CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017
COURT NO. I

Appeal No. E/1145/2011-DB

Date of Hearing/ Decision : 09.03.2018

[Arising out of Order-in-Appeal No. OIA- 92/CE/D-II/2011 dated 21.01.2011 passed by the Commissioner (Appeals) Central Excise & ST, Delhi (Panchkula)]

M/s. Uttar Haryana Bijli Vitran Nigam Limited : **Appellant**

vs.

Commissioner of Central Excise & ST, Panchkula : **Respondent**

Appearance:

Shri J.P. Kaushik, Advocate for the Appellant(s)
Shri Harvinder Singh, A.R. for the Respondent(s)

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 61629 / 2018

Per : B. Ravichandran

The appeal is against the order dated 21.01.2011 of Commissioner (Appeals) Delhi (Panchkula).

2. The appellant is engaged in the electricity distribution as their main activity. They were having workshops to convert duty paid insulated or enamelled wires and strips into transformer coils which were then captively used in the repair of transformers. The said transformers were further used by appellant for distribution of electricity. The dispute arose with regard to

excise duty liability of the appellant for the said process. Finally the matter was settled in favour of the appellant by the Tribunal, holding that the process undertaken by them does not amount to manufacture. Consequently, the appellant filed claims for refund of duties already paid. The period involved is March 1987 to February 1993. The case was litigated in various forums on different grounds. Now the only issue pleaded before us is for resolution of entitlement of the appellant for refund of duty paid during the material time. The impugned order held that the claims have been filed in time and they were entitled for refund. However, on the question of unjust-enrichment, it was held that the appellant failed to produce sufficient supporting evidences to substantiate that the burden of excise duty had not been passed on to anybody else. On this basis the claims have been rejected.

3. Ld. Counsel appearing for the appellant submits that the appellant was engaged in the process of distribution of electricity and they were not selling any manufactured items other then the electricity to the consumers. They are a Government of Haryana undertaking and they have submitted a certificate from Chartered Accountant and also a certificate on their own stating categorically that duty incidence has not been passed on to anybody else. It is submission of the ld. Counsel that the electricity distributed and sold by the appellant during the material time was charged as per the rates fixed by the State government. The rates have not varied due to this dispute. In other words, duty payment or otherwise, on the activity undertaken in the workshop, had no bearing at all on the tariff of electricity so cleared and

distributed by the appellant. Relying on the decision of the Tribunal in the case of ***Superintending Engineer, T.N.E.B., Chennai vs. CCE, Chennai – 2004 (164) ELT 84 (Tri. Chennai)*** as well on ***CCE, Lucknow vs. Oswal Chemical & Fertilizers Limited – 2009 (92) RLT 585 (CESTAT-Del.)***, the ld. Counsel submitted that the products cleared by the appellant was controlled and the tariff is fixed by the statutory authority and there is no question of unjust-enrichment involved for the assessee.

4. Ld. AR submitted that the appellant failed to substantiate the claims as recorded in the impugned order. As such, he supported the findings of the Commissioner (Appeals) in this regard.

5. Having heard both the sides, we note that the issue is more than three decades old. The appellant strongly submitted that they have produced a certificate of Chartered Accountant and their own undertaking that the duty incidence suffered on the process undertaken by them on the activities in the workshop, had not been passed on to any other person. We note that the appellant's claim has strong force, mainly on the basis that the only product sold and for which the consideration received by the appellant was electricity. Admittedly, the tariff of such electricity was fixed by the State authorities. The appellant had no flexibility in this regard. As such, the question of passing on the duty burden suffered in the workshop, on the goods which were captively consumed in the repair of transformers, which were again consumed in the distribution of electricity, does not arise. In this connection,

we rely on the decisions cited by the appellant (supra) in their support. The Tribunal noted that the appellant suffered huge losses during the material time and the question of duty paid by the appellant being reimbursed by the consumer of the electricity, is not tenable. The Tribunal also referred to a similar situation and held that the bar of unjust-enrichment will not apply in such facts. In the present case also, the appellants have been incurring losses during the material time and there is sufficient evidences to show that the tariff of electricity did not vary during the material time attributable to excise duty paid by appellant.

Accordingly, the appeal by the appellant is allowed with consequential relief.

(Order dictated and pronounced in the court)

(Justice Dr. Satish Chandra)	**(B. Ravichandran)**
President	**Member (Technical)**

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