

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

**Excise Miscellaneous Application No. 52491 of 2024
In
Excise Appeal No. 50706 of 2021**

[Arising out of Order-in-Appeal No. 17(SM)/CE/JPR/2021 dated 29.01.2021 passed by the Commissioner (Appeals), Central Excise and CGST, Jaipur]

Barmer Lignite Mining Company Ltd.

Appellant

Versus

**Commissioner, Central Goods & Service Tax,
Jaipur Zone**

Respondent

APPEARANCE:

Shri B.L.Narasimhan, Ms.Sukriti Das and Shri S.C. Vaidyanathan, Advocates for the Appellant.

Shri Shyam Prasad, Authorised Representative for the Department.

CORAM:

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

HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 59888/2024

**DATE OF HEARING : 13.11.2024
DATE OF DECISION: 16.12.2024**

BINU TAMTA:

1. Barmer Lignite Mining Company¹ has challenged the Order-in-Appeal 17(SM)/CE/JPR/2021 dated 29.01.2021 whereby the refund claim of the amount deposited 'under protest' during the pendency of the adjudication proceedings and investigation was rejected on the ground of unjust enrichment in terms of section 11B of the Central Excise Act, 1994².

2. FACTS:

The appellant is engaged in lignite mining activities at Kapurdi and Jalipa at Barmer District, Rajasthan. For the purpose of mining and lignite

**1. the appellant
2. the Act**

the appellant has entered into a Joint Venture Agreement with the Government of Rajasthan having 51% stake. The entire lignite mined by appellant was supplied exclusively to Raj West Power Ltd., presently known as JSW Energy (Barmer) Limited³ to be used in generation of electricity, in terms of Fuel Supply Agreement dated 19.01.2011. The Government of Rajasthan had entered into an Implementation Agreement (IA) dated 29.05.2006 with JSWEBL. The price of the mined lignite to be supplied by the appellant to JSWEBL was to be fixed by the Rajasthan Electricity Regulatory Commission⁴, a State Regulatory Authority formed under the Electricity Act, 2003.

3. Under the provisions of RERC Tariff Regulations, 2009, the appellant filed a petition for determination of annual transfer price of lignite, however, RERC determined the price on ad hoc basis vide various interim orders for the period October 2011 to March, 2016 and sample interim orders from April 2016 to June 2017. These ad hoc prices were determined by RERC pending the final determination of the price. As a result, the appellant approached the excise department requesting for provisional assessment of mined lignite under rule 7 of the Central Excise Rules, 2002. As per the facts stated, the department insisted on furnishing of Bond and on execution of a Bank Guarantee on the ground that the Appellant undervalued the lignite supplied to JSWEBL since the petitioned/bid price should be the final price and not the interim price. The Appellant brought to department's attention that their input service credit was always higher (almost double) than the output excise duty liability and thus were exempted from furnishing bank guarantee. However, nothing was heard from the department thereafter.

3. JSWEBL

4. RERC

4. Show cause notice dated 22.01.2016 was issued for the period April 2012 to March 2015 raising demand of Rs.19,19,73,280/- and show cause notice dated 09.11.2016 for the period October 2011 to March 2016 for Rs.49,08,57,767/-, total amounting to Rs.67,28,37,047/-. After considering the overlapping demand involved pending the proceedings the appellant deposited the aforesaid amount 'under protest' and thereafter though no show cause notice was issued, the appellant continued to deposit the differential excise duty on monthly basis 'under protest' for the subsequent period from April 2016 to June 2017 and as a result a sum of Rs.40,27,76,906/- was deposited by the appellant.

5. The demand was confirmed by the adjudicating authority vide order-in-original dated 21.02.2017 along with interest and penalty. On appeal being filed, the Tribunal vide final order dated 12.09.2018, reported in **2019-368-ELT-188(Tri.-Del)** allowed the order and set aside the demand, observing that once the petitioned price was not approved by the statutory authority RERC, the same cannot be categorized as the price actually payable. The civil appeal filed by the department against the aforesaid order was dismissed by the Apex Court in **Commissioner vs. Barmer Lignite Mining Company**⁵.

6. In view of the final order passed by the Tribunal, the appellant filed the refund claim on 15.03.2019 seeking to refund the amount of Rs.107,56,07,953/- which was deposited by the appellant 'under protest'. Initially on verification of the claim, the department returned the papers on the ground that no documentary evidences were submitted so as to comply with the principle of unjust enrichment. The appellant resubmitted the refund claim along with the supporting documents, 'Balance sheet, Profit & Loss Account and Schedules for the financial year 2011-2012 to 2017-18,

5. 2019 (368) E.L.T.-A54(SC)

ER-I Returns, Affidavit on behalf of the company etc., to establish that there was no unjust enrichment.

