IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/7/2008

(Arising out of Revision Order No. 66/2007 (M-III) dated 20.09.2007 passed by the Commissioner of Central Excise (Appeals), Chennai).

M/s. TVS Motor Co. Ltd. : Appellant

Vs.

CCE, Chennai-III : Respondent

Appearance

Shri R. Parthasarathy, Adv.,
For the appellant

Shri K.P. Muralidharan, AC (AR)
For the respondent

CORAM

Hon'ble Shri D.N.PANDA, Judicial Member
Hon'ble Shri MADHU MOHAN DAMODHAR, Technical Member

Date of Hearing/Decision: **08.03.2017**

FINAL ORDER No. 40493/2017

Per: D.N.Panda,

Appellant's grievance is that its clearances for the year 1996-97, 1997-98 and 1998-99 were assessed provisionally. Finalisation of the provisional assessment for all the three years was made on 29.03.2005 On such finalisation, there arose a refund of Rs.3,84,17,573/- which was paid in excess of the duty ultimately payable. The refund so arose was paid on 21.04.2005.

Customs, Excise & Service Tax Appellate Tribunal

2. In the course of final assessment there was an error occurred in quantifying development expenses. In appeal, that was considered by the ld. Commissioner (Appeals). He remanded the matter for appropriate order. In re-adjudication on the above limited issue, refund of Rs.1,21,65,103/- arose on 28.04.2006. Claim for refund was filed on 5.5.2006. However, the authority only allowed a refund of Rs.71,20,080/- and balance amount of Rs.50,45,023/- was credited to the Consumer Welfare Fund. Appellant says that the amount so credited to welfare fund pertains to the period 01.08.1998 to 31.03.1999.

3. Appellant further says that any amount arising out of the finality of the provisional assessment prior to 25.06.99 was not required to undergo the test of unjust enrichment in absence of provision of law in that regard. The doctrine of unjust enrichment was incorporated into law on 25.6.99 in Rule 9B of the Central Excise Rules, 44.

4. Revenue says that the authority below has passed an appropriate order.

5. Heard both sides and perused the records

6. There is no doubt that the refund of Rs. 3,84,17,573/- and refund of R.s 1,21,65,103/- arose out of completion of final assessment on 29.3.2005, further amended by the appellate order and re-adjudication order dated 28.4.06. Had there been expeditious settlement of finality of provisional assessment, the

Customs, Excise & Service Tax Appellate Tribunal

question of remitting part of the refund to Consumer Welfare Fund would not have arisen. The same appellant was before the Apex Court on same issue as per the decision reported in 2003 (156) ELT 161 (S.C.). It has been held therein that delay of the Department to finalize provisional assessment shall not drag the appellant to undergo the test of unjust enrichment. Such principle was followed by the Hon'ble High Court of Madras in the case of *CCE, Chennai Vs. Dollar Company Pvt. Ltd.* – 2015 (327) ELT 13 (Mad.).

7. Appreciating that the delay in finalization of provisional assessment has dragged the appellant to litigation and in absence of bar of unjust enrichment in Rule 9B (5) of CER, 44, prior to 25.6.99, appellant need not undergo such test. Accordingly it is entitled to the refund of Rs. 50,45,023/-. Appeal is thus allowed.

(Dictated and pronounced in open Court)

16/03/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

14.3.2017

(D.N. PANDA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
27/3
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai