

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No.411 of 2012

(Arising out of Order-in-Appeal No.40/JSR/2012 dated 29.03.2012 passed by Commissioner (Appeals) of Central Excise & Service Tax, Ranchi)

M/s Tata Motors Limited

Jamshedpur, Pin-831010

Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur

143, New Baradwani, Sakchi, Jamshedpur-831001

Respondent

APPEARANCE :

Shri Deepro Sen, Advocate for the Appellant

Shri S.Mukhopadhyay, Authorised Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.....75761/2023

DATE OF HEARING : 16 .06.2023

DATE OF DECISION : 16 .06.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order rejecting their refund claim of Excise duty paid on debit note for the period July, 2008 to August, 2008.

2. The facts of the case are that the appellant is engaged in the manufacture of motor vehicles, chassis and parts thereof. They supplied engines to M/s Telcon at transaction value on payment of Excise duty. In the month of August, 2008, the appellant increased the price of engines being supplied to the customer with retrospective effect and raised supplementary invoice for differential price increase. The said price increase was not accepted by the customer and

consequently, the appellant reversed the price increase along with duties thereon by issuing two credit notes corresponding to the supplementary invoices raised.

2.1 Thereafter, the appellant filed a refund claim of Excise duty paid on the supplementary invoices.

2.2 A show-cause notice was issued to the appellant to deny the refund claim and the appellant contested the said show-cause notice, but refund was rejected.

2.3 Against the said order, the appellant is before us.

3. The Id.Counsel for the appellant, submits that the issue in the present case relates to determination of transaction value of goods and the said issue is no longer res integra, wherein it has been held that the refusal to pay excess duties by the customers and adjustment of the same through Debit/Credit notes is sufficient evidence to claim refund under Section 11B of the Central Excise Act, 1944. To support his contention, he relied on the following decisions :

(i) Commissioner of Central Excise, Bangalore II Vs. Techno Rubber Industries Private Limited : 2011 (272) ELT 191 (Kar.) ;

(ii) Commissioner of Central Excise, Mangalore 3 Vs. Solaris Chemtech Limited : 2011 (273) ELT 191 (Kar.).

He further submits that the findings of the Id.Commissioner (Appeals) in the impugned order, is beyond the findings of the Adjudication Order. Therefore, the impugned order is to be set aside.

4. On the other hand, the Id.A.R. for the Revenue, supported the impugned order and submitted that the appellant did not provide contract between their buyers and themselves to ascertain the facts

that the excess duty paid by the appellant through supplementary invoices was not acceptable. In that circumstances, the appeal is to be dismissed.

5. Heard both the parties and considered the submissions.
6. In this case, it is a fact on record that excess duty has been paid by the appellant on the strength of supplementary invoices and the enhancement of price has not been accepted by the buyers. Moreover, the buyers have also issued certificate to the extent that they have not taken credit on the strength of supplementary invoices.
7. In that circumstances, the Hon'ble Karnataka High Court in the case of Techno Rubber Industries Pvt. Ltd. (supra) has observed as under :

"6. From the material on record, it is clear that assessee paid the duty at the rate of 16% as against 8% during the month of March, 2003. A sum of Rs. 2,46,240/- is the excess duty. In order to demonstrate that his customer has not paid his excess duty to the assessee, he relied on a debit note raised by the customer in his name in the month of June, 2003. 'The adjudicating authority rejected the said piece of evidence holding that debit note if it had been raised in the month of March, 2003, it could have been looked into, but when a debit note is raised for a different month, it cannot be the basis for such refund. But the documents produced in the case such as, accounts books, as pointed out by the Tribunal, clearly discloses that customer has not paid this excess duty. When once it is admitted that the department has received excess duty, they are bound to refund it to the person who has paid the excess duty. If the customer of the assessee has paid that excess duty, customer would have been entitled to the said refund. When the customer is not claiming refund, when he has raised a debit note, when he

refuses to pay excess duty claimed, the only inference to be drawn is that the assessee has not received that excess duty which he has paid to the department, in which event, the department is bound to refund to the assessee the excess duty calculated which is not in dispute. This is precisely what the Tribunal has held. We are satisfied from the legal evidence on record, that the said finding of the Tribunal is sound and just and does not call for interference."

8. Further, in the case of Solaris Chemtech Ltd., again the Hon'ble Karnataka High Court has examined the issue and observed as under :

"5. From the material on record as well as the finding recorded by the two appellate authorities, it is clear that the excise duty has not been passed on to the customer. It is a case of mere adjustment of accounts by issue of credit note. Section 11B provides for refund of excise duty paid under the Act. In the circumstances, it is set out in proviso to sub-section (2) of Section 11B that when the excise duty paid by the manufacturer, if he had not passed on the incidence of such duty to any other person i.e., his customer, the duty paid is refundable. In the instant case, when the duty at a higher rate was paid by the manufacturer to the Department is not collected from the customer, in other words, if the higher duty is not passed on to the customer and the customer has not paid the said amount, the assessee is entitled to refund of that excess amount paid at a higher rate. That is precisely what the two fact finding authorities have concurrently held. The said findings recorded by the authorities is based on legal evidence on record. Keeping in mind the aforesaid legal provisions, we hold that the said finding do not suffer from any legal infirmities which calls for interference. In that view of the matter, we do not see any merit in this appeal. Accordingly, the appeal is dismissed. Hence, the substantial question of law is answered against the revenue and in favour of the assessee."

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9. As the facts of the case are not in dispute that the buyers of the appellant have not taken the cenvat credit of duty paid by the appellant on the strength of supplementary invoices.

10. In that circumstances, we hold that the appellants are entitled for refund as claimed.

11. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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