CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 53894 OF 2018

[Arising out of Order-in-Appeal No.952-953(CRM)CE/JDR/2018 dated 29.08.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

M/s. JK Cement Works
Kailash Nagar, Nimbahera,
Chittorgarh-312617 (Rajasthan) **Appellant**

Vs.

Commissioner of CGST and Central Excise, Jodhpur **Respondent**

WITH

EXCISE APPEAL NO. 50097 OF 2019

[Arising out of Order-in-Appeal No.952-953(CRM)CE/JDR/2018 dated 29.08.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

M/s. JK Cement Works
Kailash Nagar, Nimbahera,
Chittorgarh-312617 (Rajasthan) **Appellant**

Vs.

Commissioner of CGST and Central Excise, Jodhpur **Respondent**

AND

EXCISE APPEAL NO. 50696 OF 2020

[Arising out of Order-in-Appeal No.849(CRM)CE/JDR/2019 dated 24.10.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

M/s. JK Cement Works
Kailash Nagar, Nimbahera,
Chittorgarh-312617 (Rajasthan) **Appellant**

Vs.

Commissioner, Central Excise & CGST, Udaipur
142-B, Sector-11, Hiran Magri,
Udaipur-313002 (Rajasthan) **Respondent**

Appearance:
Present for the Appellant: Shri B.L. Narasimhan, Advocates
Present for the Respondent: Shri Bhagwat Dayal, Authorised Representative

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

Date of Hearing: **05/05/2026**
Date of Decision: **20/05/2026**

Final Order No.50957-50959/2026

ASHOK JINDAL:

All the appeals are arising out of common issue, therefore, all are disposed of by a common order.

2. The facts of the case are as under :

1. The Appellant is a unit of J.K. Cement Limited and is engaged in the manufacture of grey cement falling under Chapter 25 of First Schedule to Central Excise Tariff Act.
2. During the FY 1986-87, in order to give impetus to cement manufacturing units in the State of Rajasthan for meeting increased demand of cement, the Central Government, vide **Notification No. 36/87-CE dated 1.3.1987** (for short, **"Rebate Notification**, granted rebate of Excise Duty to cement manufactured in factory which commenced production on or after 1.4.1986. Effectively, a rebate of Rs. 50 per metric tonne (for short **"PMT"**) was granted to such manufacturers.
3. The Rebate Notification was followed by a Press Note dated 30.4.1987 issued by Ministry of Industry, Department of Industrial

Development, which stipulated that the rebate of Excise Duty and reduction of levy quota of cement were meant to suitably compensate the concerned cement units for increase in setting up of cement plants and for growth of cement industry.

4. Further, Cement Control Order, 1967 specified the retention price (ex-factory price) of cement in Clause 8, which when read with Explanation I(ii) thereof, entitled the manufacturers to collect Excise Duty including the exemption or rebate in Excise Duty of Rs. 50 PMT granted by Central Government vide the Rebate Notification.

5. In view of the above, the Appellant (which at the relevant time was a unit of J.K. Synthetics Ltd.) applied for and was granted a license dated 3.11.1987 for substantial expansion of installed capacity of its existing cement unit at Nimbahera, Rajasthan. In furtherance to the above, on 17.12.1987, the Appellant set up a new manufacturing unit adjacent to its old plant in the name of 'New J.K. Cement Works', and commenced manufacturing operations therefrom. Consequently, the said manufacturing unit became entitled to avail incentives and rebate of Excise Duty granted under the Rebate Notification.

6. The Appellant, vide letters dated 17.12.1987 and 27.1.1988, intimated the Ld. Jurisdictional Assistant Commissioner, Central Excise and Customs, regarding its claim to avail the benefit of the Rebate Notification as a new manufacturing unit. Further, vide letter dated 13.4.1988 the Appellant also intimated that it shall be making clearances on payment of Excise Duty at a higher rate "under protest", without availing benefit of the Rebate Notification, till the

time of approval of classification list by the department.

7. Accordingly, the Appellant paid excess Excise Duty under protest amounting to Rs. 1,85,93,463 for the period from 1.5.1988 to 31.10.1988 and Rs. 20,29,894 for the period from 1.11.1988 to 21.11.1988.

8. On 21.11.1988, the department approved a classification list separately for New J.K. Cement Works, allowing rebate of Excise Duty to the Appellant in terms ofthe Rebate Notification. Hence, w.e.f. 22.11.1988, the Appellant made payment of the Excise Duty to the Government after reduction of Rs. 50 PMT in terms of the Rebate Notification.

