CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 1996 & 2202 of 2009

(Arising out of Order-in-Appeal No. 199/BPL/2009 dated 12.03.2008 passed by the Commissioner (Appeals) Customs & Central Excise, Bhopal)

DATE OF HEARING : 14.03.2017
DATE OF DECISION : 14.03.2017

CCE, Bhopal ...... Appellant
(Rep. by Sh. G.R. Singh, DR)

VERSUS

The Executive Engineer, Fabrication Workshop ....Respondent
(Rep by Ms. Shreya Dahiya, Adv.)

AND

The Executive Engineer, Fabrication Workshop ....Appellants
(Rep by Ms. Shreya Dahiya, Adv.)

VERSUS

CCE, Bhopal ...... Respondent
(Rep. by Sh. G.R. Singh, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52471-52472/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

Both the present appeals; one by the Department and another by the assessee-Appellants are filed against the impugned order-in-appeal no. 199/BPL/2009 dated 12.03.2008 passed by the Commissioner (Appeals) Customs & Central Excise, Bhopal.

2. The assessee-Appellants are engaged in the manufacture of parts of tower and structures in the workshop of Madhya Pradesh State Electricity Board, Sehore. The goods, so fabricated, are not meant for sale but captively used for transmission of electricity energy. The process of fabrication carried out by the assessee-Appellants was cutting, drilling, bending, joining and riveting which did not appear to be manufactured. However, the assessee-Appellants were paying Excise Duty as per the directions of the jurisdictional excise authorities under protest.

3. From the record, it appears that the assessee-Appellants have already paid duty in excess on power parts and sought claim for refund by mentioning that these tower parts were consumed captively for transmission of electric energy.

4. The issue involved in the present appeals is pertaining to refund of excess duty amounting to Rs. 38,35,000/-. After hearing the learned Counsel for the assessee-Appellants and the learned DR for Department, it appears that the issue has already come up before this Tribunal in Excise Appeal No.1804/2007 dated 25.2.2016 where it was observed as under:-

> *"6. We find that the observation of the Honble Supreme Court in Mafatlal Industries Ltd. 1997 (89) ELT 247 (SC) is relevant in this case. The Honble Madras High Court relying on the said decision of the Apex Court held in C.C.E vs. Superintending Engineer, T.N.E.B. (supra) that unjust enrichment has no application in a situation like the present one. The Honble Madras High Court observed as below:-*

"10. As rightly relied on by the learned counsel appearing for the petitioner, the Constitution Bench of the Apex Court, in the decision reported in 1997 (89) E.L.T. 247 (S.C.) (Mafatlal Industries Ltd. v. Union of India), pointed out as follows :

> *99. The doctrine of unjust enrichment is a just and salutory doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched.*

11. In the light of the above said pronouncement of the Apex Court, we do not find any justification in the contention of the appellant herein that on account of unjust enrichment at the hands of the State, refund could not be granted. It may be of relevance herein that in the decision cited by the learned counsel appearing for the respondent, the Karnataka State Agro Corn. Products Limited was shown to have passed on the liability to the consumer and duty had been made over to the Central Government. Subsequently, it was found that it was not liable to pay the excise duty. Hence, it filed the refund claim. In considering the issue of unjust enrichment, the Karnataka High Court followed the decision of the Apex Court reported in 1997 (89) E.L.T. 247 (S.C.) (Mafatlal Industries Ltd. v. Union of India) to ultimately hold that there was no unjust enrichment even as regards the Government undertakings are concerned. Thus following the decision of the Apex Court that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State."

5. Further, the Hon'ble Madras High Court in the case of **Sescot Sheet Metal Works Ltd. v. CESTAT, Chennai,** 2015 (321) ELT 545 (Mad) has observed that "in the case of State owned Undertakings which are funded, controlled and monitored by the State Government, the doctrine of unjust enrichment will not arise". Similar view was taken in assessee-Appellants' own case in Excise Appeal No. 2201 of 2009 dated 10.11.2016.

6. In view of the above settled legal position, we find that there is no case for unjust enrichment against the assessee-Appellants. Hence, we find no reason to sustain with the impugned order and the same is set aside.

7. In the result, the appeal filed by the Department is dismissed and the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay