CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Excise Appeal No.50314 of 2024

[Arising out of Order-in-Appeal No.47 (RLM)CE/JPR/2023 dated 11.10.2023 passed by the Commissioner (Appeals), CGST, Jaipur]

M/s. Oiles India Pvt. Ltd., **Appellant**
SP2-36, New Industrial Complex,
(Majrakath), Japanese Zone,
Neemrana-301 705, Alwar (Rajasthan).

VERSUS

Commissioner of Central Excise & CGST, **Respondent**
A-Block, Surya Nagar,
Alwar, Rajasthan-301 001.

APPEARANCE:

Shri B.L. Yadav, Consultant for the appellant.
Shri Vishwa Jeet Saharan, Authorised Representative for the respondent.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO.50536/2025

DATE OF HEARING:21.04.2025
DATE OF DECISION:29.04.2025

BINU TAMTA:

1. The present appeal has been filed challenging the Order-in-Appeal[1] rejecting the refund claim, which was allowed by the Adjudicating Authority.

2. The facts of the present case are that the appellant had received Investment Subsidy against Entitlement Certificate sanctioned under the

[1]47 (RLM)CE/JPR/2023 dated 11.10.2023

Rajasthan Investment Promotion Policy – 2010[2], which was adjusted towards payment of VAT and CST in their returns during the period January, 2014 to June, 2015. The Department had raised a demand of central excise duty on the investment subsidy. The issue was finally decided by the Tribunal vide Final Order dated 21.12.2018 setting aside the demand of duty and penalty with consequential benefits. For the said period, the appellant filed the refund claim, which was sanctioned to them.

3. The appellant had also filed the refund claim of Rs.14,34,293/- on 03.07.2019 for the amount of excise duty paid on VAT by them at their own risk for the subsequent period RG-23 A Part-II Entry No.451 dated 23.12.2015, 693 dated 30.11.2016, 939 dated 28.02.2017 and through challan no.00436 dated 08.06.2017 and 00367 dated 08.12.2016. The Adjudicating Authority rejected the refund claim vide Order dated 25.10.2019 on the ground of limitation. The appeal filed by the appellant was allowed by way of remand vide Order dated 26.02.2021/09.03.2021, observing that the limitation clause of filing refund claim within one year is not applicable. Since the issue of unjust enrichment has not been particularly examined, the case was remanded to the Adjudicating Authority. On remand, the Adjudicating Authority sanctioned the refund claim. Being aggrieved, the Department preferred an appeal before the Commissioner (Appeals), *inter alia,* submitting that the Adjudicating Authority had not examined the books of accounts, wherein the assessee had shown the duty paid *suo moto*/under protest on the subsidy received under RIPS as 'expenses' incurred by them and relied on the decision in the case of

[2] (RIPS)

Hindustan Petroleum Corporation Ltd. Vs. CCE, Mumbai-II [3], wherein it was held that refund claim was not reflected in the books of accounts as receivables. The Commissioner (Appeals) observed that once the amount of tax paid has been booked as 'expenses' in Profit & Loss Accounts, it automatically shows that incidence of duty has been passed on to the customers. The present appeal has been filed before this Tribunal challenging the said order.

4. Heard Shri B.L. Yadav, Consultant for the appellant and Shri Vishwa Jeet Saharan, Authorised Representative for the respondent.

5. From the grounds of appeal taken by the Revenue before the Commissioner (Appeals) and the appeal decided thereon is basically on the point that since the amount shown as 'expenses' is not towards amount as 'receivable' , it cannot be established that the assessee have passed the test of unjust enrichment. I find that the said issue has been considered by the Tribunal in the case of **M/s. Chambal Fertilizers and Chemical Vs. Commissioner of Central Excise and CGST[4]**, wherein it was noticed that the refund claim was rejected on the ground that the amount deposited was accounted as 'expenses' in the Profit and Loss Account of the appellant meaning thereby that the burden of duty has been passed. In this context, the Tribunal relied on the earlier decisions in the case of **Commissioner of Customs Vs. U.T. Electronics Pvt. Ltd. [5]**and also in the case of **Allied Chemicals and Pharmaceuticals Pvt. Ltd. Vs. CCE and ST, Jaipur [6]**and concluded that method of accounting followed by an assessee does not

