

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 51184 of 2020

(Arising out of Order-in-Appeal No. DDN/EXCUS/000/APP/2020-21 dated 30.07.2020 passed by the Commissioner CGST (Appeals), Dehradun.)

M/s Neel Metal Products Ltd.

Appellant

Plot No. 4 to 6 & 11 to 16, Sector 5
Integrated Industrial Estate
SIDCUL, Haridwar
Uttarakhand

VERSUS

**Commissioner of Central Goods And
Service Tax, Dehradun**

Respondent

E-Block, Nehru Colony
Haridwar Road, Dehradun
Uttarakhand

APPEARANCE:

Shri R.P. Jindal, Advocate for the Appellant
Shri Ravi Kapoor, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50582 / 2022

Date of Hearing: 14.01.2022
Date of Decision: 04/07/2022

ANIL CHOUDHARY:

The issue in this appeal is whether the refund claim filed by the appellant for excess duty paid due to price revision with retrospective effect, whether the same have been rightly rejected on the ground of unjust enrichment.

2. The appellant is a manufacturer of automotive parts and supply

their finished goods *inter alia* to Hero Motor Corp Ltd. The appellant was supplying automotive parts to M/s Hero Motor Corp under purchase order No.-HOEC160664 dated 20th April 2016, issued by the purchaser –Hero Motor Corp. Subsequently, Hero Motor Corp amended the said purchase order being Amendment No. 00001 dated 6th July 2016, with retrospective effect from 23rd April 2016, modifying the prices downwards. Debit note no. 24003999 dated 24th December 2016 was issued by Hero Motor Corp showing details of invoices which was revised due to aforementioned revision of prices. The debit note dated 24th December, 2016 was for an amount of Rs. 85,92,274.34/- for price deduction against product nos. 1026952, 1025606 and 1030961. The amount of Rs. 85,92,274.34/- included excise duty of Rs. 9,26,890.43 and also sales tax Rs. 2,50,260.42/-. The said debit note have been booked by the appellant in their Books of Accounts on 29th December 2016 as is supported by the extract of the general ledger. Thus, due to acceptance of this debit note by the appellant, the amount of excise duty Rs. 9,26,890.43/- stood reimbursed to Hero Motor Corp. Further, this amount has been shown as excise duty recoverable in general ledger account of the appellant. Further, certificate of Chartered Accountant have been annexed, certifying that the said amount of Rs. 9,26,890.43/- have not been passed on to Hero Motor Corp., rather the same stands reimbursed to Hero Motor crop.

3. Thereafter, the appellant filed refund claim on 24th March 2017 for the refund of excess excise duty Rs. 9,26,890/- before the Assistant Commissioner, mentioning the reason for refund claim and also enclosed various documents like purchase order, amendment to the purchase order, debit note which contains the details of invoices

which were revised due to the downward price revision, copy of sales invoices issued by appellant which were relevant, a detailed chart of the invoices and copy of Cenvat account with copies of GAR challans.

4. It appeared to revenue that in view of the ruling of Hon'ble Supreme Court in the case of MRF, the refund is not allowable, wherein the Apex Court had observed – when an assessee claims refund of duty on the basis of price variation, under the price variation clause of the relevant contract subsequent to clearance of the goods, the claim, for whatever reason, cannot be allowed. Such fluctuation in price subsequent to clearance of the goods cannot affect the manufacturer's liability to pay excise duty.

5. It further appeared that appellant have passed on the incidence of duty to their customer-Hero Moto Corp. at the time of the clearance of the goods. As such, unjust enrichment clause is also attracted. Accordingly, SCN dated 22nd June 2017 was issued with proposal to reject the refund. The SCN was adjudicated on contest and the refund claim was rejected holding that the same was hit by unjust enrichment, vide Order-in-Original dated 19th July 2018.

6. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who *vide* impugned Order-in-Appeal was pleased to reject the appeal, upholding the Order-in-Original.

7. Being aggrieved the appellant-assessee is before this Tribunal *inter alia* on the grounds that the court below have erred in observing that the said debit note does not make it clear that it was issued on account of price variation or for some other reason. It has been erroneously observed that the debit note amount does not match with

the amount of refund claim. The learned Counsel for the appellant explains the breakup of debit note as follows:-

Price Difference	: Rs. 74,15,123.48
ED (Excise Duty)	: Rs. 9,26,890.43 (The amount for which refund claimed)
S.Tax (Sales Tax)	: Rs. 2,50,260.42
G. Total	: Rs. 85,92,274.33 (The amount of debit note)

8. It is further urged that the appellant demonstrated the debit note comparing it with the purchase order and price revision memorandum, with the help of chart prepared, showing the invoice details reflecting the difference on the basis of old price as well as the revised price. There is no difference as per the debit note as compared with the invoices. It is also urged that the details are clear and conclusive that the debit note was on account of price variation. Thus, the finding of the court below are factually wrong and erroneous.

9. Even if, the amount of debit note Rs. 85,92,274.33/- is analysed with respect to various components of the price, the proportionate amount of excise duty of Rs. 9,26,890.43/- is evident as follows: –

Assuming difference in basic price= Rs. 100.00

Excise duty = 12.5%

Cum duty price = Rs. 112.50

VAT/S.Tax= 3%= Rs. 3.375

Total (difference-in) price= Rs. 115.875

Excise duty element in debit note of Rs. 85,92,274.33=

$8592274.33 \times 12.5 / 115.875 = \text{Rs. } 9,26,890.43$

10. It is further urged that under the facts and circumstances that the downward revision of prices is not disputed and it is further

admitted fact that the appellant have accepted the price variation and the debit note, and have accordingly given credit in its Books of Accounts to Hero Motor Corp. Thus, there is no question of unjust enrichment in the given facts and circumstances. It is evident that it is the appellant who has paid the excess excise duty out of his own pocket, as there is no dispute with regard to the debit note. It is further urged that the impugned Order-in-Appeal is a non-speaking order and have been passed in a mechanical manner. The impugned order have more or less reproduced the findings of the Adjudicating Authority and have not recorded any independent conclusions.

11. The appellant further relies on the ruling of this Tribunal in **CCE, Raipur Vs. IBP Ltd 2013 288 ELT 385**, wherein it have been held that the presumption that the incidence of duty has been passed on to the customer, once the amount of duty has been reflected in the sales invoice, definitely there is presumption under Section 12B of the Act that the incidence of duty has been passed on to the customer. However, this presumption is a rebuttable presumption and once the assessee produces sufficient evidence in the form of debit/credit notes or any other evidence, the burden shifts on the Department, and it is for the Department to prove that the credit note is bogus or have not been acted upon. Once it is proved that the debit/credit note have been acted upon and the incidence of duty earlier passed on, have been neutralised, the refund would be admissible.

12. It is further urged that the matter have been clarified by Hon'ble Supreme Court in its subsequent judgement in the case of **CCE Pune Vs. SKF India Ltd 2009 239 ELT 385** and also in the case of **CCE Vs. International Auto Ltd 2010 250 ELT 3 SC**.

13. The learned DR appearing for Revenue relies on the impugned order.

14. Having considered the rival contentions, I find that there is no real dispute with respect to the facts and circumstances. In the course of hearing before the Tribunal, the learned Counsel for the appellant have reconciled the said debit note and its breakup with the invoices, as well as the detailed chart annexed to the appeal paper book. I further find that there is no good reason to doubt the transaction between the appellant and their buyer Hero Motor Corp Ltd. I further take notice that Hero Motor Corp Ltd, Haridwar Unit, to which the goods have been supplied is operating under 'Area Based exemption' during the relevant period. Thus, there is no chance of Hero Motor Corp having taken Cenvat credit and utilised the same. I further find that there is no doubt as to genuineness of the transaction as well as the debit note in question issued by Hero Motor Corp Ltd, and accepted by the appellant-assessee. I further find that adequate entries have been made by the appellant in the Books of Accounts and they have credited the account of Hero Motor Corp. Further, the amount of refund claim have been shown as duty recoverable from the revenue in the Books of Accounts and the financial statements of the appellant being balance-sheet.

15. In view of my findings and observations, I allow this appeal and set aside the impugned order. The appellant is entitled to consequential benefits, in accordance with law.

(Order pronounced on 04/07/2022)

Anil Choudhary
Member(Judicial)