9. The factual background leading to the present disputes is summarised as under:

Date	**E/53894/2018 Refund (Pd. 1.5.1988 to 31.10.1988)**	**E/50097/19 Refund (Pd. 1.11.1988 to 21.11.1988)**	**E/50696/2020 Recovery proceedings of refund sanctioned**
4.1.1989 and refilled on 23.9.1999	Pursuant to the classification list approved on 21.11.1988,a claim for refund of **Rs.1,85,93,463** was filed by the Appellant on account of excess payment of Excise Duty during the period from. 1.5.1988 to 31.10.1988		
4.5.1989		Refund claim for **Rs.20,29,894** was filed by the Appellant on account of excess payment of Excise Duty	
17.12.1989	A SCN C. No. V(25)18/1998/4677 dated 17.12.1999 **("SCN-I")** was issued proposing rejection of the claimed amount of Rs. 1,85,93,463 on the ground that (i) refund is time barred; and (ii) hit by the bar of unjust enrichment		

16.2.2000	OIO No. 22/2000-CE (Refund) dated 16.2.2000 passed by the Ld. Assistant Commissioner, Central Excise & Customs Division, Chittorgarh held that refund claim is not time barred and sanctioned the amount, however, directed to be deposited in Consumer Welfare Fund u/s 12C of Excise Act, on account of unjust enrichment.		
8.5.2001	OIA No. 268(KDT) CE/JPR-II(128)/2001, passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur and rejected the appeal filed by the Appellant. Aggrieved with the same, Appellant filed an appeal against the said OIA before the Hon'ble CEGAT, New Delhi		
5.12.2002	The Hon'ble CEGAT, New Delhi, in the case of **Birla Corporation Limited & New JK Cement Limited v. CCE, Jaipur, Final Order No. 263-64/2002-C dated 5.12.2002**, allowed the appeal filed by Appellant on the ground that duty has been paid under protest and therefore the bar of unjust enrichment is not applicable in light of the judgement of the Hon'ble Supreme Court in **Sinkhai Synthetics & Chemicals Ltd. v. CCE, Aurangabad, 2002 (143) ELT 17 (SC)**, and directed the department to refund the amounts with utmost expedition		
25.5.2003	Vide OIO no. 233/2003-CE (Refund)dated 23.5.2003**,** the Ld. Assistant Commissioner Central Excise & Customs Division, Chittorgarh, refunded the claimed amount of Rs. 1,85,93,463, however, adjusted and appropriated the same in the Government		

	Account towards Appellant's outstanding arrears, in terms of Certificate dated 9.5.2003 issued u/s 142(1)(a) of Customs Act, 1962.		
19.8.2003		OIO No. 385/03-CE (Refund) dated 19.8.2003 passed by the Ld. Deputy Commissioner, Central Excise & Customs Division, Chittorgarh, sanctioned the refund claim of Rs. 20,29,894, however, the same was appropriated, in the Government Account, in terms of Certificate dated 9.5.2003 in terms of Certificate dated 9.5.2003 against Appellant's outstanding arrears	
2.4.2004			SCN bearing C. No. V(25)15/Off/Adj-11/68/04 dated 2.4.2004 issued by the Ld. Commissioner, Central Excise Commissioner, Jaipur, proposing recovery of refund amounting to Rs. 1,85,94,463 u/s 11A(1) Central Excise Act, 1944**("Excise Act")**, alongwith interest u/s 11AB *ibid.*
6.4.2004			SCN bearing C. No. V(25)15/Off./ Adj-II/ 165/ 04 dated 6.4.2004 issued by the Ld. Commissioner, Central Excise Commissioner, Jaipur proposing recovery of refund amounting to Rs. 20,29,894 u/s 11A(1) Excise Act, along with interest u/s 11AB *ibid.*
10.2.2004 to 29.10.2004	The Appellant filed Writ Petition No. 5925/2003 before the Hon'ble Rajasthan High Court, seeking interest on the refunded amounts of Rs. 1,85,93,463 and Rs. 20,29,894 under Section 11BB of the Excise Act, which was allowed by the Hon'ble Rajasthan High		

