CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 30022 of 2020
(Arising out of **Order-in-Appeal** No.HYD-EXCUS-MD-AP2-0009-19-20 dated 27.05.2019 passed by Commissioner of Central Tax (Appeals-II), Hyderabad)

GR Power Switchgear Ltd., .. **APPELLANT**
Unit – II, Plot No. 29/b,
Phase – IV IDA,
Jeedimetla, Hyderabad,
Telangana – 500 055.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Medchal - GST
H No. 11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI Bazarghat Branch,
Lakdikapool, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Lalit Mohan Chandra, Advocate for the Appellant.
Shri B. Subhas Chandra Bose, Authorized Representative for the Respondent.

CORAM: **HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30425/2026

Date of Hearing: 05.05.2026
Date of Decision: 28.07.2026

[ORDER PER: ANGAD PRASAD]

The present appeal has been filed by M/s GR Power Switchgear Ltd., (hereinafter referred to as appellant) against the impugned Order-in-Appeal No. HYD-EXCUS-MD-AP2-0009-19-20 dated 27.05.2019, upholding the demand of Rs. 7,04,352/- under Section 11D of the Central Excise Act, 1944, along with applicable interest and penalties. The dispute pertains to the period 2015-16 and 2016-17.

2. The fact, in brief, is that the appellant was engaged in the manufacture of both dutiable as well as exempted excisable goods. During the relevant

period, they cleared exempted goods under Notification No. 3/2004-CE and Notification No. 12/2012-CE without payment of Excise duty. Since common inputs were used in the manufacture of dutiable as well as exempted products and separate accounts were not maintained, the appellant opted to comply with Rule 6 (3)(a)(i) of the Cenvat Credit Rules, 2004 by reversing an amount equivalent to 6% of the value of exempted goods. The said amount was duly reversed in their books of accounts and reflected in the ER-1 Returns.

3. The appellant had entered into an agreement with M/s Megha Engineering & Infrastructure Ltd., Whereby, the buyer agreed to reimburse the appellant the amount payable under Rule 6(3) of Cenvat Credit Rules, 2004. Accordingly, the appellant recovered the equivalent amount from the buyer. Since the invoice format contends only the column "Excise duty", the reimbursement amount was reflected under that column although the goods themselves were exempt from duty.

4. During audit, the Department noticed that the amount had been shown in the invoices as "Excise duty". According to the Department, once any amount is collected as Excise duty, Section 11D mandates its deposit into the Government treasury. Consequently, the present proceedings were initiated.

5. The Learned Counsel submits that the amount recovered from the buyer was never Excise duty. It was merely reimbursement of the statutory liability discharged by the appellant under Rule 6(3)(a)(i) of the Cenvat Credit Rules, 2004. It is submitted that the agreement executed between the appellant and the buyer specifically provided that the purchaser would reimburse the amount payable under Rule 6(3) of Cenvat Credit Rules, 2004.

Therefore, both contracting parties clearly understood the nature of the payment and never intended it to represent Excise duty.

6. The appellant further submits that the goods themselves were fully exempt from Excise duty. Consequently, there could never be any levy or collection of Excise duty on such clearances.

7. It is argued that mere description of an amount in an invoice cannot alter the real character of the transaction. The substance of the transaction must prevail over its nomenclature. Reliance is placed upon the decision Tribunal New Delhi, Jindal Tubular (India) Ltd., Vs Pr. Commissioner, CGST & Central Excise, Ujjain, [(2023) 4 Centax 3 (Tri-Del)], wherein, under identical circumstances it was held that reimbursement of the amount payable Rule 6(3) does not become "Excise duty" merely because it is shown in the invoice under the duty column. Reliance is also placed upon Larger Bench judgment in Unison Metals Ltd., Vs Commissioner of Central Excise, Ahmedabad – I [2006 (204) E.L.T. 323 (Tri-LB)] which has been accepted by the Board vide Circular No. 870/8/2008-CX dated 16.05.2008.

8. Learned Authorized Representative reiterates the findings recorded in the impugned order. It is submitted that the invoices issued by the appellant specifically describe the recovered amount as "Excise duty". Therefore, the appellant has collected an amount representing Excise duty from its customer.

9. According to the Revenue, Section 11D is attracted whenever any amount is collected as representing Excise duty irrespective of whether the duty was legally payable.

10. We have carefully considered the rival submissions and perused the records with written submissions.

11. The short issue for determination is whether the reimbursement recovered by the appellant from its customer towards the statutory reversal required under Rule 6(3)(a)(i) can be treated as "amount collected as representing Excise duty" within the meaning of Section 11D.

12. There is no dispute that the goods supplies by the appellant were fully exempt under the relevant exemption notifications. Consequently, no Excise duty was leviable on such clearances.

13. It is equally undisputed that the appellant discharged its independent statutory obligation under Rule 6(3)(a)(i) by reversing an amount equal 6% of the value of exempted goods and reflected such reversal in its statutory records and ER-1 Returns.

14. The agreement entered into between the appellant and M/s Megha Engineering and Infrastructure Ltd., specifically provided that the buyer would reimburse this statutory amount. Thus, the contractual intention between the parties is unambiguous. The buyer agreed only to reimburse the Rule 6(3) liability and not to pay Excise duty.

15. The Revenue has proceeded solely on the basis that the invoice described the amount under the column "Excise duty" in our considered opinion, the description employed in an invoice cannot determine the true legal character of a transaction where the surrounding documents and contractual arrangement clearly establish otherwise.

16. The New Delhi Tribunal in Jindal Tubular (India) Ltd., supra, considered an almost identical dispute and categorically held that reimbursement of the

amount payable under Rule 6(3) does not become Excise duty merely because the invoice distributed it as such. The Tribunal held that Section 11D is not attracted where the amount recovered is in reality reimbursement of statutory reversal under Rule 6(3) of Cenvat Credit Rules, 2004. Relevant para of the judgment as thus:

> "15. We find from the agreement and the invoices that the buyer was fully aware that the goods were fully exempted and no excise duty was liable to be paid. In fact, the buyer was required to provide an excise duty exemption certificate to the appellant to avail the benefit of exemption notification. However, the buyer also agreed to pay to the appellant an amount equal to 7% which it paid under Rule 6(3)(1). However, both the agreements and the invoices inaccurately mentioned this as "excise duty reversal". This might give impression this is an amount recovered by the appellant from the customer as representing the excise duty which would be recoverable under Section 11D. Notwithstanding the inaccurate decryption of this amount recovered by the appellant from its customers, it is clear from the agreement that the buyer was not paying this amount thinking it to be excise duty but was paying it as a reimbursement of an amount under Rule 6(3)(1) of CCR. The invoices also indicate that the excise duty is exempted under Notification No. 3/2004. Further, below the "excise duty reversal @ 6%" in the invoice, it is mentioned in "amount paid under Rule 6(3)(i) of CCR". Needless to say, since this is not an amount of excise paid by the appellant and the buyer M.s Navayuga Engineering Company Limited will not be entitled to Cenvat credit of the amount so paid. However, that matter is beyond the scope of this appeal. What is important for this appeal is whether the appellant has collected the amount as representing Excise duty from its customers which does not appear to be the case from the agreement and from the invoices. We, therefore, find that this case is different M/s G.S. Pharmabutor (P) Ltd., where the amount was being collected as representing excise duty in each of these invoices. The case is covered by the Larger Bench decision of the Tribunal in M/s Unison Metals Ltd., which has also been accepted by the Revenue by CBEC Circular dated 16-5-2008. Therefore, this part of the demand cannot be sustained and needs to be set aside."

17. The Larger Bench decision in Unison Metals Ltd., supra, also lays down that Section 11D applies only where the assessee has collected an amount as Excise duty. Where the amount represents something other than duty, Section 11D has no application. The said Larger Bench decision has also been accepted by the Central Board through Circular dated 16.05.2008. Relevant paras of the decision as follows:

"8. In the present case, it is not in dispute that the assessees had paid 8% of the value of the goods in terms of Rule 57CC at the time of removal of the goods from the factory. The amounts so paid are the amounts recovered by them from their buyers. Thus, in the present cases, no amounts collected from the buyers remain unpaid to the revenue, irrespective of whether those amounts were represented in the sales documents as duty or not. In fact, the invoices referred to the payment in different terms such as "8% reversal of assessable value", "8% value", "8% duty etc." As the amounts recovered from the buyers are not retained by the assessees, the question of deposit cannot arise, whether under Section 11D or any other provision. A reading of Section 11D makes it clear that what is required is that amounts collected as duty should not be retained by the manufacturers and should be deposited with the revenue. This was the view that Division Bench took in the case of NU-WAVE SHOES. We may read the relevant part of that order:

"Admittedly, Rule 57CC(1) is applicable in the present case. It is not the case of the Department that the assessees have been charging an amount over and above 8% of the price of the exempted variety of footwear from their customers and in fact, the show cause notice proceeds on the basis that only the amount reversed by debit in the credit account from 1-9-1996 to April, 1997 has been charged from the customers. For the period 23-7-1996 to 31-8-1996, the show cause notice itself recognises that the assessees have been reversing Modvat credit proportionately on a prorate basis on inputs used in the manufacture of exempted variety of footwear and that the amount so reversed has been charged from the customers. A perusal of the invoices placed on record clearly shows that they have debited their RG 23A account while paying 8% under Rule 57CC and some invoices show debit entry in their PLA. This makes it clear that the appellants have not retained the amount collected from the customers and that they have passed on the amount to the Government as provided under Section 11D of the Central Excise Act. Hence the charge of contravention of the provisions of Section 11D is not sustainable. Accordingly, we set aside the impugned order and allow the appeal."

