CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20607 of 2017

[Arising out of Order-in-Appeal No.MYS-EXCUS-000-APP-072, 073 & 074-16-17 dated 12.01.2017 passed by the Commissioner of Central Excise (Appeals), Mysore]

M/s. TVS Motor Company Ltd.
P.B. No.01, Bythahalli,
Kadkola Post,
Mysore-571 311.

Appellant(s)

VERSUS

Commissioner of Central Excise
And Service Tax,
S1-S2….Vinaya Marga,
Siddhartha Nagar,
Mysore-570011.

Respondent(s)

WITH

1. **Central Excise Appeal No.20608 of 2017 (M/s. TVS Motor Company Ltd. Vs. Commissioner of Central Excise and Service Tax, Mysore)**
   [Arising out of Order-in-Appeal No.MYS-EXCUS-000-APP-072, 073 & 074-16-17 dated 12.01.2017 passed by the Commissioner of Central Excise (Appeals), Mysore].

2. **Central Excise Appeal No.20609 of 2017 (M/s. TVS Motor Company Ltd. Vs. Commissioner of Central Excise and Service Tax, Mysore)**

   [Arising out of Order-in-Appeal No.MYS-EXCUS-000-APP-072, 073 & 074-16-17 dated 12.01.2017 passed by the Commissioner of Central Excise (Appeals), Mysore].

3. **Central Excise Appeal No.20380 of 2018 (M/s. TVS Motor Company Ltd. Vs. Commissioner of Central Excise and Service Tax, Mysore)**
   [Arising out of Order-in-Appeal No.MYS-EXCUS-000-APP-171-172-17-18 dated 29.12.2017 passed by the Commissioner of Central Tax (Appeals-II), Mysuru]

4. **Central Excise Appeal No.20525 of 2018 (M/s. TVS Motor Company Ltd. Vs. Commissioner of**

Central Excise and Service Tax, Mysore)

[Arising out of Order-in-Appeal No.MYS-EXCUS-000-APP-171-172-17-18 dated 29.12.2017 passed by the Commissioner of Central Tax (Appeals-II), Mysuru]

5. **Central Excise Appeal No.21052 of 2018 (M/s. TVS Motor Company Ltd. Vs. Commissioner of Central Excise and Service Tax, Mysore)**

   [Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-004-18-19 dated 06.04.2018 passed by the Commissioner of Central Tax (Appeals), Mysuru]

6. **Central Excise Appeal No.21057 of 2018 (M/s. TVS Motor Company Ltd. Vs. Commissioner of Central Excise and Service Tax, Mysore)**

   [Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-003-18-19 dated 06.04.2018 passed by the Commissioner of Central Tax (Appeals-II), Mysuru]

7. **Central Excise Appeal No.20813 of 2019 (M/s. TVS Motor Company Ltd. Vs. Commissioner of Central Excise and Service Tax, Mysore)**

   [Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-176-18-19 dated 25.02.2019 passed by the Commissioner of Central Tax (Appeals), Mysuru]

8. **Central Excise Appeal No.20387 of 2021 (M/s. TVS Motor Company Ltd. Vs. Commissioner of Central Excise and Service Tax, Mysore)**

   [Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-MSC-124-2020-21 dated 30.03.2021 passed by the Commissioner of Central Tax (Appeals), Mysuru]

9. **Central Excise Appeal No.3233 of 2012. (Commissioner of Central Excise and Service Tax, Mysore Vs. M/s. TVS Motor Company Ltd.)**
   [Arising out of Order-in-Appeal No.486/2012 dated 27.09.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore]

10. **Central Excise Appeal No.3234 of 2012. (Commissioner of Central Excise and Service Tax, Mysore Vs. M/s. TVS Motor Company Ltd.)**

[Arising out of Order-in-Appeal No.486/2012 dated 27.09.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore]

11. Central Excise Appeal No.20294 of 2019. (Commissioner of Central Excise and Service Tax, Mysore Vs. M/s. TVS Motor Company Ltd.)

[Arising out of Order-in-Appeal No.MYS-EXCUS-000-APP-133-18-19 dated 21.12.2018 passed by the Commissioner of Central Excise (Appeals), Mysore]

12. Central Excise Appeal No.20683 of 2019. (Commissioner of Central Excise and Service Tax, Mysore Vs. M/s. TVS Motor Company Ltd.)

[Arising out of Order-in-Appeal No.MYS-EXCUS-000-APP-176-18-19 dated 25.02.2019 passed by the Commissioner of Central Excise (Appeals), Mysore]

APPEARANCE:

Mr. Ravi Raghavan and Ms. Sneha Philip, Advocates for the Assessee.

