

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/848 /2009,106 /2010 - CU[DB]
ST/CO/115/2010

Date 13/10/2011

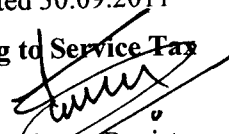
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S CONVERGYS INDIA SERVICE PVT. LTD.
DLF ATRIA, JACARANDA MARG, DLF PHASE-II,
GURGAON-122002, HARYANA.
M/S CONVERGYS INDIA SERVICE PVT. LTD.

Appellant
Vs
Respondent

C.S.T. DELHI

I am directed to transmit herewith a certified copy of **Final order No.ST/547-48/ 2011 CU[DB]** dated 30.09.2011
passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**


Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

C.S.T. DELHI

17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult

MR.LUTHRA & LUTHRA LAW OFFICE

103, ASHOKA ESTATE, BARAKHAMBHA ROAD, N DELHI.

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

10. LAWCRUX Advisors Pvt Ltd. LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

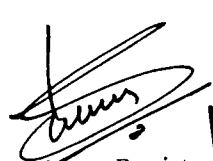
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file

C.S.T. DELHI

17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.


Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 13.09.2011

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Service Tax Appeal No. 848 of 2009

[Arising out of order-in-original No. 45/RDN/2009 dated 22.10.2009 passed by the Commissioner of Service Tax, New Delhi]

M/s Convergys India Services Pvt. Limited Appellant
[Rep. by Sh. J.P. Singh, Advocate for the appellant]

Vs.

CST, New Delhi

Respondent
[Rep. by Sh. Sonal Bajaj, SDR for the respondent]

AND

**Service Tax Appeal No. 106 of 2010 with
Service Tax Cross Objection No. 115 of 2010**

CST, New Delhi

Appellant
[Rep. by Sh. Sonal Bajaj, SDR for the appellant]

Vs.

M/s Convergys India Services Pvt. Limited Respondent
[Rep. by Sh. J.P. Singh, Advocate for the respondent]

Coram: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Sh. Rakesh Kumar, Member (Technical)

Final Order No. ST/547-548/11

Per: Shri Rakesh Kumar:

The facts leading to these appeals are in brief as under:-

1.1 M/s Convergys India Services Pvt. Limited, Gurgaon (hereinafter referred to as the appellant) are engaged in the business of providing call center (customer care) services under the taxable service category of 'business auxiliary services', as defined under Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 1994. They had entered into service agreement with Convergys Customer Management Group Inc. (hereinafter referred to as CMG). The appellant are, thus providing the taxable services of business auxiliary services to their client abroad. Since the output services were being treated as export under the Export of Services Rules, 2005, no service tax was being paid on the call service provided by them to their client abroad. The appellant filed a claim under Rule 5 of the Export of Services Rules, 2005 for rebate of the service tax paid on input services used in _____ providing of their output service. Rule 5 of the Export of Services Rules, 2005 provides for grant of rebate of central excise duty paid on input services used in or in relation to providing of their output service.

1.2 Rule 5 of the Export of Services Rules, 2005 provides for grant of rebate of central excise duty paid on input and service tax paid on input services used in providing the export service out of India, subject to such

conditions or limitations, if any, and fulfillment of such procedure, as may be specified, in the notification issued by the Government. The Government has issued Notification No. 12/2005-ST dated 19.04.1995 prescribing the condition and also the procedure to be followed for claiming rebate under Rule 5 of the Export of Services Rules. In terms of para 3.1 of the notification, the provider of taxable service for the purpose of claiming of rebate on export of service shall, prior to the date of export of taxable service, file a declaration with the jurisdictional Assistant /Deputy Commissioner of Central Excise describing the taxable service intended to be exported alongwith the description, quantity, value, rate of duty and amount of duty payable on inputs actually required to be used in providing taxable service to be exported; and the value and amount of service tax and cess payable on input services actually required to be used in providing taxable service to be exported. **Para 3.2 of the notification provides that the declaration so filed by the service exporter shall be verified for their corroboration by the Assistant Commissioner / Deputy Commissioner of Central Excise and he may, if necessary, call for any relevant information or samples of inputs and if after such verification, the Assistant/Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty/ service tax, he may accept the declaration.** Para 3.4 of the notification prescribes the procedure for presentation of claim for rebate and in terms of para 3.4(ii), the application for rebate shall be accompanied by invoices for the inputs / input services, documentary evidence of receipt of payment against taxable service exported, evidence of payment of duty on inputs and