We find that the above view taken by the Tribunal is in conformity with the judgment of the Apex Court in the case of Mafatlal Industries, that repeat payment of excise duty is not contemplated. We read para 97 of that judgment [Mafatlal Industries Ltd. – 1997 (89) E.L.T. 247 (S.C)]:

"Meaning and purport of Section 11D

97. It was contended by the learned Counsel for the appellants-petitioners that Section 11D provides for double taxation. It was contended that Sub-section (1) of Section 11D makes the manufacturer liable to pay duty which he collects from the buyer as part of the price of goods even where the manufacturer has already paid the duty at the time of removal. We do not think that there is any foundation for the said understanding or apprehension. There are no words in the section which provide for payment of duty twice over. All that the section says is this : the amount collected by a person/manufacturer from the buyer of goods as representing duty of excise shall be paid over to the State even if the tax collected by the manufacturer from his purchaser is more than the duty due according to

> law, the whole amount collected as duty has to be paid over to the State; if on the assessment being made it is found that the duty collected and paid over by the manufacturer is more than the duty due according to law, such surplus amount shall either be credited to the Fund or be paid over to the person who has borne the incidence of such amount in accordance with the provisions of Section 11B. It is obvious that if in a given case, the manufacturer has collected less amount as representing the duty of excise than what is due according to law he is not relieved of the obligation to pay the full duty according to law. This is the general purport and meaning of Section 11D. These may be case where goods are removed/cleared without effecting their sale. In such a case Section 11D is not attracted. It is attracted only when goods are sold. The purport of this section is in accord with Section 11B and cannot be faulted."

9. The scheme of Central Excise duty payment is that a manufacturer removed goods from the factory of production after payment of duty. While selling the goods, the manufacturer recovered the duty so paid. In doing so, an assessee is recouping the tax already paid. The arrangement is not that the assessee first collected the tax from the buyer of the goods and then remits the amount to the government. Section 11D has to be read keeping this scheme in view. Therefore, the provisions for "every person who is liable to pay duty... and has collected any amount from the buyer of any goods in any manner representing as duty of excise, shall forthwith pay the amount so collected to the credit to the Central Government" has application only when equivalent duty had not been deposited at the time of removal of the goods. The scheme of the law is that manufacturers shall not collect amounts falsely representing them as central excise duty and retain them, thus, unjustly, benefiting themselves. In the present cases, (irrespective of whether the 8% payments were duty or not) since the 8% amount remain already paid to the revenue, and no amount is retained by the assessee, Section 11D has no application.

10. The real identity of the amount 'collected' (whether excise duty payable or not) is of no relevance for Section 11D. What is relevant is only whether the collection was 'represented' as duty of excise. The representation may as well be entirely false. The qualifying of the representation through the words 'in any manner' makes this clear. Therefore, the contentions of both sides on the question, as to whether deposits under Rule 57CC are excise duty or not, are beside the point."

18. The facts of the present appeal are squarely covered by the ratio laid down in Jindal Tubular (India) Ltd., supra. The agreement, statutory records and ER-1 Returns consistently establish that the appellant had merely recovered reimbursement of the amount already reversed under Rule 6(3) of Cenvat Credit Rules, 2004. No material has been brought on record to establish that the parties intended the recovery to represent Excise duty.

19. Therefore, the mere description of the reimbursement under the printed column “Excise duty” cannot convert its legal character into Excise duty so as to attract 11D of Central Excise Act, 1944.

20. In view of the above discussion and respectfully following the decisions in Jindal Tubular (India) Ltd., supra, and Unison Metals Ltd., supra, we hold that the amount recovered by the appellant representing reimbursement of the amount reverse under Rule 6(3)(a)(i) of the Cenvat Credit Rules and in Excise duty. Accordingly, the provisions of Section 11D of the Central Exise Act, 1944 are not attracted.

21. The demand of Rs. 7,04,352/- together with interest and consequential penalties, is therefore set aside.

22. The impugned order is set aside. The appeal filed by the appellant is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 28.07.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha