

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I
APPEAL NO. E/832/2010

[Arising out of Order-in-Appeal No. 14/MA/GGN/2009 dated 08.01.2010 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of hearing/decision: 06.06.2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

M/s Carrier Airconditioning & : Appellant(s)
Refrigeration Ltd

VS

C.C.E., - Delhi III : Respondent(s)

Appearance:

Present for the Appellant(s): Shri Amar Pratap (Advocate)

Present for the Respondent(s): Shri Tarun Kumar (AR)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. 62446/2018

Per : Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim has been rejected by the authorities below.

2. The facts of the case are that the appellant are selling goods from their depot and at the time of clearance of goods from their factory, they are paying duty on the nearest value of the sale price of the goods and at the time of the clearance from the depot. The

appellant is paying duty on the correct price, therefore, there was some variation as sometimes appellant pay excess duty at the time of clearance from their factory, and sometimes appellant pay short duty at the time of clearance of their factory goods. In case, where the short duty has been paid, the appellant paid the differential duty along with interest but in case where the excess duty has been paid, the appellant filed refund claim. To entertain the refund claim, a show cause notice dated 19.12.2008 was issued to the appellant, on the ground that the appellant is required to pass the bar of unjust enrichment. The matter was adjudicated, both the authorities below rejected the refund claim on merits but have not given any finding on the issue unjust enrichment, rather it was observed by the authorities below that the concerned goods were assessed to duty correctly and there was no excess payment of duty. Therefore, aspect of unjust of enrichment does not require any further discussion. As the authorities below have gone beyond the scope of the show cause notice therefore, impugned order is to be set aside.

3. Heard the Ld. Counsel and perused the record. On perusal of the record, we find that in the show cause notice only the issue raised was whether the appellant has passed the bar of unjust enrichment or not and that issue has not been discussed by the authorities below but the authorities below have gone beyond the scope of the show cause notice to decide the issue on merits. Same cannot be done, therefore, the impugned order deserves no merits. Accordingly, the impugned order is set aside, as the issue raised by the appellant has

not been considered by any of the authorities below, in that circumstances, the matter required re-consideration only on the issue of bar of unjust enrichment. In that circumstances, the matter is remanded back to the adjudicating authority to pass an appropriate order in accordance with law, on the issue of bar of unjust enrichment.

The appeal is disposed off in the above manner.

(Order dictated and pronounced in the open court)

Devender Singh
Member (Technical)

Ashok Jindal
Member (Judicial)

Kailash