service tax including cess on input services used for providing taxable service exported and also a declaration that the taxable services, in respect of which rebate has been claimed, have been exported in terms of Rule 3 of the Export of Services Rules, 2005.

1.3 In this case, the appellant filed nine rebate claims for the months from July 2005 to March 2006 with the jurisdictional Assistant Commissioner for total amount of Rs. 2,88,68,969/-. All these rebate claims have been filed within the limitation period prescribed under Section 11B of the Central Excise Act, 1944. The jurisdictional Assistant Commissioner scrutinized these rebate claims and vide order-in-original dated 23.10.2007 sanctioned the rebate claims of total amount of Rs.2,50,54,831/- and rejected the claim for Rs. 38,14,138/-. Out of Rs.38,14,138/- which was rejected, an amount of Rs. 18,25,612/- had been rejected on the ground that same was in respect of outdoor caterers service, which was not eligible and in respect of mandap keeper, real estate agents, erection, installation and commissioning services which have not been included in the declaration. The rebate claim for Rs. 19,88,526/- had been rejected for non submission of original invoices. In respect of the Assistant Commissioner's order rejecting the claim of Rs. 38,14,138/-, the appellant filed an appeal before the Commissioner (Appeals) who vide order-in-appeal dated 30.09.2008 set aside the order of the Assistant Commissioner and allowed the claim in respect of that amount. In the present proceedings, there is no dispute about the amount of Rs.38,14,138/-.

1.4 As regards the rebate claim of Rs. 2,50,54,431/- which had been sanctioned by the Assistant Commissioner, this portion of the claim was examined by the Commissioner who was of the view that AC's order sanctioning the same was not correct and under the review powers vested under Section 84, show cause notice was issued for disallowing the rebate claim on the grounds that- (i) in respect of number of some services, the required declaration had not been filed as per para 3.1 and the words "other Services" in the declaration filed under para 3.1 of the Notification No. 12/2005-ST.(NT) would not cover the services used but not specifically mentioned in the declaration, (ii) the proof of export submitted is not satisfactory and (iii) services of Chartered Accountant Management Consultancy and advertisement are not the services which can be said to have been used for providing the output services which has been exported. Subsequently, the Commissioner vide order-in-review No. 45/RDN/2009 dated 22.10.2009 passed under section 84 of the Finance Act, 1994 disallowed the entire rebate claim of Rs. 2,50,54,831/-, ordered its recovery from the appellant under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest on it. However, he at the same time, also ordered its credit to Consumer Welfare Fund on the ground that its sanction would amount to unjust enrichment, as the charges being received by the appellant from their client abroad are cost of operating call centre plus 10% of that cost, it indicates that they are recovering service tax from their client. He also imposed penalty of Rs. 2,50,54,831/- on the appellant under Section 78 of the Finance Act, 1994, but did not impose any penalty under section 77 of the Act. The present appeal

No.ST/848/2009 has been filed against the order of the Commissioner disallowing the rebate claim of Rs. 2,50,54,831/- ordering its recovery alongwith interest and its credit to the Consumer Welfare Fund and imposing penalty of equal amount on them under Section 78 of the finance Act, 1994.