	Court in **J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs, 2004 (170) E.L.T. 4 (Raj.)**, and directed the Department to pay interest on refunded amountsat the applicable rate. The aforesaid judgment was maintained by Hon'ble Supreme Court in **2005 (179) E.L.T. A150 (S.C.)**.		
16.11.2004	In accordance with the above, interest amounting to **Rs. 1,91,16,117** was paid to the Appellant on the refund amount of Rs. 1,85,96,463		
31.3.2005		Pursuant to the judgment dated 10.2.2004 of the Hon'ble Rajasthan High Court, interest of **Rs. 21,26,049** was sanctioned to the Appellant on the refunded amount of Rs. 20,29,894	
9.11.2005			SCN bearing C. No. V(25)15/Off/Adj-II/59/05/5898-5900 dated 9.11.2005 was issued by the Ld. Commissioner, Central Excise Commissionerate, Jaipur-II, proposing recovery of interest of Rs. 1,91,16,117 sanctioned on the refunded amount of Rs. 1,85,96,463 u/s 11A(1) Excise Act, along with interest u/s 11AB *ibid*.
22.2.2006			SCN bearing C. No. V(25)15/Off/Adj-II/60/05/722-23 dated 22.2.2006 was issued by the Ld. Commissioner, Central Excise Commissionerate, Jaipur-II, proposing recovery of interest of Rs. 21,26,049 sanctioned on the refunded amount of Rs. 20,29,894 u/s 11A(1) Excise Act, along with interest u/s 11AB *ibid*.
25.1.2007	The judgment of the Hon'ble Supreme Court in the case of **Sinkhai Synthetics (supra)** was reversed by the Larger Bench judgment of the Hon'ble Supreme Court in the case		

	of **CCE v. Allied Photographics India Ltd., 2004 (166) ELT 3 (SC)**. Consequently, department challenged CESTAT's Final Order dated 5.12.2002 before the Hon'ble Supreme Court vide Civil Appeal No. 1983-1984/2004. The appeal was disposed off by Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Jaipur v. Birla Corporation Ltd. & Anr, 2007 (208) E.L.T. 481 (S.C.),** wherein it was held as under: • The bar of unjust enrichment is applicable to refund claims as well, even where the duty is paid under protest; and • The matter was remanded to the Ld. Assistant Collector for factual verification regarding the duty incidence, if passed on to the customer.		
22.12.2008	Pursuant to the remand direction of the Hon'ble Supreme Court, the Ld. Assistant Commissioner, Central Excise & Service Tax Division, Chittorgarh vide OIO No. 321/2008-CE(Refund) dated 22.12.2008**("OIO dated 22.12.2008"),** held that the doctrine of unjust enrichment is not applicable to the present case and hence, the amount of Rs. 1,85,93,463 was correctly refunded to the Appellant.		
22.1.2009		Pursuant to such remand by the Hon'ble Supreme Court, OIO No. 390/2008/CE (Refund.) dated 22.1.2009**("OIO dated 22.1.2009")** was passed by the Ld. Assistant Commissioner, Central Excise & Service Tax Division, Chittorgarh, wherein it was held that doctrine of unjust enrichment is not applicable to the present case and hence, the amount of Rs. 20,29,894 was correctly refunded to the Appellant.	
14.5.2009	OIO dated 22.12.2008 was challenged by department before the Ld. Commissioner (Appeals), Jaipur by way of an appeal**,** pursuant to which a		

	notice bearing C. No. APPL/JPR-II/CE/CH/146/III/2009/2128 dated 27.3.2009 was issued by the Ld. Superintendent (Appeals), Jaipur to the Appellant directing the Appellant to file cross objections against the said Department Appeal, which were duly filed by the Appellant on 14.5.2009.		
6.7.2009		OIO dated 22.1.2009 was challenged by department before the Ld. Commissioner (Appeals), Jaipur by way of an appeal, pursuant to which a notice bearing C. No. APPL/JPR-II/CE/CH/191/IV/09/94 dated 12.5.2009, was issued by the Ld. Superintendent (Appeals), Jaipur to the Appellant directing the Appellant to file cross objections against the said Department Appeal, which were duly filed by the Appellant on 6.7.2009	
30.4.2010	Order-in-Appeal No. 236(KKG)CE/JPR-II/2010 dated 30.4.2010 and Order-in-Appeal No. 235(KKG)CE/JPR-II/2010 dated 30.4.2010 (collectively **“OIAs dated 30.4.2020”**) were passed by the Ld. Commissioner, Central Excise (Appeals), Jaipur-II, which allowed the aforesaid department appeals, observing that the Appellant had passed on the burden of duty element to the customers and thus, the refund claim is hit by the bar of unjust enrichment. It is pertinent to note that the Ld. Commissioner, Central Excise (Appeals), Jaipur-II did not consider the cross objections filed by the Appellant.		
8.4.2011	Being aggrieved by the aforesaid OIAs dated 30.4.2010, the Appellant filed Appeal No. E/2717-2718/2010 before Hon’ble CESTAT, New Delhi, which was disposed off in **J.K. Cement Works v. Commissioner of Central Excise, Jaipur-II, 2016 (335) E.L.T. 727 (Tri. - Del.) (“CESTAT Order dated 8.4.2011”)**, wherein it was held as under: • Principle of unjust enrichment is applicable to refund claim filed by Appellant; • The matter is remanded to Commissioner (Appeals) to consider whether duty element has been passed on by the Appellant; and		

	• Commissioner (Appeals) was directed to consider cross objections filed by Appellant.	
10.10.2011	The aforesaid CESTAT Order dated 8.4.2011 was challenged by the Appellant before Hon'ble Supreme Court vide Civil Appeal No. 7541-7542/2011, which were dismissed by Hon'ble Supreme Court in **2016 (335) E.L.T. A210 (S.C.).**	
29.8.2018	In compliance of the remand directions of Hon'ble CESTAT, New Delhi vide CESTAT Order dated 8.4.2011, Ld. Commissioner (Appeals), Central Excise & CGST, Jodhpur, after a delay of 7 years, passed OIA No. 952-953 (CRM)CE/JDR/ 2018 dated 29.8.2018 **("OIA dated 29.8.2018")**, wherein it was *inter-alia* held as under: • Appellant has failed to produce documentary evidence which establish that the Appellant has not passed the burden of duty to their customers; • The affidavit and Chartered Accountant certificate submitted by the Appellant were rejected; and • In the financial statement of the Appellant, excise duty paid has been claimed to have been absorbed and shown as expenditure in the profit and loss account therefore, it clearly reflects that the duty element has been passed to the buyers. Therefore, it was held that the refund claims of Rs. 1,85,93,463 and Rs. 20,29,894 filed by the Appellant are hit by the bar of unjust enrichment.	
15.01.2019		All four show cause notices were adjudicated vide common OIO No. 05-08/CX/UDR/2018-19/JC dated 15.1.2019**("OIO dated 15.1.2019")** passed by the Ld. Joint Commissioner, Central Excise Division, Udaipur, holding that the refunds and interest thereon erroneously sanctioned to the Appellant are liable to be recoveredunder Section 11A(1) of the Excise Act along with interest under Section 11AB/ 11AA *ibid.* Being aggrieved by the aforesaid OIO dated 15.1.2019, the Appellant filed appeal before the Ld. Commissioner (Appeals), Central Excise & CGST, Jodhpur

24.10.2019		Vide OIA No. 849(CRM)CE/JDR/2018 dated 24.10.2019**("OIA dated 24.10.2019")**, the Ld. Commissioner (Appeals), Central Excise & CGST, Jodhpur rejected Appellant's appeal and upheld OIO dated 15.1.2019 in its entirety.
	Being aggrieved with the aforesaid OIA dated 29.8.2018, the Appellant filed present **Central Excise Appeal No. E/53894/2018 and Appeal No. E/50097/2019,** before the Hon'ble CESTAT, New Delhi	Being aggrieved by OIA dated 24.10.2019, the Appellant filed present **Central Excise Appeal No. E/50696/2020**

SUBMISSIONS

A. THE APPELLANT HAS NOT UNJUSTLY ENRICHED ITSELF AND HENCE, THE PRESENT PROCEEDINGS ARE LIABLE TO BE SET ASIDE.

A.1. It is submitted that the question of unjust enrichment does not arise in the present case, as the Appellant did not pass on the burden of duty incidence to its buyers.

A.2. It is submitted that during the relevant period, the Appellant had been incurring heavy losses and costs due to setting up of a new manufacturing unit and thus, the price at which the cement was sold was below the cost of production. As a result, the excise duty element was absorbed by the Appellant and was accounted for as an expenditure in their Balance Sheet.

A.3. During the period from 01.05.1988 to 31.03.1989, the cost of production of cement in the new manufacturing unit was Rs. 5,337.42 lakhs. After taking into account excise duty (Rs. 1,172.18 lakhs) paid on dispatches of cement from factory and sales tax paid thereon (Rs. 627.69 lakhs), the Appellant expected a profit of approximately Rs. 864.91 lakhs (worked out on the basis of a 12% return on fixed asset). Therefore, the total price expected by the Appellant was approximately Rs. 8,202.20 lakhs.

A.4. However, due to stiff competition in the market, the Appellant was able to make actual sales realization of only Rs. 6,762.93 lakhs. Thus, on the expected price, the Appellant suffered a loss of Rs. 1439.27 lakhs. Therefore, the Appellant incurred a loss of Rs. 553.02 lakhs to the balance sheet.

A.5. Hence, it is absolutely clear and apparent that the Appellant was unable to recover its cost of production and thus, had to absorb the excise duty payable on the sale of cement, and consequently, did not recover the same from its customers.

A.6. In support of the aforesaid submission, an **Affidavit of Mr. B.L. Pokharna Manager (Sales) of the Appellant** was submitted by the Appellant, wherein it has been stated that the Appellant had to absorb the excise duty element and was unable to recover the same from its customers. Further, to strengthen the above submission, the Appellant also furnished a Chartered Accountant Certificate wherein based on cost of production, excise duty paid, sales tax, expected profit, total expected price, actual sales realization and the loss incurred by the Appellant, it was reasonably concluded that the new manufacturing unit of the Appellant was unable to recover the element of excise duty on the clearance of goods during the relevant period and had absorbed the excise duty, and hence, the Appellant was unable to pass on the burden of duty to its customers.

A.7. In this regard, reliance is placed on the decision of the Hon'ble Tribunal, Chennai in the case of **Shakun Overseas Limited v. Commissioner of Customs, Chennai,2002 (140) E.L.T. 444 (Tri. - Chennai)**, wherein it was held that where goods were sold at a price lesser than the landed cost, which was duly evidenced by *inter alia* a Chartered Accountant Certificate,the incidence of burden cannot be said to have been passed on to the customers.

A.8. In the present case, the documentary evidence clarifies the position that the Appellant was not in a position to recover the excise duty from its customers. The entire excise duty was paid out of the price realization, which was below the cost of production. Thus, the excise duty was absorbed by the Appellant and was not passed on to its customers and hence, the question of applicability of unjust enrichment does not arise in the present case.

B. <u>THE FINDINGS OF UNJUST ENRICHMENT MERELY ON BASIS OF MANNER OF ACCOUNTING IS NOT TENABLE.</u>

B.1. The Ld. Commissioner (Appeals), Central Excise & CGST, Jodhpur, vide OIA dated 29.8.2018, has observed that the Appellant has passed on the burden of excise duty to its customers merely on the basis that the Excise Duty amount is shown as expenditure in the profit and loss account of the Appellant.

B.2. In this regard, it is humbly submitted that it is humbly submitted that mere accounting treatment in the Books of Accounts of the Appellant does not prove or establish that incidence of duty was actually passed on to some other person by the Appellant. Rather, in the presence of documentary evidence in the form of Affidavit as well as a Chartered Accountant Certificate to show that the burden of duty was borne by the Appellant alone, mere accounting treatment cannot be made a sole basis for reaching an adverse conclusion. Hence, findings in the OIA dated 29.8.2018are erroneous and unsustainable.

B.3. The aforesaid submission is strengthened by the decision of Hon'ble Tribunal in **Allied Chemicals & Pharmaceuticals Private Limited vs. CCE & ST, Final Order**

No. 50146-50163/2019 dated 1.2.2019 – CESTAT, New Delhi, wherein it was held that the bar of unjust enrichment would not apply merely on basis of the statements contained in the Profit & Loss A/c while there are documentary evidences in the nature of invoices, ER-1 returns, Accounting Standards, CA certificate, in support of the refund claim establishing that duty incidence had been borne by the assessee and not passed on to any other person.

B.4. Further, in the decision of the Hon'ble CESTAT, Chandigarh in the case of **Monte Carlo Fashion Limited v. CC, Ludhiana, Final Order No. 60376-60380/2019 dated 2.4.2019 in Customs Appeal No. C/61573 to 61577/2018-Cus (DB) – CESTAT, Chandigarh**, it was held that the fact that the appellants have made debit entry in the Profit and Loss Account as expenditure and not shown in the balance sheet as dues recoverable from the department cannot be the reason to deny the refund claim for the reason that the appellants have not passed the bar unjust enrichment, especially when the certificate issued by the chartered accountant certifying that the appellants have not passed the duty incidence to the customers has been furnished.

