

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

**Excise Appeal No. E/3964/2010-CU[DB]**

[Arising out of Order-In-Appeal No. 442 (DKV) CE/JPR-I/2010 dated  
21.09.2010 passed by Commissioner(Appeals) Jaipur]

**For approval and signature:**

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. National Engineering Industries Ltd.

...Appellant

Vs.

C.C.E. Jaipur-I

...Respondent

**Appearance:**

Ms. Rinki Arora, (Advocate) for the Appellant

Mr. R.K. Mishra (DR) for the Respondent

**CORAM:**

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision.08.05.2017

**Final Order No. 53865 /2017**

**Per S. K. Mohanty:**

This appeal is directed against the impugned order dated 21.09.2010 passed by the Commissioner of Customs and Central Excise (Appeals), Jaipur. The grievance of appellant in this appeal is that crediting of the refund amount to consumer welfare fund in terms of the Section 11B of the Central Excise Act, 1944 is not proper and justified inasmuch as the incidence of duty paid was all along retained by the appellant and such incidence has not been passed on to any other person.

2 Brief facts of the case are that the appellant is engaged in the manufacture of Tapper/ Roller/ Cartridge Bearing, falling under Chapter heading 8482.00 of the Central Excise Act, 1985. During the disputed

period, the appellant removed certain semi finished goods to the job worker for further processing. During the course of processing of the goods at the job workers premises, certain scrap generated, which were sold from the job workers' premises on payment of Central Excise duty. However, as an abundant precaution, the appellant discharged the Central Excise duty attributable to the scrap sold from the factory of the job worker. The Central Excise duty paid on the scrap material was reflected by the appellant in the invoices issued to itself. The appellant had also produced the Certificate of the Chartered Accountant, certifying that the incidence of duty liability has not been passed on and the same has been borne by the appellant. However, the authorities below have transferred the refund amount to the Consumer Welfare Fund under Section 11B *ibid* on the ground that the cost of scrap removed by the appellant were not considered in its cost of production and as such, sanction of refund to the appellant will hit by the doctrine of unjust enrichment.

3. The *Ld. Advocate* appearing for the appellant refers to the invoices enclosed in the appeal paper book and submits that the invoices were issued by the appellant to self, and thus, there is no scope for passing on the incidence of duty to any other person in order to fall within the mischief of unjust enrichment contained in Section 11D *ibid*. she also refers to the Certificate dated 22.10.2009 issued by the Chartered Accountant, wherein it has been certified that the amount of excise duty paid by the appellant in respect of the refund claim has not been collected by the appellant from any person.

4. On the other hand, the *Ld. AR* appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both the sides and perused the records.
6. On perusal of the invoices issued by the appellant to self and the Certificate dated 22.10.2009 submitted by the Chartered Accountant, we find that the incidence of Central Excise duty in respect of the refund amount has not been passed on by the appellant to any other person and the same has been borne by the appellant itself. Since, the refund amount in question has not been transferred or passed on to any outside person, the doctrine of unjust enrichment in this case shall not be applicable and the refund amount instead of being credited to the Consumer Welfare Fund, should be refunded to the appellant.
7. Therefore, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant with consequential benefit of refund.

(Dictated and pronounced in the open court)

(V. Padmanabhan)  
Member(Technical)

(S. K. Mohanty)  
Member (Judicial)

Neha