IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 7.6.2017

Appeal No. E/2066-2067/2011-SM with E/CO/223 & 225/2011-SM
E/2075-2076/2011-SM with E/CO/226-227/2011-SM
E/2079/2011-SM with E/CO/224/2011-SM

(Arising out of Order-in-Appeal No. 115 & 114, 113, 110, 111/BPL/2011 dated 31.5.2011/26.5.2011 passed by the Commissioner, Central Excise, Bhopal)

CCE, Bhopal Appellant

Vs.

M/s Birla Ericssion Optical Ltd. Respondent
M/s Vindhya Telelink Ltd.
M/s Vidhya Telelink Ltd.

<u>Appearance</u>

Shri G.R. Singh, D.R. - for the appellant

Ms. Priyadeep, Advocate - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53788-53792/2017

Per Ashok K. Arya :

The Revenue has filed these appeals challenging the refund amounts granted to the respondents viz. M/s Birla Ericssion Optical Ltd. and M/s Vindhya Telelink Ltd. of Central Excise duty, when the prices of the goods supplied were reduced subsequently by the buyers of the goods, and buyers paid to the respondents only the reduced price of the goods, which resulted in reduced liability of duty of Central Excise against the respondents.

2. The brief facts are that:

(i) The respondents are engaged in the manufacture of telecommunication cable. They supplied said goods to various customers including SAIL, MTNL and so on.

(ii) The respondents supplied subject goods to their customers but prices were later reduced. Therefore, the respondents' received reduced payment for the subject goods. The respondents' stand is that when prices were reduced later, liability of Central Excise duty was also reduced proportionately.

(iii) The respondents earlier paid the duty of Central Excise on the earlier price which was higher than the duty on subsequently reduced prices and, therefore, paid higher Central Excise duty earlier.

(iv) When subsequently prices were reduced the Central Excise component also proportionately reduced for which respective impugned orders granted refund to the respondents.

(v) However, the department's stand is that on 'unjust enrichment' the respondents have not given certificate/evidence indicating that they were not unjustly enriched.

(vi) The department states that the CA certificate produced by the respondents in this regard is not acceptable. Therefore, the department has filed these appeals against respective orders in appeal.

3. The Revenue has been represented by ld. DR Shri G.R. Singh and respondents have been represented by ld. Counsel, Ms. Priyadeep.

4. After having carefully considered the facts of the case and submissions of both the sides, it appears that the matter deserves fresh consideration by original adjudicating authority, who shall verify the documents to be submitted by the respondents that there was no 'unjust enrichment' to the respondents in this regard and buyers of the respondents have not taken Cenvat credit for the amount which has been claimed as refund by the respondents.

5. Consequently, the respective impugned orders are set aside and these matters are remanded to the original adjudicating authority for fresh adjudication after giving opportunity of personal hearing and submission of documents to the respondents.

6. In the result, the appeals are allowed by way of remand in above terms and cross-objections also stand disposed of.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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