[3]2014 (5) TMI 1136 CESTAT-Mumbai
[4] 2023(2) TMI 10 CESTAT-New Delhi
[5] 2020 TIOL 386 CESTAT-Delhi
[6] 2019 2TMI 849 (Trbl.-New Delhi)

impact upon the admissibility of refund and cannot be made a basis to hold that the incidence of duty had been passed. The principle of treating the excise duty booked as 'expenditure' in the Profit and Loss account cannot be held to have passed on the incidence of duty has been further affirmed by the recent decision of this Tribunal in the case of **Barmer Lignite Mining Co. Ltd. Vs. Commerce CE & CGST[7].** In view thereof, the Commissioner (Appeals) has erred in passing the order. In fact, the earlier orders of the Tribunal in the case of **U.T. Electronics Pvt. Ltd. (supra)** and **Allied Pharmaceuticals (supra)** were issued much earlier and, therefore, should have been followed by the Commissioner (Appeals). The Adjudicating Authority while sanctioning the refund claim held that there is no question of unjust enrichment to the claimant, observing as under:-

> "13. In terms of the Commissioner (Appeals) order dated 26.02.2021, the only aspect that is to be examined critically in this case is of unjust enrichment. In this context it is notices that Central Excise duty was demanded by the department on the Investment Subsidy and Employment Generation subsidy received by the assessee from Government of Rajasthan under the RIPS Scheme. In this regard, I find that the amount received by them from the Government of Rajasthan in the form of relief on outward VAT/Sales Tax and there were no sales of goods involved in the matter to the Government of Rajasthan, therefore, the duty paid suo-moto/under protest was not recovered from them. Neither the amount of duty was recovered from other buyers because the amount of subsidy received was not on account of goods sold to them, therefore, in such a scenario, there is no question of unjust-enrichment to the claimant."

6. In view of the matter being remanded, the Adjudicating Authority had decided the issue of bar of unjust enrichment although the Tribunal in other cases have already held that the plea of unjust enrichment is not applicable in case of refund of duty deposited under protest at the time of

[7] 2024 (12)TMI 940-CESTAT, New Delhi

investigation. It was also observed that any amount deposited during the pendency of adjudicating proceedings or investigation is in the nature of deposit made under protest and, therefore, the principles of unjust enrichment would not apply when a refund is claimed for this amount. In the present case, the issue of excisability of subsidy amount was pending adjudication, and was finally concluded only by the order of the Tribunal dated 21.12.2018, where the period involved was from 2014 – 2015, however, the appellant had deposited further amount of central excise duty on VAT at their own risk and for the subsequent period which the present refund claim has been made. In this regard, it needs to be appreciated that the issue regarding the liability of duty on the subsidy amount was subjudice and the appellant to avoid any enhanced liability on account of non-payment of duty, had paid the said amount. The observations of the High Court of Delhi in the case of **Team HR Services Pvt. Ltd**.[8], where the Court observed that the undisputed position is that the deposit "under protest" was made against the anticipated liability and which liability though fructified by the respondent was set aside by the CESTAT and which order attained finality. It is relevant to quote the para from the said decision as under:

> "We may however mention that the Counsel for the petitioner also, perhaps to bring the case of the petitioner within the Circular relied upon, has sought refund of the amount by calling it "pre-deposit", when it was not deposited by way of pre-deposit but under protest, even before any demand was raised and while the petitioner was still being investigated against. Such deposits under protest, to ease the rigors which the Tax Authorities otherwise are entitled to impose, are not unknown and judicial notice has been taken thereof. However as long as the amount deposited is under protest and in which protest, as held in Mafatial Industries Ltd. supra no grounds are required to be stated, no right thereto accrues in favour of the depositee till the depositee is held entitled in law

[8] 2020 (38) GSTL 457-Delhi High Court

> thereto. Thus, the wrong nomenclature given by the petitioner to the deposit would not be a ground for allowing the respondents State to unduly enrich themselves. A Division Bench of this, Court in Indglonal Investment and Finance Ltd. v. Income Tax Officer, (2012) 343 ITR 44 has held that refund provisions should be interpreted in a reasonable and practical manner and when warranted, liberally in favour of the assessee."

7. The submissions of the learned counsel is that the disputed amount was paid under protest much after the clearance of the impugned goods and the said amount, therefore, is not covered by unjust enrichment. I find from the decision of the Tribunal that once the supplies have already been made, any amount paid thereafter, as tax or deposit, the burden of such amount cannot be passed on to the assessee and, therefore, the test of unjust enrichment is not applicable. Reliance is placed on the decision in the case of **Advanced Steel Tubes Vs. CCE, Ghaziabad**[9]

8. In view of the discussion above, the impugned order is set aside. The appeal is, accordingly, allowed with consequential relief.

[Order pronounced on 29th April, 2025.]

(Binu Tamta)
Member (Judicial)

Ckp.

[9] 2014(310) ELT 370 (Tri.-Del.)