1.5 The Commissioner's order was examined by the Committee of Chief Commissioners, which dated 05.01.2010 observing that the Commissioner's order ordering credit of rebate claim to Consumer Welfare Fund is not correct, and that in view of the apex Court's judgement in the case of **CCE, Ahmedabad vs. Cadila Laboratories (P) Ltd. reported in 2002 (142) ELT 279 (SC)** non-compliance of the procedure as laid down in the notification issued under Rule 5 of Export of Service Rules, 2005 shall result in denial of rebate claim to the appellant, directed the Commissioner to file an appeal to the Tribunal for correct determination of these points. The revenue wants to disallow rebate claim to be credited to the Government Account and also wants the penalty to be upheld. The appeal No. ST/106/2010 has been filed by the revenue in pursuance of the direction dated 05.01.2010 of the Committee of the Chief Commissioners and in respect of the appeal of the revenue, the appellant have filed Cross Objection No. ST/CO/115/2010.

2. Heard both the sides.

3. Shri J. P. Singh, Advocate, the ld. Counsel for the appellant, pleaded that Commissioner's order ordering credit of the rebate claim to Consumer Welfare Fund is totally incorrect, and as per the provisions of Section 11B,

the principles of unjust enrichment not applicable in respect of export rebate, that same view has been taken by the Tribunal in case of **CST, Ahmedabad vs. S. Mohanlal Services reported in 2010 (18) STR 173 (Tri. Ahmd.)**, that claiming the rebate, in question, the procedure as prescribed in the Notification No. 12/2005-ST dated 19.04.2005 had been followed, that the jurisdictional Assistant Commissioner had sanctioned the rebate of Rs. 2,50,54,831/- after satisfying himself in this regard, that Commissioner's finding that the provisions of para 3.1 of the Notification No. 12/2005-ST dated 19.04.2005 have not been followed inasmuch as a number of services are not mentioned in the declarations filed, is not correct; that as regards the proof of export in form of details of the remittance received for export of services, the appellant had produced a detailed chart in this regard and the jurisdictional Assistant Commissioner had satisfied himself in this regard; that no condition prescribed for claiming rebate in Notification No. 12/2005-ST had been contravened; that in view of this, the Commissioner's order denying the rebate claim, and ordering its recovery is without any basis; that in the **appellant's own case the Hon'ble Punjab & Haryana High Court reported in 2010 (20) STR 166 (P&H)** has held that even though for the period 19.4.2005 to 31.5.2005, there was no declaration, the rebate claim for this period cannot be denied; that ratio of Punjab & Haryana High Court is squarely applicable to this case and even if the Tribunal holds certain service had not been specifically declared, the rebate cannot be denied and that there is absolutely no justification for penalty of Rs. 2,50,54,831/- imposed under Section 78 on the appellant as no fraud, wilful mis-declaration, on

suppression of facts etc. is involved. He, therefore, pleaded that the impugned order is not correct.

4. Shri Sonal Bajaj, Ld. SDR defended the impugned order of the Commissioner disallowing the rebate claim and ordering its recovery and pleaded that since the conditions as prescribed in the Notification No. 12/2005-ST for claiming rebate have not been fulfilled, the rebate claim has been correctly denied and its recovery from the appellant has been correctly ordered and penalty has been correctly imposed under Section 78 of the Finance Act, 1994.

5. We have carefully considered the submissions from both sides and perused the record. The rebate has been denied by the Commissioner on three grounds- (i) In the monthly declarations filed in terms of para 3.1 of the notification No. 12/2005-ST, the input services namely; Air Travel Agent's Services, Architect's Services, Business Auxiliary Services, Cargo Handling Services, Cleaning Services, Commercial Training or Coaching Services, Consulting Engineer's Services, Customs House Agent's Services, Event Management Services, Internet Services, Manpower Consultancy Services, Storage & Warehousing Services, Technical Inspection & Certification Services, Technical Testing & Analysis Services and tour Operator's Services have not been mentioned and the appellant's contention that these services are covered by – "Other Services" in their declarations, is not acceptable; (ii) Condition of para 3.4 (ii)(b) of the Notification No. 12/2005-ST is not fulfilled inasmuch as FIRC's submitted by the appellant as an evidence of receipt of remittance

against export of taxable services do not contain the invoice number etc. of the export invoices, and therefore it is not possible to establish that the FIRC's pertain to the export services; and (iii) Service of advertisement, Chartered Accountant's and Management Consultancy cannot be treated as services used for providing output service which was exported and hence in respect of these services export rebate would not be admissible.

5.1 The contention of the appellant is that all the import services had been declared in the monthly declarations that the services in question are covered by "other services" in the declarations, that in the declarations filed under para 3.1 it is not possible to mention each and every input service expected to be availed during the month and that the Assistant Commissioner after checking had found only three services as not declared but the order of the Assistant Commissioner was set aside by the CCE (Appeals). As regards violation of condition of para 3.4 (ii) (b) of the notification, it has been pleaded by the appellant that co-relation statement had been submitted before the Assistant Commissioner and on that basis he was satisfied regarding the receipt of the payment from the overseas clients. As regards denial of rebate in respect of Advertisement Services, Chartered Accountant and management Consultancy Services, the appellant's plea is that these services are 'input' services within the meaning of this term, as defined in Rule 2(R) of Cenvat Credit Rules, 2006 and the question of rebate in respect of these services stands decided in the appellant's favour by Tribunal decision in the appellant's own case reported in 2009 (21) STT-67.

6. On perusal of the show cause notice issued by the Commissioner, it is seen that with regard to non-fulfilment of the condition of para 3.1 of the Notification No. 12/2005-ST the department's allegation is that 15 input services – Air Travel Agent's Services, Architect's Services, Business Auxiliary Services, Cargo handling Services, Cleaning Services, Commercial Training or Coaching Services, Consulting Engineer's Services, Customs House Agent's Services, Event Management Services, Internet Services, Manpower Consultancy Services, Storage & Warehousing Services, Technical Inspection and Certification Services, Technical Testing & Analysis Services and Tour Operator's Services have not been declared in the monthly declaration and the services cannot be treated as covered under 'Other Services' in the declaration.

6.1 It is not the case of the department that the abovementioned services which are alleged to be not specifically mentioned in the declarations filed under para 3.1 of the notification, have not been received. There is also no allegation that as per the requirement of para 3.4(a) (ii) the invoices for all the input services had not been submitted. On the contrary, in the order-in-original passed by the Assistant Commissioner, he has given a clear finding that declarations filed were accepted by him on due verification of actual use of input services, except for one service viz outdoor caterer services. The Commissioner while concluding that the condition of para 3.1 of the notification has not been fulfilled, has not stated as to how the above finding of the Assistant Commissioner is incorrect, when as per para 3.4(a)(ii) of the Notification No. 12/2005-ST, the rebate application is accompanied by the invoices for inputs and input services as documentary

evidence regarding the use of the input services, and there is no allegation of the department that rebate claims were not accompanied by such invoices. In view of this, even if the Commissioner's observation that certain services were not mentioned in the declaration is accepted, it would be only a technical lapse and it would not be correct to deny the rebate claim just for the reason that certain input services were not specifically mentioned in the declarations. As held by the **Hon'ble Punjab and Haryana High Court in the appellant's own case reported in 2010 (20) STR 166 (P&H)**, the rebate under Rule 5 of the Export of Services Rules cannot be disallowed for delay in filing of declaration under para 3.1 of the Notification No. 12/2005-ST. Moreover, when from the facts narrated in the show cause notice and the impugned order-in-original, it is clear ^{that} the declarations, as required under para 3.1 of the notification, were being filed and in those declarations, only some inputs services as mentioned above were not specifically declared, it is highly irrational on the part of the Commissioner to deny the entire rebate claim. Moreover as discussed above, even in respect of services not specifically declared, there is substantial compliance as in every declaration the appellant by mentioning – 'Other Services', had clearly disclosed to the department that they ^{intended} to use some services other than those specifically mentioned in the declaration and subsequently while filing rebate claim had enclosed the invoices in respect of those services and, therefore, in respect of these services, the rebate cannot be denied. As mentioned in para 3.2 of the notification, the basic criteria for permitting the export rebate is the satisfaction of the sanctioning authority that there is no likelihood of

