IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/869/2012-EX(SM)

[Arising out of Order-in-Appeal No. 01/BPL/2012 dated 23.01.2012, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Bhopal].

M/s. Sigma Heavy Engg. Industries ....Applicants

Vs.

C.C.E. Bhopal ....Respondent

Appearance:

Shri Z.U. Alvi, Advocate for the Appellants
Shri M.R. Sharma, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 10.01.2017

FINAL ORDER NO.50400/2017-EX(SM)

Per V. Padmanabhan:

The appellant is engaged in the manufacture of transformer tanks. They entered into the contract with customer for fabrication of tanks. The contract relevant in the present case has been executed with M/s. Areva T & D India Ltd. which is a manufacturer of Electrical Transformers. In terms of the contract the price of the tank was agreed as Rs.86.30 per kg weight of the tanks when actually weighed at the premises of the Customer. The disputed consignments were cleared by the appellant from their factory on payment of excise duty based upon the approximate value of the tanks. On weighment in the customer's premises the actual weight was found to be less. Accordingly, the appellant claimed for refund of duties towards the reduction in prices. The same was disallowed by original authority. When the issue was challenged before Commissioner (A), he upheld the disallowance of the claim only on the ground of unjust enrichment.

With the above background, I have heard Z.U. Alvi, Advocate for the Appellants and Shri M.R. Sharma, DR for the Respondent.

2. The Ld. Counsel for the appellant submits that the appellants has received payment only to the extent of reduced value as per actual weight of the tank at the customer's premises. The customer has also certified that they have reimbursed taxes only as per the reduced prices and that they have availed Cenvat Credit only to the extent of amount of duty actually reimbursed to the appellant. Accordingly he submits that the certificate of the customer himself may be accepted to satisfy the requirement of establishing unjust enrichment.

3. Ld. DR reiterates the findings of the Commissioner (A) in the impugned order. He argues that the certificate issued by the buyer cannot be considered as proof of non recovery of duty by the appellant from buyer.

4. There is no dispute in the facts of the case that excess duty has been paid by the appellant. In terms of the contract executed by the appellant with his customer the price of the goods become finally determined only when the actual weight of the transformer tanks gets determined at the premises of the customer. Since the weight actually determined was less, the estimated weight on which excise duty was paid, excess excise duty has been paid by the appellant. The only reason for which the Commissioner (A) has

rejected the refund claim in the impugned order is non satisfaction of the condition of unjust enrichment under section 11B of the Central Excise Act. The certificate issued by the buyer clearly confirms that the payment made to the appellant is only to the extent of the finally agreed price along with excise duty calculated thereon and thus requirement of unjust enrichment stands satisfied. Accordingly, the refund claim is to be passed under section 11B.

5. In line with the above decisions, the impugned order is set aside and appeal allowed with consequential relief.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu