I find that Section 12B of Central Excise Act, 1944 clearly states that "Every person who has paid the duty of excise on any goods under this Act unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods."
>
> In the instant case against the quoted price i.e.Rs.1064 per meter, the price actually paid by the purchaser was Rs. 600/meter,

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which was accepted by the supplier & accordingly the supplier managed to show the basic price, basic excise duty etc. & now showing that duty has been paid keeping in mind that the price was 1064/- and not 600/meter & subsequently accepts the price of 600/meter. They neither stopped the supply nor filed any suit against purchaser. This situation does not convince me. This simply reflects that while entering into contact the price factor was not reasonable and duty ought to have been paid on price actually paid or payable." This situation clearly indicates that all taxes were part of the price finally settled and rest of the details as mentioned by the party is artificial and the party could not put forward any concrete evidence to justify their pricing aspect and to say that duty incidence has not been passed on to the consumers. Hence, I hold that the duty incidence has been passed on to the consumers and hence need to be credited to the Consumer Welfare Fund as per the provisions of Section 11B of Central Excise Rules, 1944.

I have also found that the case do not fall under the purview of time barred. As per the provisions of Section 11B the refund claim is to be made within a period of one year from the relevant date. In the instant case the clearances pertain to period from 23.04.02 to 25.5.02 and the refund claim was made on 24.01.2003 which is well within prescribed limitation period. Keeping in view of the aforesaid facts, I pass the following order.

The refund claim for Rs.15,68,647/- & Rs. 12,54,856/- filed by M/s T.T.L. Limited, Plot No.6, Site-iv, Industrial Area, Sahibabad is not admissible on the ground of unjust enrichment should be credited to the Consumer Welfare Fund as per provisions of Section 11B of Central Excise Act, 1944."

The similar order was also passed for other period. Being aggrieved the appellant preferred appeals before commissioner (Appeals) who vide impugned Order-in-Appeals has rejected the appeal observing as follows:-

"I also find that as per provision of Section 12B of the Central Excise Act, 1944, the onus to prove that incidence of duty has not been passed on lies on the applicant. The appellants vainly tried to prove that burden of duty has not been passed on to their buyers by furnishing letter dated 19.09.2003 written by DHBVNL, i.e. by the buyer, addressed to the Deputy Commissioner, Central Excise,

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Div.III, Ghaziabad and a certificate dated 16.01.2003, depicting payment of Excise duty, basic value and other charges paid by the appellants. But on examination of invoices issued by the appellants to the said buyers, the adjudicating authority has observed that Central Excise duty has been shown in the invoices. Therefore, it is evident that Central Excise duty has been realized from their customers. I find that the appellants could not establish that the said duty amount of Rs.15,68,647/- & Rs. 12,54,856/- has been paid by them and has not been passed on to others. Further, it is well settled that refund, even if otherwise due on merits, cannot be granted if the same does not qualify the test of unjust enrichment under Section 11B of the Central Excise Act, 1944. In the instant case such test of unjust enrichment has not been qualified as aforesaid. Therefore, I am inclined to hold that amount of refund has been rightly credited to the Consumer Welfare Fund under Section 11B (2) of the Act supra. In view of the above legal position, it may also be maintained that the case laws relied upon by the appellants are not relevant and helpful to them.

In view of the above discussion and findings I find no infirmity in the impugned order dated 01.09.06. Therefore, I uphold the same and reject the appeal of the appellants."

5. Being aggrieved appellant is before this Tribunal on the ground that it is an admitted fact that the appellant have not received a single rupee more than the settled price of Rs. 600/meter. The learned counsel argued that without any contrary facts on record, nor there being any evidence of collection of the duty paid in excess, the principle of unjust enrichment is not attracted. Further the facts supporting the settled price and amount received by the appellant from the concerned buyers/electricity board stood verified by revenue. Accordingly, he prays for setting aside the impugned order with consequential benefits. The learned counsel further relies on the ruling of Hon'ble Supreme Court in the case of HPL Socomac Ltd.Vs CCE 2015 (320) ELT 33(S.C.) wherein under the similar facts & circumstances, where the manufacturer HPL Socomac Ltd (supra)

received purchased order for electricity meters and supplied the same to the DHBVNL and where similarly price was settled against the interim price of 1,120/- at Rs.600/meter, and it was held by the Apex Court that the original order was no-vated insofar as price was concerned.

"11. We have heard learned counsel for the parties. It is clear that by their letter dated 15.04.2005 the original purchase order dated 31.10.2001 was no-vated insofar as price was concerned.

12. The novation turned out to be that a price of Rs.600/-per meter had been charged. Rs.600/-per meter being less that 5% of Rs.700/- per meter if the penal rate of 5% was to be applied therefore became the price without reference to any penal rate. This price had been fixed before removal from the factory premises in May, 2002. The Commissioner (Appeals) order dated 18.06.2004 though correct in principle is wrong on facts as he does not refer to the letter dated 15.04.2005 of the appellant at all. The CESTAT is wrong in turn because on facts there was no imposition of penalty for the delayed period.

13. In the aforesaid premises, the impugned order of CESTAT and the Commissioner (Appeals) are set aside.

14. Since duty has been paid on the basis of the original price in the puruchase order, the difference between the said rate and the reduced rate of Rs.600/-per meter for 35000 meters which came to Rs.21,24,920/- would have to be repaid to the appellant. This amount had been claimed by the appellant on 20.11.2002 and had been turned down by the impugned orders. The said amount will now as a consequence of the setting aside of these orders be ordered to be repaid to the appellant together with interest at 9% per annum from November, 2002 till the date of payment.

15. Payment be made within three months from the date on which this order is communicated to the Commissioner of Central Excise Range-III, Gurgaon. The appeal is allowed in the aforesaid terms."

6. The learned AR for Revenue relies upon the impugned order.

7. Having considered the rival contentions we hold that the appellant have not received a single rupee more than the settled

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amount of Rs. 600/- per meter from the buyers. We further, notice that there is no dispute as regards this fact and the entitlement of refundable amount is not in dispute. So far the issue of unjust-enrichment in concerned we hold that under the admitted facts, the appellant has not received a single rupee more than the settled amount of Rs. 600/- per meter from the buyers, there is no case of unjust enrichment made out. Accordingly relying on Ruling of Apex Court in the case of HPL Socomax Ltd. (Supra) we hold that the appellant is entitled to refund. Allowing the appeals of the appellant we direct the revenue authority to grant the refund within 90 days from the receipt of this order along with interest as per the Rules. The appeal is allowed with consequential benefits.

(Dictated in Court)

-Sd-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

alp

प्रमाणित प्रति / Certified True Copy
5/10/16 SPS
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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