Mr. Sanjay Venkat, Superintendent (AR) for the Revenue.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21580 - 21592 /2025

DATE OF HEARING: 09.04.2025
DATE OF DECISION:07.10.2025

DR. D.M. MISRA

Out of the 13 appeals, 9 appeals are filed by the assessee-appellant and 4 are by the Revenue against the respective Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), Mysore / Mangalore since involve more or less common issues, are taken up together for hearing and disposal.

2. The facts, in common in all these appeals, are that the appellant is manufacturer of two wheelers and three-wheelers (Auto) and during the relevant period in question i.e. 2009-2017 initially discharged duty resorting to provisional assessment in terms of Rule 7 of the Central Excise Rules, 2002 on the impugned abatements such as freight, free service charges and discounts such as institutional sales, Money Spinner Scheme, ASC Redistribution Incentive scheme, Growth Incentive, Dealer Incentive, Retail Incentive Scheme, Billing Incentive Scheme, BS-III discount, free insurance scheme discount, CSD claim etc. since the quantum of which could not been ascertained at the time of clearance from their factory. After receipt of the exact quantum of discounts etc. on which duty was paid, the appellant filed the documents for finalization of assessment. On finalization of assessment, the amount of duty excess paid and short-paid during the relevant period have been determined and the adjudicating authority accordingly quantified the amount of refund due to excess payment of duty admissible to the appellant. In some of the orders, the Department allowed 'netting off' i.e. the duty excess paid to the duty short-paid during the particular period and quantified the amount of admissible or duty payable by the appellant. The Revenue has mostly challenged such action of the Department as contrary to the provisions of law in the appeals filed before us wherever 'netting off' was allowed by the authorities below. After quantifying the amount of duty excess paid, the adjudicating authority applying the principles of unjust enrichment though sanctioned the refund but directed to be transferred to the consumer welfare fund. The appellant-assessee filed appeals against such orders.

3.1. At the outset, the learned advocate for the appellant has submitted that they are engaged in the manufacture of two wheelers and three wheelers (auto) motor vehicles falling under Chapter 87 of the Central Excise Tariff Act, 1985. They have manufacturing facilities at Hosur (Tamil Nadu), Mysore (Karnataka) and Nalagarh (Himachal Pradesh) and the present dispute relates to the Mysore Unit only. They had cleared their final products on payment of excise duty directly to the dealers situated in various states who in turn sold the goods to ultimate consumers. During the period 2009-2017, after finalization of provisional assessment, it was held that the appellant are eligible for discounts / abatements on account of freight, free service charges and discounts such as institutional sales, Money Spinner Scheme, ASC Redistribution Incentive scheme, Growth Incentive, Dealer Incentive, Retail Incentive Scheme, Billing Incentive Scheme, BS-III discount, free insurance scheme discount, CSD claim etc. He has submitted that since the quantum of expenses, discounts etc. were not known at the time of clearance of goods from their factory, they have opted for provisional assessment which were periodically finalized in terms of Rule 7 of the Central Excise Rules, 2002. The abatements as claimed by the appellant have been accepted by the Department; however (i) the 'netting off' of excess and short-paid duty is disputed and (ii) the refund of excess duty paid has been rejected on the ground of unjust enrichment.

3.2. Learned advocate has submitted that the Department has sanctioned refund of Rs…4,01,06,264/- after netting off of short-paid duty against excess duty paid for the period 2-11-2014 vide Order-in-original C.No.V/87/18/17/2016-Refund/1170/16 dated 06.10.2016 by categorically observing that the duty burden has not been passed on to the consumers. He has submitted that the said order has not been challenged by the Department; therefore, it should have been uniformly applied to all other refunds in question as the said order has attained finality. He has submitted the Department has filed four appeals bearing No. E/3234/2012, E/3233/2012, E/20683/2019 and E/20294/2019 challenging the respective Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), Mysore that 'netting off' of excess and short-paid duty cannot be permitted under law. He has submitted that the issue is no more res integra and considered by the Tribunal in the following cases:-

i. Toyota Kirloskar Auto Parts Pvt. Ltd. Vs. CCE, LTU, Bangalore [2012(276) ELT 332 (Kar.)]
ii. Hindustan Zinc Ltd. Vs. CCE, Jaipur [2016(336) ELT 328 (Tri. Del.)]
iii. Jonas Woodhead & Sons (I) Ltd. Vs. CCE, Chennai-IV [2015(329) ELT 577 (Tri. Chennai)]
iv. JK Tyres & Industries Ltd. Vs. CCE, Mysore [2023(12) TMI 899 – CESTAT BANGALORE]

3.3. He has further submitted that adjustment of excess duty arising out of provisional assessment is permissible notwithstanding the bar of unjust enrichment and once it is established that excess duty has been paid, the same shall rightly be set off against the duty short paid to arrive at the net liability i.e. refund / duty payable. It is only the amount remaining after such netting off would become subject to unjust enrichment. In support, they placed reliance on the judgment of the Hon'ble Karnataka High Court in the case of Principal Commissioner of Central Tax, Mysore Vs. Vikrant Tyres Ltd. [2021-VIL-729-KAR-CE].

3.4. He has submitted that in the scheme of Rule 7 of Central Excise Rules, 2002, there is no indication that when an assessee is permitted to pay duty on provisional basis and dealing with more than one goods, it has to be treated separately; that the total duty payable and duty to be paid consequent to the finalization of provisional assessment under Rule 7 of the Central Excise Rules, 2002 has to be netted off to arrive at the duty payable or refund admissible. The appellant-assessee has filed appeals against various orders of the learned Commissioner(Appeals) wherein it is held that though the appellant are eligible to refund of the excess duty paid however since they failed to satisfy the test of unjust enrichment, it is directed to transfer the refund amount to the consumer welfare fund. In support to the conclusion, the Department has referred to the decision of the Hon'ble Supreme Court in the case of CCE, Madras Vs. Addison & Co. Ltd. [2016(339) ELT 177 (SC)] (Addison case, for short).

3.5. Learned advocate for the appellant has further submitted that the appellant has submitted Chartered Accountant's certificate to establish that they have borne the burden of duty paid in excess and not passed on to any other person. Also, he has submitted that illustrative copies of the credit notes evidencing reimbursement of the free service charges against FSC, details of actual expenditure incurred by the appellant towards free service charges and the apportionment of the said charges, illustrative copies of the credit notes extending discounts to dealers, details of actual expenditure incurred by the appellant towards discounts and the apportionment of the said charges and details of freight apportioned. Referring to the judgment in Addison's case, the appellant has submitted that since the appellant has established the fact through evidences that the burden of duty has not been passed on to its customers hence they are entitled to the excess duty amount paid which is evidenced by way of issuing credit notes and certified by Chartered Account; they are entitled to the refund of the excess duty paid. In support, they have referred to the judgment in the case of Johnsons Matthey (India) Ltd. Vs. CCE [2017 (3) TMI 1449 CESTAT CHANDIGARH] and Sudhir Papers Ltd. Vs. CCE, Bangalore-I [2012(276) ELT 304 (Kar.)]

3.6. He has submitted that in Addison's case, it is held that if it is not possible to identify the person / persons who have borne the duty, the amount of excise duty so collected in excess will remain in the fund which will be utilized for the benefit of the consumers as provided in Section 12D of the Central Excise Act, 1944. In the present case, since it is identified that the appellant is the person who has borne the duty and no duty has been passed on to the dealers, then the amount of excess excise duty is to be refund to the appellant. The question of unjust enrichment stands satisfied at this stage itself and further verification whether the dealer has passed on duty incident to the consumers is irrelevant and uncalled for.

3.7. On various abatements / discounts passed on, the learned advocate has submitted as follows:-

- The dealer provides free service to the buyer of the vehicle on production of the free service coupon by incurring expenditure from the dealer margin.

- The free service is offered to the ultimate customers at the time of purchasing a new vehicle from the dealer. To avail the same the ultimate customer is issued a coupon against which the free service (4 to 5 services depending on the model of the vehicle) is rendered to the ultimate customer by the dealer. The customers can avail free services from the dealers for their vehicles against the FSC Coupons issued to them.

- After the dealers render free services to the customers, the dealers submit their claim of Free Service charges to the Appellant and provides the FSC coupons as evidence of / proof of having rendered free services to the customers. The FSC incurred by the dealers are reimbursed by the Appellant by issuance of credit notes.

- The Appellant has placed on record point to point co-relation between the credit notes issued and the FSC against which dealers are reimbursed by the Appellant. A perusal of the detailed statement providing the engine wise trail of free service coupon with the corresponding credit note and original sale invoice will make it clear that the Appellant reimburses the dealers by way of credit notes against those FSC that is given by the dealer. The credit note value undisputedly is a cum-duty price and therefore, it is evident that the incidence of duty in respect of the credit note value has not been passed on to the dealer.