and evasion of excise duty, service tax i.e. claiming rebate for the inputs/ input services not actually received. In this case, there is not even a whisper of such allegation. The failure to specifically mention certain input services in the declarations required to be filed ^{as per} para 3.1 of the notification is, therefore, a purely technical mistake for which the rebate claim can not be denied. The judgement of Hon'ble Supreme Court in the case of **Collector of Central Excise, Ahmedabad vs. Cadila Laboratories (P) Ltd. reported in 2002 (142) ELT 279 (SC)**, relied upon by the department is not applicable to the facts of this case, when there is substantial compliance with the provisions of Notification No. 12/2005-ST regarding the procedure to be followed for ^{claiming} the rebate. Therefore, the Commissioner's order disallowing the rebate and ordering its recovery is not sustainable and the same is liable to be set aside.

7. As regards the second ground for denial of rebate claim, we find that it is not disputed that the services, in question, have been exported, that is, the same have been ^{provided} to client outside India. The appellant have pleaded that they had produced a statement showing the co-relation between the export invoices and the FICRs, but there is no discussion regarding the same in the impugned order. On the contrary, the Assistant Commissioner in para 10 of the order-in-original sanctioning refund rebate claim has given a categorical finding that the appellant have filed the rebate claim alongwith requisite evidence as per para 3.4 of the notification and that they have fulfilled all the conditions of the Notification No. 12/2005-ST. Just because FICRs do not bear the export

invoice numbers, it cannot be concluded that the same do not pertain to the service provided by the appellant to their client abroad.

8. As regards the rebate claim in respect of advertisement service, Chartered Accountant Services of Management Consultant Services, the department does not dispute that the same are covered by the definition of 'input service' as given in Rule 2 (1) of Cenvat Credit Rules, 2004. The department's objection is that these services are not used for providing the Customer Care Services which was exported. On this point the Tribunal in the appellant's own case [**Commissioner of Service Tax vs. Converges India (P) Ltd. reported in 2009 (21) STT-67**] has held that there can not be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate and that whenever credit has been permitted to be taken, the same are permitted to be utilized and when the same is not possible, there is provision for grant of rebate and that without questioning the eligibility for credit, the eligibility to rebate can not be questioned. Following this judgement of the Tribunal, we hold that Commissioner's order disallowing rebate in respect of advertisement service, Chartered Accountant Services and Management Consultant service is not sustainable and is liable to be set aside.

9. We are therefore, of the view the grounds on which the rebate claim has been denied by the Commissioner are flimsy and as such the Commissioner's order denying the rebate claim and ordering its recovery from the respondent is not sustainable. When the demand of service tax is not sustainable, there is no question of penalty under Section 78 of the

Finance Act, 1994. However, we cannot help expressing our anguish at the casualness with ^{which} the Commissioner by making the allegation of wilful mis-statement and suppression of facts against the appellant has invoked penal provisions of Section 78, totally ignoring the fact that the appellant had submitted the rebate claims with all the relevant documents to the jurisdictional Assistant Commissioner who after rejecting the claim for Rs.38,14,138/- had sanctioned the remaining amount of Rs.2,50,54,831/- after being satisfied about its correctness and the rebate sanctioned by the Assistant Commissioner ^{by} sought to be recovered by reviewing the AC's order without discovery of any new document indicating mis-statement or suppression of some information by the appellant. In such a case, penal provision ^{could} be invoked only ^{if there was evidence} of collusion with the AC/DC sanctioning the rebate ^{who despite of the rebate} not being admissible, sanctioned the same. But there is not a whisper of such allegation against the Assistant Commissioner. In case after ~~case~~ we find the provisions of extended period under proviso to Section 73(1) of the Finance Act, 1994 ^{and proviso to} Section 11A(i) of Central Excise Act, 1944, together with penal provisions of Section 11AC of Central Excise Act, 1944/ Section 78 of Finance Act, 1994 being invoked in a most casual manner by making the allegation of "suppression of fact", "wilful mis-statement" ^{etc} without examining as to whether there is evidence on record to invoke these provisions and totally ignoring the law laid down in this regard by the Apex Court in a series of judgements – CCE vs. Champher Drugs reported in 1989 (40) ELT 276 (SC), Padmini Products vs. Collector of Central Excise, reported in 1989 (43) ELT 195 (SC); Pushpam

