IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

COURT-IV

Appeal Nos. E/1213,1323,1438/2007

[Arising out of the Order in Appeal Nos. OIA- 217/CE/BPL/2006 and 218/CE/BPL/2006 both dated 29.11.2006 and OIA- 212-213/CE/BPL/2006 dated 16.11.2006 passed by Commissioner (Appeals), Central Excise, Bhopal]

The Senior General Manager Vehicle Factory … Appellant

Vs.

Commissioner of Central Excise & S.T., Bhopal … Respondent

Appearance:

Rep. by - Shri A.K. Tripathi, Advocate for the appellants.
Rep. by - Shri H.C. Saini DR, for the respondent

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision : **28.02.2017**

Final Order No. 52031-52033/2017-DB

Per V. Padmanabhan

The issue involved in these three appeals is the same and hence, these are disposed of by this common order.

2. The appellant is a Government of India undertaking under Ministry of Defence and is engaged in the manufacture of 'Shaktiman', 'Nissan Jonga' etc. exclusively for the use of Indian Army. For the purpose, the appellant receives supplies of various motor vehicle parts from various manufacturers under Chapter –X procedure of erstwhile Central Excise Rules, 1944. It was noticed by

the department that some goods cleared under AR-3A by the suppliers of the parts were not received by the appellant. The duty involved in such cases was paid by the appellant. The appellant also challenged the orders confirming the duty involved on short received goods before the first appellate authority and succeeded in the proceedings. Consequently, the refund claims were filed for the duty originally paid for the goods short received. These refund claims were rejected by the Assistant Commissioner. When the issue was challenged before the first appellate authority, he held that appellant was eligible for the refund on merits however, the claims were hit by the doctrine of unjust-enrichment under Section 11B. In the present appeal, the appellant sought payment of refund in cash to them.

3. With the above background, we heard hri A.K. Tripathi, ld. Advocate and Shri H.C. Saini, ld. DR.

4. The submissions of the ld. Counsel for the appellant is that refund should be paid to them in cash inasmuch as there can be no claim of unjust-enrichment against the appellant which is a unit under Government of India, Ministry of Defence. The vehicles have been manufactured using the components and cleared to the Ministry of Defence for their own use. Since the duty involved has not been recovered, the refund is not hit by doctrine of unjust-enrichment.

5. Ld. DR reiterates the impugned orders.

6. It has not been disputed that the refund claims by the appellant are admissible to them on merits. However, in the impugned orders, the view has been taken that appellant has failed to establish that the incidence of duty has not been passed on to the buyers of the goods. Accordingly, it has been ordered that the refund should not be paid in cash.

The appellant is a unit of Ministry of Defence. They have manufactured vehicles such as Shaktiman Trucks and supply the same for defence use. The bar of unjust-enrichment will be applicable in those cases where the incidence of excise duty involved has been passed on to some other person. In the present case, it is obvious that the Ministry of Defence cannot pass on the incidence of duty to any other agency. Consequently, we are of the view that refund will be payable in cash.

7. In view of the above discussion, the impugned orders are set-aside and the appeals are allowed.

[Order dictated & pronounced in open court]

(**M.V. Ravindran**)
Member (Judicial)

(**V. Padmanabhan**)
Member (Technical)

KL.