- The Appellant submits that the actual FSC charges would be known to them on receipt of the documents, viz., free service coupon and the services rendered to the customers, periodically submitted by the dealers to their Area Offices. Only on verification of the Free services rendered, the dealers are reimbursed. Thus, the benefit of abatements flows in both the legs of transactions – i.e., dealer to the ultimate customer and subsequently from appellant to dealer.

- Therefore, the abatement on FSC emanates from the customers only as against the assumption by the department that the abatements are passed on by the Appellant to the dealers first. The Appellant submits that when the abatements arise out of the ultimate customers redeeming their free service coupon, the question of dealer passing on the burden of excise duty to the customer does not arise.

- Further, as the name suggests, no charges have been recovered by the dealer from the end customer. When the ultimate customers are not charged for the free services, it cannot be said that the burden of duty on such FSC was passed on to the ultimate customers by the dealers.

- Therefore, it is clear that the benefit of the abatement pertaining to FSC reimbursements has percolated to the end customer by way of provision of free service. Such being the case, there is no unjust enrichment at the hands of the Appellant and the excess duty paid is rightly eligible as refund.

- Similar to FSC, the Appellant also extends trade discounts to the ultimate customer through their dealers. The trade discounts are of different types. Some of them are:

   i. Discounts on purchase during the festival season;

ii. Free insurance, viz., the premium for insurance is borne by the Appellant and paid directly to the insurance company;

iii. Arranging interest free financing or finance at reduced rate.

- The end customer approaches the dealer with the knowledge of such discounts/abatements. Even in cases where the benefits are extended to the dealers as per their discretion, the reimbursement of the discount is made by the Appellant only in those cases where the proof of such extension of benefit stands proved by the dealers. For example, the discounts are shown in the invoice of the dealer which on evidence is reimbursed to the dealer by the Appellant.

- If the discounts are not extended to the customers through the invoice, a separate voucher is issued passing off of the discount which is acknowledged by the customer. Only against such acknowledgement, the Appellant reimburses the dealer through credit notes

- The Appellant submits that such trade discounts were extended for the benefit of the ultimate customers only. Therefore, the trade discounts are reimbursed by the Appellant only on proof submitted by the dealers to the effect that the customers have been extended the same.

- From the above, it is clear that the ultimate consumer first gets the benefit from the dealer and the dealer, in turn, gets the reimbursement from the appellant. Thus, in both the legs of transactions, the benefit flows and the expenditure is borne by the Appellant only.

- Thus, the discounts emanate from the customers only and therefore, it is incorrect to presume that the excise duty burden was passed on by the dealers to the customers.

- The Appellant incurs freight expenses on the transportation of motor vehicles to dealers as well as to branches of the Appellant. The abatement on freight is claimed on the following basis:

i. Freight for clearance of goods to Dealers from the factory.
ii. Freight for clearance from various branches to dealers.
iii. Freight for clearances from factory to the Depot/ Branches.
iv. Freight on transport of spares and exports.

➢ The Appellant submits that the abatements claimed by them towards freight is not collected by them from their dealers at all. The freight charges are the expenses incurred by the Appellant for transporting the motor vehicles from the factory or depot to the dealer premises. The freight charges are paid by the Appellant itself.

➢ This being the case, the charges cannot possibly be passed on to the dealers at all. When it is identified that the Appellant is the person who has borne the duty and no duty has been passed on to the dealer, then the amount of excess excise duty has to be refunded to the Appellant. The question of unjust enrichment stands satisfied and further verification of whether the dealer has passed on the duty incidence to the customer is irrelevant.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals) in rejecting the refund claims. Also, he has reiterated the grounds of appeal wherever Revenue has filed appeal against the orders of the Commissioner(Appeals) allowing netting off of the duty.

5. Heard both sides and perused the records.

6. The issues involved in the present appeals filed by both Revenue and assessee are (i) after finalization of provisional assessment, whether netting off of duty is permissible and (ii) amount claimed as refund during the relevant period is hit by bar of unjust enrichment.

7. On the issue relating to netting off of duty, this Tribunal in the case of JK Tyres & Industries Ltd. Vs. CCE, Mysore (supra), following the judgment of the jurisdictional High Court in the case of Principal Commissioner of Central Tax, Mysore Vs. Vikrant Tyres Ltd. (supra), held as follows:-

> 8. The short question involved in these present appeals for determination is, whether the principles of unjust enrichment be applicable to the amount excess paid before adjusting the same with the amount short-paid while finalising provisional assessment under Rule 7 of the Central Excise Rules, 2002.
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> 9. Undisputedly, the appellant has resorted to provisional assessment under Rule 7 of the Central Excise Rules, 2002 at the time of clearance of the goods from the factory to the depots, since certain conditional discounts passed on to the customers on sale from depots subsequently, the exact quantum of which is known only after its clearance from factory and sale from depots. When the exact amount of discount is ascertained, the admissible discounts are calculated on month-to-month basis and the assessable value at the time of clearance from the factory is redetermined and the duty payable is accordingly arrived at. Consequently, the difference between the duty paid and the duty payable is calculated and the assessment is finalized. The result of the said exercise may end up with recovery of differential duty short paid or refund of excess paid.
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> 10. The Revenue's contention is that after determination of the exact duty payable on finalization of assessment, excess duty paid cannot be adjusted against duty short paid, without testing its incidence of excess duty whether passed on to any other person in compliance with the statutory presumption under section 12B of CEA, 1944. It is their argument that netting of duty by passing the statutory presumption is not laid down under Rule 7 of Central Excise Rules,2002. Accordingly, duty liability is calculated against the duty provisionally paid at the time of clearance of the goods from the factory and the amount payable. During the said exercise for a particular month, the result could be excess payment of duty in certain cases and short payment in other cases. The assessing authority after adjusting the duty excess paid against the short-paid, arrives at the net result i.e., either excess payment or short-paid during the month is recoverable or refundable. Consequently, the recovery/refund is accordingly directed. The Revenue's objection is that the duty excess paid cannot be adjusted against the duty short-paid during a particular month/period of assessment to arrive at the net result of refund or liability. It is the Revenue's contention that there is no specific provisions under Rule 7 of the Central Excise Rules, 2002 directing such adjustment/netting off duty.
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> 11. Revenue has referred to the judgment of the Hon'ble Madras High Court in the case of TVS Electronics Ltd. case (supra) which followed the judgment in Addison & Co. Ltd. passed by the Hon'ble Supreme Court in directing that the refund amount arising due to provisional assessment be subjected to unjust enrichment. 12. The appellant's contention on the other hand is that the very purpose of provisional assessment is for adjustment

of excess duty-paid to short-paid during a particular period and determining the net effect of the duty, that is, either by way of payment or seeking refund of the amount paid. In support they referred to the judgment of jurisdictional High Court in the case of Vikrant Tyres Ltd's case and in Toyota Kirloskar Auto Parts Pvt. Ltd's case(supra).

13. The Revenue's argument may seem attractive in view of the judgment of Hon'ble Madras High Court in TVS Electronics's case(supra), but we find that the jurisdictional Hon'ble Karnataka High Court in the appellant's own case taking note of the judgment of the Hon'ble Supreme Court in Addison & Co. Ltd. case and in the context of finalisation of provisional assessment for different period of the same assessee held as follows:

> "14. In Addison & Co. Ltd., supra, the Hon'ble Apex Court has held that the assessee had admitted the incidence of duty was originally passed on to the buyer. No material was placed on record to show that the buyer to whom the incidence of duty was passed on by the assessee did not pass it on to any other person. It has been thus held that the sine qua non for a claim for refund as contemplated in Section 11B of the Act is that the claimant has to establish that the amount of duty of excess in relation to which such refund is claimed was paid by him and that the incidence of such duty has not been passed on by him to any other person.
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> 15. in the aforesaid judgment, the Hon'ble Apex Court has observed that the refund of excess duty paid can be allowed only in cases where the burden of duty has not been passed on any other person including the ultimate customer as well and moreover, Hon'ble Apex Court was considering the case of normal refund and not adjustment at the time of finalisation of provisional assessment. Hence, it is distinguishable. Thus, the authorities were conscious of Rule 7(6) and the factual findings of the authorities held in favour of the assessee is not challenged by the Revenue.
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> 16. Nextly, it is also significant to note that the methodology and manner of challenge made by the Revenue. Indisputedly, for the assessment years from 2002-03 to 2008-09 refund claim of the manufacturer assessee was allowed and in the same has reached finality. The Revenue as cherry picked the assessment years in question to challenge, giving a finality to the other assessment years. In this context, it would be preferable to refer to the judgment of the Hon'ble Apex Court in the case of Commissioner of Central Excise, Allahabad vs. Surcoat Paints (P) Ltd. [2008) E.L.T. 4 (SC) wherein, the Hon'ble Apex Court has held that the Revenue having accepted the decision given by the Tribunal in another case of the same nature, is precluded from challenging the similar order passed in respect of another unit. If so, in the very same assessee's case if the refund orders are accepted for particular years, the same cannot be challenged relating to other years. Revenue cannot pick and choose the assessment years for challenging the orders having similar effect. Moreover, as observed by the First

> Appellate Authority, the issue of unjust enrichment has been raised for the first time on the sanction of refund order consequent on finalisation of provisional assessment. The authorities have admitted that the credit notes were issued by the assessee to their dealer representing various discounts which have been actually passed on, in accordance with marketing circulars/policies. It is also observed that on verification of sample depot invoices at the time of completion of provisional assessment, that the assessee has not issued any cenvatable invoice from the depot which are prescribed document for availment of cenvat credit under Cenvat Credit Rules, 2004. Thus, it cannot be held that the assessee has not subjected to the test of unjust enrichment."

> 14. It has been brought to our notice that the said judgment of the Hon'ble Karnataka High Court has been accepted by the Revenue as communicated through their letter dated 17.11.2023. Needless to mention, the principle laid down by the jurisdictional High Court is binding on the Tribunal in view of the judgment of the Larger Bench of the Tribunal in the case of Collector of Central Excise, Chandigarh vs. Kashmir Conductors: 1997 (96) E.L.T. 257 (Tri.-LB).

8. On the issue of unjust enrichment, the Revenue heavily relied upon the judgment of the Hon'ble Supreme Court in Addison's case(supra). Revenue's contention is that the appellant is required to establish that the amount claimed as refund has not been passed on to 'any other person' even though credit notes have been raised passing on the benefit to the dealers of the motor vehicles.

9. Before analysing the said argument, it is relevant to refer to the ratio laid down by the Hon'ble Supreme Court in Addison's case. In the said case, the respondent were manufacturer of cutting tools and claimed refund of excess duty paid on various taxes and discounts such as turnover tax, surcharge, additional sales discounts, transitory insurance, excise discounts, additional discounts and turnover discounts. Further referring at para 16 of the judgment that the incidence of duty was originally passed on to the buyer and there is no material brought on record to show that buyer to whom the incidence of duty was passed on by the assessee did not pass on to any other person. Referring to the

principle laid down in the case of Mafatlal Industries Ltd. Vs. UOI [1997(89) ELT 247 (SC)], their Lordships observed as follows:-

> **19.** The *sine qua non* for a claim for refund as contemplated in Section 11B of the Act is that the claimant has to establish that the amount of duty of excise in relation to which such refund is claimed was paid by him and that the incidence of such duty has not been passed on by him to *any other person*. Section 11B(2) provides that, in case it is found that a part of duty of excise paid is refundable, the amount shall be credited to the fund. Section 2(ee) defines Fund to mean the Consumer Welfare Fund established under Section 12C. There is a proviso to Section 11B(2) which postulates that the amount of excise duty which is refundable may be paid to the applicant instead of being credited to the fund, if such amount is relatable to the duty of excise paid by the manufacturer and he had not passed on the incidence of such duty to *any other person*. Clause (e) to proviso of Section 11B(2) also enables the buyer to receive the refund if he had borne the duty of excise, provided he did not pass on the incidence of such duty to *any other person*. There is a third category of a class of applicants who may be specified by the Central Government by a notification in the official gazette who are also entitled for refund of the duty of excise. A plain reading of Clauses (d), (e) and (f) of the proviso to Section 11B(2) shows that refund to be made to an applicant should be relatable only to the duty of excise paid by the three categories of persons mentioned therein i.e. the manufacturer, the buyer and a class of applicants notified by the Central Government. Clause (e) refers to the buyer which is not restricted to the first buyer from the manufacturer. The buyer mentioned in the above Clause can be a buyer downstream as well. While dealing with the absence of a provision for refund to the consumer in the rules this Court in *Mafatlal Industries* v. *Union of India* (supra) held as follows :-
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> > "98. A major attack is mounted by the learned counsel for petitioners-appellants on Section 11B and its allied provisions on the ground that real purpose behind them was not to benefit the consumers by refusing refund to manufacturers (on the ground of passing on the burden) but only to enable the Government to retain the illegally collected taxes. It is suggested that the creation of the Consumer Welfare Fund is a mere pretence and not an honest exercise. By reading the Rules framed under Section 12D, it is pointed out, even a consumer, who has really borne the burden of tax and is in a position to establish that fact, is yet not entitled to apply for refund of the duty since the Rules do not provide for such a situation. The Rules contemplate only grants being made to

> Consumer Welfare Societies. Even in the matter of making grants, it is submitted, the Rules are so framed as to make it highly difficult for any consumer organisation to get the grant. There is no provision in the Act, Shri Nariman submitted, to locate the person really entitled to refund and to make over the money to him. "We expect a sensitive Government not to bluff but to hand back the amounts to those entitled thereto", intoned Shri Nariman. It is a colourable device - declaimed Shri Sorabjee - "a dirty trick" and "a shabby thing". The reply of Shri Parasaran to this criticism runs thus: It ill-becomes the manufacturers/Assessees to espouse the cause of consumers, when all the while they had been making a killing at their expense. No consumers' organisation had come forward to voice any grievance against the said provisions. Clause (e) of the proviso to sub-section (2) of Section 11B does provide for the buyer of the goods, to whom the burden of duty has been passed on, to apply for refund of duty to him, provided that he has not in his turn passed on the duty to others. It is, therefore, not correct to suggest that the Act does not provide for refund of duty to the person who has actually borne the burden. There is no vice in the relevant provisions of the Act. Rules cannot be relied upon to impugn the validity of an enactment, which must stand or fall on its own strength. The defect in the Rules, assuming that there is any, can always be corrected if the experience warrants it. The Court too may indicate the modifications needed in the Rules. The Government is always prepared to make the appropriate changes in the Rules since it views the process as a "trial and error" method - says Shri Parasaran".

20. There was a further submission which was considered in the said judgment about the convenience/difficulty for the ultimate consumer to make applications for refund. In that connection it was held as follows :-

> "99. We agree with Shri Parasaran that so far as the provisions of the Act go, they are unexceptionable. Section 12C which creates the Consumer Welfare Fund and Section 12D which provides for making the Rules specifying the manner in which the money credited to the Fund shall be utilised cannot be faulted on any ground. Now, coming to the Rules, it is true that these Rules by themselves do not contemplate refund of any amount credited to the Fund to the consumers who may have borne the burden; the Rules only provide for "grants" being made in favour of consumer organisations

> for being spent on welfare of consumers. But, this is perhaps for the reason that clause (e) of the proviso to sub-section (2) of Section 11B does provide for the purchaser of goods applying for and obtaining the refund where he can satisfy that the burden of the duty has been borne by him alone. Such a person can apply within six months of his purchase as provided in clause (e) of Explanation B appended to Section 11B. *It is, therefore, not correct to contend that the impugned provisions do not provide for refunding the tax collected contrary to law to the person really entitled thereto*. A practical difficulty is pointed out in this behalf by the learned counsel for appellants-petitioners: It is pointed out that the manufacturer would have paid the duty at the place of "removal" or "clearance" of the said goods but the sale may have taken place elsewhere; if the purchaser wants to apply for refund - it is submitted - he has to go to the place where the duty has been paid by the manufacturer and apply there. It is also pointed out that purchasers may be spread all over India and it is not convenient or practicable for all of them to go to the place of "removal" of goods and apply for refund. True it is that there is this practical inconvenience but it must also be remembered that such claims will be filed only by purchasers of high-priced goods where the duty component is large and not by all and sundry/small purchasers. This practical inconvenience or hardship, as it is called, cannot be a ground for holding that the provisions introduced by the 1991 (Amendment) Act are a "device" or a "ruse" to retain the taxes collected illegally and to invalidate them on that ground - assuming that such an argument is permissible in the case of a taxing enactment made by Parliament. (See *R.K. Garg* [(1981) 4 SCC 675 : 1982 SCC (Tax) 30 : AIR 1981 SC 2138] and other decisions cited in paras 87 and 88.)"

21. That a consumer can make an application for refund is clear from paras 98 and 99 of the judgment of this Court in *Mafatlal Industries* (supra). We are bound by the said findings of a Larger Bench of this Court. The word 'buyer' in Clause (e) to proviso to Section 11B(2) of the Act cannot be restricted to the first buyer from the manufacturer. Another submission which remains to be considered is the requirement of verification to be done for the purpose of finding out who ultimately bore the burden of excise duty. It might be difficult to identify who had actually borne the burden but such verification would definitely assist the Revenue in finding out whether the manufacturer or buyer who makes an application for refund are being unjustly enriched. If it is not possible to identify the person/persons

> who have borne the duty, the amount of excise duty collected in excess will remain in the fund which will be utilized for the benefit of the consumers as provided in Section 12D.

10. From the aforesaid observation of the Hon'ble Supreme Court, it is clear that while claiming refund, it is necessary and relevant to establish that the burden of duty has not been passed on to 'any other person' which includes buyers and ultimate consumers. In the present case, the appellant had claimed that duty paid on free service charges, abatement on discounts, freight charges has been ultimately borne by them and not passed on to dealers or 'any other person'. With regards to Free Service Charges, it is claimed that the same is offered to the ultimate customers at the time of purchasing of new vehicles from the dealer. After the dealers render free services to the customers against the free service coupons, they claim the amount from the Appellant on the basis free service coupons collected from the customers as proof of having rendered free service to the customers which are reimbursed by the appellant by issuance of credit notes. It is their claim that they have placed on record point-to-point correlation between the credit notes issued and the free service coupons collected from the customers against which dealers are reimbursed by the appellant. It is submitted that the detailed statement enclosed with appeal paper book providing engine-wise trail of free service coupon with corresponding credit note and original sale invoice would make it clear that the appellant has reimbursed the dealers by way of credit notes against free service coupons that is forwarded by the dealers after collecting it from the customers. The credit notes involved undisputedly is a cum-duty price and therefore it is evident that the incidence of duty in respect of the credit note value has not been passed on to the dealer. Further, the name of the abatement itself suggest that the customers are not charged for the free service; therefore,

passing on the burden by the dealer to the customers does not arise.

11. On the issue of discounts, the appellant has claimed that the same is passed on by the dealers to ultimate consumers. The discounts are of different types viz. festival season discounts, free insurance discount i.e. premium for insurance is borne by the appellant and paid directly to the insurance company etc. The end customers approach the dealer with the knowledge of such discounts and they extend the benefit through the dealers by way of reimbursement of the discounts only in those cases where such extension of benefit stands proved by the dealers. For examples, the discounts shown in the invoice of the dealer which on evidence is reimbursed to the dealers by the appellant. Therefore, ultimate consumer first gets the benefit from the dealer and the dealer in turn gets the reimbursement from the appellant. Hence, the benefit flows to the ultimate customer and the expenditure is borne by the appellant only.

12. Regarding the freight, it is claimed that the appellant had incurred the expenses on transportation of motor vehicles to the dealers' premises as well as to their branches. It is categorically claimed that the expenses towards freight is not collected from the dealers at all. The freight charges are the expenses incurred by the appellant for transporting the motor vehicles from the factory or depot to the dealer's premises. Thus, the freight charges are paid by the appellant; hence, such freight charges cannot possibly be passed on to the dealers at all. Therefore, if it is identified that appellant is the person who has borne the duty on the freight charges and no duty has been passed on to the dealers, then the amount of excise duty paid has to be refunded to the appellant and the question of unjust enrichment does not arise in such cases. Against the said backdrop of the claim of the appellant, in the Appeal paper book and during the

course of hearing, sample evidences have been referred/placed to show that the burden of duty has not been passed on.

13. In contrast to the aforesaid claims of the Appellant, we find that in majority of the orders of the learned Commissioner(Appeals), relying on hypothetical examples, it is inferred that the FSC, Discounts and freight charges on which duty was paid while resorting to provisional assessment, the appellant could not demonstrate that the burden of excess duty paid on the elements of abatement/discounts, now claimed as refund, have not been passed on to any other person. Only in one of the impugned Order pertaining to appeal No. E/20387/2021, the learned Commissioner(Appeals), verifying certain invoices, held that the appellant could not establish that the burden of duty has been borne by them and the same has not been passed on to any other person.

14. Besides, it has been also brought to our notice that on the refund claims on similar discounts / abatements, refund amount of Rs.4,01,06,264/- was allowed to the appellant for the period from 2011-2014 vide OIO C.No.V/87/18/17/2016-Refund/1170/16 dated 06.10.2016 and the said order has been accepted by the Department as no appeal was filed against the said order disputing the claim of the appellant that the burden of duty has not been passed on to the consumers.

15. In this scenario, it is prudent to remand the matter to the learned Commissioner(Appeals) to analyze the evidences on record including the CA certificate and other evidence, if any, that would be produced before him to examine whether the burden of duty has been passed on to any other person or otherwise.

16. In the result, the appeals filed by the Revenue on the issue of netting off of duty are rejected; the appeals filed by the

assessee-appellant to the extent of challenging the rejection of netting off are allowed. To determine the issue of unjust enrichment, it is remanded to the learned Commissioner (Appeals) to ascertain whether the burden of duty has been passed on to 'any other person'.

17. Appeals are disposed off accordingly.

(Order was pronounced in court on 07.10.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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