Pharmaceuticals Company vs. CCE, Bombay reported in 1995 (78) ELT 401 (SC), Continental Foundation Jt. Venture vs. CCE, Chandigarh reported in 2007 (217) ELT 177 (SC), Anand Nishikawa Co. Ltd. vs. CCE, Meerut reported in 2005 (188) ELT 149 (SC) etc.

The appellant's plea in this regard were dismissed by the Commissioner in para 13F of the order as under:-

7 { "The ^{noticees} contention that "Interest under Section 75 and penalty under Section 77 & 78 of the Act are not leviable in the present case" also does not hold merit because as discussed in para A & B above, this is a case of erroneous refund to the noticees which they availed by way of adopting the means of willful mis-statement and suppressing the facts with intent to claim undue rebate".

There is absolutely no discussion in the impugned order about the evidence in this regard as to whether the criteria for invoking these provisions, as laid down in the above mentioned judgements of the Apex Court is satisfied. The only explanation for such type of adjudication is that either the Commissioner is totally ignorant of the judgements of the Apex Court on this issue ^{by} in order to error the side of the revenue he has ^{chosen} to defy the judgements of the Apex Court. But such adjudication orders are mockery of justice. 1 }

10. As regards the Commissioner's order ordering the credit of the rebate amount to Consumer Welfare Fund, we are surprised as to how Commissioner, after disallowing the rebate claim of Rs. 2,50,54,831/- and ordering its recovery from the appellant alongwith interest, has ordered the credit of the same amount to the Consumer Welfare Fund. It is only the refund / rebate claim which ^{has been held admissible}, can be credited to Consumer Welfare Fund on the ground of unjust enrichment, if applicable. 1 }

In any case, in terms of the provisions of Section 11B of the Central

Excise Act, 1944, as made applicable to Service tax matters by Section 83 of the Finance Act, 1994, the principle of unjust enrichment is not applicable to export rebate. Therefore, the Commissioner's order ordering credit of the rebate amount to Consumer Welfare Fund is not sustainable. At the same time, there is no merit in the Revenue's plea for crediting this amount to Government Account as the Commissioner while disallowing the rebate claim is not sustainable.

11. In view of the above discussion, the impugned order is set aside. The appeal filed by the appellant is allowed and the appeal filed by the revenue is dismissed. The Cross-objection filed by the appellant also stands disposed of.

(Operative portion of the order already pronounced in the Court)

[Archana Wadhwa]
Member (Judicial)

[Rakesh Kumar]
Member [Technical]

/Pant/

While agreeing with the conclusions arrived at by my learned brother, I would just like to observe that after disallowing the rebate claim sanctioned by the original Adjudicating Authority, the Commissioner has ordered to credit the same in the consumer welfare fund. The said order of the Commissioner is apparently self-contradictory order in as much as on one hand, he has rejected the refund claim and on the other hand he has ordered the same to be credited to the consumer welfare fund. The officers of the level of Commissioner are expected to know that it is only after the refunds are sanctioned on merits that the same can be credited to consumer welfare fund on the ground of unjust enrichment. The rejected refunds/rebates cannot be credited to the consumer welfare fund. The same reflects on the non-application of mine on the part of the Commissioner.

(~~Archana~~ Archana Wadhwa)
Member (Judicial)