B.5. Similar proposition was laid in the following decisions that mere treatment of the claimed amount in the Balance Sheet as 'expenditure' cannot be concluded that incidence of duty has been passed on to any buyer, and on this basis the refund amount cannot be denied to the assessee:

- **CCE, Pune-I v. Sandvik Asia Ltd., 2015 (323) ELT 431 (Bom.)**
- **CCE, Coimbatore v. Flow Tech Power, 2006 (202) ELT 404 (Mad.)**
- **Barmer Lignite Mining Company Limited v. Commissioner, CGST, Jaipur-I, Final Order No. 59888/2024 dated 16.12.2024 – CESTAT, New Delhi**
- **Chambal Fertilizers and Chemicals Limited Versus Commissioner, Central Goods and Service Tax, Udaipur (Raj.) Final Order No.50085/2023 dated 30.01.2023 – CESTAT, New Delhi**
- **Commissioner of Customs (Port), Kolkata v. KEC International Limited, Final Order No. 77608-77609/2023 dated 1.12.2023 in Customs Appeal No. 75630/2017 – CESTAT, Kolkata**
- **Shyam Coach Engineers Versus Commissioner of Central Excise &C.G. St. – Final Order No. 50011/2024 dated 04.01.2024 – CESTAT, New Delhi**
- **Commissioner of Customs Versus U.T. Electronics Pvt. Ltd. Final Order No. 51730-51732/2019 dated 24.12.2019 – CESTAT, New Delhi**

B.6. In view of the settled position by way of the above judicial precedents, it is humbly submitted that mere accounting treatment cannot be made a sole basis for concluding that incidence of excise duty has been passed on by the Appellant to the customers.

B.7. It is further submitted that the presumption created under Section 12B of the Excise Act, which states that "*every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods*", wasintroduced w.e.f. 20.9.1991 and hence, is not applicable to the relevant period in the present case.

B.8. In view of the above, rejection of refund on the ground of unjust enrichment is not sustainable and is liable to be set aside.

C. EXPERT'S OPINION IN THE FORM OF CHARTERED ACCOUNTANT CERTIFICATE MUST BE GIVEN DUE IMPORTANCE AND THE SAME CANNOT BE BRUSHED ASIDE UNLESS CONTROVERTED WITH DOCUMENTARY EVIDENCE.

C.1. In the present case, the Appellant duly furnished a Chartered Accountant Certificate (which was based on detailed scrutiny of the financial statements of the Appellant) before the Ld. Commissioner (Appeals)to show that the burden of excise duty was in fact borne by the Appellant alone and was not passed on to the customers.Despite this, the Ld. Commissioner (Appeals) concluded that the burden of excise duty was passed on by the Appellant to its customers. It is humbly submitted that such conclusion is erroneous and unsustainable.

C.2. In this regard, it is submitted that the Chartered Accountant Certificate is based on the financial records maintained by the Appellant, i.e. books of accounts and other accounting records, which clearly reflect that the element of excise duty on clearance of goods during the relevant period was not collected from the customers inasmuch as the total sales realization for sale of cement during the relevant period was less than the reasonably expected price of cement, evidencing that the incidence of duty was not passed onto the customers and was borne by the Appellant itself.

C.3. It is humbly submitted that once the Chartered Accountant certificate has been placed on record, the same is to be given due importance by the Authorities. It has been repeatedly held that due weightage is to be given to Chartered Accountant certificate and the same cannot be rejected when the department has not adduced any evidence to rebut such certificate.

C.4. Reliance in this regard is placed on the following decisions:

- **Hero Motocorp Ltd. v. CC (Import and General), 2014 (302) E.L.T. 501 (Del.)**
- **Tirumala Bearings (P) Ltd. v. CCE&C, Vishakhapatnam, 2016 (335) E.L.T.**

145 (Tri. - Bang.)

- **ITC Ltd. v. Commissioner of Customs, Final Order No. 77322/2025dated 7.8.2025, CESTAT, Kolkata**
- **CCE, Surat-II v. Binakia Synthetics Ltd., 2013 (294) E.L.T. 156 (Tri. - Ahmd.)**
- **CCE, Mumbai v. Shethia Audio Video Pvt. Ltd., 2003 (161) ELT 452 (Tri.- Mumbai)**
- **CCE, Ahmedabad v. Devi Synthetics, 2010 (261) E.L.T. 416 (Tri. - Ahmd.)**
- **CCE, Surat v. Ajay Prakash Dyg. & Ptg. Mills, 2009 (248) E.L.T. 666 (Tri. - Ahmd.)**

C.5. In view of the foregoing submissions, the Appellant has not unjustly enriched itself in the present case and the Appellant is entitled to refund of the claim amount along with interest in accordance with law.

D. **WITHOUT PREJUDICE, THE DOCTRINE OF UNJUST ENRICHMENT IS NOT APPLICABLE TO THE INSTANT CASE AS EVIDENT FROM INTENT OF THE NOTIFICATION NO. 36/87 DATED 1.3.1987.**

D.1. As evident from the Rebate Notification read with Press Note dated 30.4.1987, it is evident that the underlying objective was to compensate the manufacturers who set up new units by incurring heavy capital investment and the modality for the same was by way of retention of Excise Duty.

D.2. Further, Clause 8 of the Cement Control Order, 1967 read with the Rebate Notification makes it clear that the intention of the Rebate Notification was to incentivise the domestic cement manufacture by allowing retention of Rs. 50 PMT of Excise Duty collected by manufacturers from their customers to cover the initial setting up cost of manufacturing unit.

D.3. In view of the above, since it was a definitive policy of the Government that the Cement manufacturers are entitled to retain the rebate portion as an incentive, then invocation of principle of unjust enrichment is inequitable in as much as this is against the principle of promissory estoppels and the Government is required to honour its promise by not collecting the amount of such excess duty paid by the Appellant.

D.4. In the instant case, during the relevant period from 1.5.1988 to 21.11.1988, since the department did not approve the classification declarations, the Appellant started clearances on payment of total duty, including Rs. 50 PMT allowed to be retained by the Notification. The said payment of Rs. 50 PMT was made under protest.

D.5. On 21.11.1988, the department approved the classification list, allowing rebate of Excise Duty to the Appellant under the Rebate Notification. Hence, w.e.f. 22.11.1988, w.e.f. 22.11.1988, the Appellant made payment of the Excise Duty to the Government after reduction of Rs. 50 PMT, which was retained in terms of the Rebate Notification. For the said period, no dispute has been raised by the department against the Appellant regarding admissibility of benefit under the Rebate Notification.

D.6. Thus, once the benefit for the period w.e.f. 22.11.1988 has been allowed in the same set of facts and law, it is legally untenable on the part of the department to deny the same for the period prior to 22.11.1988, during which period the Appellant was constrained to make payment at higher rate on account of delay in approval of classification list by the department.

D.7. Such denial of benefit would amount to allowing the department to take benefit of its own wrong, which is not permissible in law and hence, OIA dated 29.8.2018 and OIA dated 24.10.2019 are liable to be set aside.

SUBMISSIONS IN RESPECT OF APPEAL NO. E/50696/2020 ("Appeal III")

E. DEMAND OF INTEREST UNDER SECTION 11AA/11AB OF THE EXCISE ACT ON THE AMOUNT SANCTIONEDIS INCORRECT.

E.1. The Ld. Commissioner (Appeals), vide OIA dated 24.10.2019, has confirmed demand of interest on the amount of refund along with interest sanctioned to the Appellant, under Section 11AA/11AB of the Excise Act, without making it clear which of these provisions is being invoked.

E.2. It is submitted that Section 11AA of the Excise Act does not provide for recovery of interest on amounts erroneously refunded to an assessee. Similarly, Section 11AB*ibid.* states that the person who is liable to pay duty will pay interest from the date of erroneous refund. However, in the present case, there is no allegation with respect to the Appellant's liability to pay any duty. Therefore, interest is neither payable under Section 11AA*ibid.* nor under Section 11AB*ibid*.

E.3. Further, the impugned OIA dated 24.10.2019 is also incorrect in demanding interest on interest of Rs. 1,91,16,117 and Rs. 21,26,049 that was paid to Appellant pursuant to directions of the Hon'ble Rajasthan High Court and affirmed by Hon'ble Supreme Court. In this regard, reliance is placed on the following decisions which have held that interest on interest not payable under excise:

- **Vindhyachal Air Products Pvt. Ltd. v. CCE, Bhopal, 2016 (339) E.L.T. 120 (Tri. - Del.)**
- **CIT, Gujarat v. Gujarat Fluoro Chemicals, 2013 (296) ELT 433 (SC)**

E.4. In view of above submissions, it is humbly submitted that the denial of the refunded amounts and also recovery of the refunded amount and interest already sanctioned,

> alleged as erroneously sanctioned vide the impugned OIA dated 29.8.2018 and OIA dated 24.10.2019 are liable to be set aside and all the appeals filed by the Appellants are liable to be allowed in full.

3. Learned authorized representative oppose the contention of the learned counsel for the appellant and submits that the authorities below has rightly held that the bar of unjust enrichment has not been passed by the appellant. Therefore, refund claims are wrongly sanctioned to them and same are recoverable along with interest.

4. Heard the parties. Considered submissions.

5. We find that in this case the refund claims of duty paid by the appellant under protest have been initially sanctioned but later on sought to be recovered along with interest on the ground that appellant has failed to pass the bar of unjust enrichment. The case of the Revenue is that the appellant has collected duty in their invoices from the customers and although they incurred losses, but the same has been booked as expense by them. They have passed the duty incidence on their customers and certificate issued by the Chartered Accountant is not reliable document in this case.

6. We find that it is a fact on record that during the impugned period the appellant set up a new Cement Plant and initially, the appellant was incurring heavy losses and the appellant is not shown duty elements separately in their invoices. Due to heavy losses, the appellant could not recovered the cost of production from the customers on sale of their goods. In that circumstances, it is to be seen that whether the appellant has passed the bar of unjust enrichment or not?

7. Admittedly, in this case when goods were sold below the cost price, question of recovery of excise duty does not arise. The case of the Revenue is that as they have entered their duty of element in their books of account of the as expenditure, therefore, they have passed the duty incidence on their customers. The said issue has been examined by the Hon'ble Apex Court in the case of **Commissioner of Central Excise, Pune-I** vs. **Sandvik Asia Ltd. [2015(323)ELT 431(Bom.)],** wherein the Hon'ble Apex Court held as under:

> "4. On perusal of the impugned order and considering the arguments of both learned counsel, we are unable to agree with Mr. Kantharia. The Tribunal was not concerned with the treatment given to the amount and as deposited in the Assessee's profit and loss account. It is immaterial and irrelevant for the Tribunal and equally for us as to what the Assessee terms this amount in his Books of Account. Even if it is shown on the 'expense side' that does not mean that the presumption that the burden has been passed to the consumer can be raised."

8. Further in the case of M/s. National Aluminium Company Limited vs. Commissioner of CGST & Excise, Rourkela (supra), this Tribunal again examine the issue and observe as under:

> "13. With regard to the allegations made by the ld.A.R. for the Revenue during the impugned period, the appellant has booked the excise duty as revenue expenditure, the said issue has already been examined by this Tribunal in the case of M/s U.T. Electronics Private Limited (supra) and held that merely booking the revenue expenditure does not mean that the refund claim is hit by bar of unjust enrichment. On the contrary, the Revenue is to prove that the bar of unjust enrichment is applicable to the facts and circumstances of the case."

9. Following the decision of this Tribunal, we hold that merely booking the duty elements as revenue expenditure does not mean that duty incidence has been passed by the appellant to their customers. Therefore, we hold that the appellant has passed the bar of unjust enrichment. Consequently, the appellant are entitled for the refund claim.

10. Further, the certificate issued by the Chartered Accountant certifying that the duty incidences have not been passed on the customers has been discarded by the Revenue without any cogent reasons. In fact, the certificate issued by the Chartered Accountant is a sufficient evidence to certify that the burden of unjust enrichment has not been discharged by the appellant, as held in the case of **Commissioner of Central Excise, Mumbai-I** vs. **Shethia Audio Video Pvt. Ltd. [2003(161)ELT 452 (Tri.-Mumbai)]** in para 6 of the said order as under:

> "6. While agreeing with the Revenue that the question of payment of duty is linked with manufacture and does not depend upon the registration of a manufacturer with the Central Excise authorities, we agree with the findings that the material produced by the respondent before him in the form of Chartered Accountant's certificate was sufficient for satisfaction that the duty burden which was discharged on a subsequent date to the clearances, was not passed on to the respondent's buyers. No material has been produced before us to show anything to the contrary."

12. In view of the above discussion, we hold that the appellant has passed the bar of unjust enrichment and is entitled for the refund claim.

Therefore, the refund claims were rightly sanctioned to the appellant alongwith interest.

13. In these circumstances, all the appeals are disposed of in the above manner.

(Order pronounced on 20/05/2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Archana