7. The adjudicating authority passed the sanctioned order dated 04.09.2019 in favour of the appellant observing that the principle of unjust enrichment is not applicable. The department preferred an appeal before the Commissioner (Appeals) and the appellant filed the cross-objection to the appeal. By the impugned order, the Commissioner (Appeals) rejected the refund claim on the ground that the same is hit by the clause of unjust enrichment as the amount has been shown as expenditure in the Profit & Loss Account, which means that the incidence of duty has been passed on to the customers. Being aggrieved, the appellant has filed the present appeal before this Tribunal.

8. Heard Shri B.L.Narasimhan, learned counsel assisted by Ms. Sukriti Das and Shri S.C. Vaidyanathan, Advocates for the Appellant and Shri Shyam Prasad, learned Special Counsel for the Department.

Submissions of the Appellant

i. The amount deposited during the pendency of the adjudication proceedings or investigation is in the nature of deposit which cannot be subjected to the rigour of unjust enrichment in terms of section 11B of the Act relying on the decision of the Madras High Court in **Commissioner of Central Excise, Coimbatore vs. Pricol Ltd⁶**. It is a settled law that the doctrine of unjust enrichment is not applicable to the claims filed for the amount deposited during the course of investigation or pendency of adjudication proceedings. He also pointed out that the decision of the Madras High Court was subsequently followed by the Allahabad High Court in **Commissioner of Central Excise, Lucknow vs. Eveready Industries**

6. 2015(39)STR 190(Madras)

India Ltd.⁷, and Ebiz.Com Pvt. Ltd. vs. Commissioner of Central Excise, Customs and Service Tax and Ors.⁸;

ii. Unjust enrichment cannot be alleged merely on the basis of the manner of accounting, where the amount shown in the Profit & Loss Account as expenditure does not prove that the appellant has unjustly enriched itself;

iii. The learned Counsel submitted that the Assistant Commissioner while refunding the amount in cash had relied upon the verification report by the Range Officer, and therefore, the impugned order on the ground that the refund amount was accounted as expenses in the Profit & Loss account to say that the burden of duty has been passed on is unsustainable. The learned counsel had explained the accounting standard⁹ being followed by them according to which any claims that an enterprise is pursuing through legal process is a contingent asset. In the present case, the dispute pertaining to the demand of differential duty was pending before the Tribunal, and therefore, refund of duty paid was contingent upon the decision of the Tribunal. However, the appellant in compliance with AS-29 could not have recognised the excise duty paid as a 'Contingent Asset'. The learned counsel has also relied on the Accounting Standard-9 and Accounting Standard Interpretation-14 and submitted that mere accounting treatment in the books of accounts does not prove that the incidence of duty was actually passed on to the customers by the appellant. The learned Counsel referred to series of decisions in this regard which are as under:

- i. **Allied Chemicals & Pharmaceuticals Private Limited vs. CCE & ST, Jaipur-I, Final Order Nos. 50146-50163/2019 dated 01.02.2019(CESTAT, New Delhi);**
- ii. **Chambal Fertilizers and Chemicals Limited ;**
- iii. **Commissioner of Customs, ACC Import Commissionerate, New Customs House, New Delhi vs. UT Electronics Private**

7 2017(357) ELT 11 (Allahabad)

8 2017(49) STR 389-Allahabad High Court

9 AS-29

- Limited, Final Order Nos. 51730-51732/2019 dated 24.12.2019 (CESTAT New Delhi);
- iv. **Shyam Coach Engineers vs. Commissioner of Central Excise & CGST, Jaipur Final Order No.50011/2024 dated 04.01.2024;**
 - v. **Commissioner of Central Excise, Pune vs. Sandvik Asia Limited, 2015(323) ELT 431-Bombay High Court;**
 - vi. **Man Trucks & Bus India Private Limited vs. Commissioner of Customs, GST, Central Excise, Indore, 2021 (375) ELT 590 (Tribunal-Delhi)**

iv. The bar of unjust enrichment is not applicable when the price is fixed by the statutory authority. The appellant, therefore, had no liberty either to alter or modify the price fixed by RERC. In the present case, admittedly, RERC was the recognised authority for the determination of the price who had fixed the same on interim basis. The case of the appellant is that they had supplied the entire mined lignite to JSWEL only under the invoices on payment of excise duty. The learned counsel referred to the observations made in the final order dated 12.09.2018 passed by the CESTAT observing that the price could only be fixed by RERC, an appointed authority under Electricity Act, 2003. Reliance has also been placed on the Apex Court in **State of Rajasthan vs. Hindustan Copper Ltd¹⁰** and **Commissioner of Central Excise, Coimbatore vs. Flow Tech Power¹¹** which has been **subsequently affirmed by the Madras High Court¹²**;

v. Unjust enrichment is not applicable when duty has been paid subsequent to the removal of goods. The submission is 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 respondent and therefore, the test of unjust enrichment would not be applicable where deposits have been made after the goods have been supplied. Reliance has been placed on the decision of the Tribunal in the case of **Advanced Steel**

10. (1998) 9 Supreme Court Cases 708

11. 2005 (187) E.L.T. 399 (Tri.-Chennai)

12. 2006 (202) E.L.T. 404 (Mad.)

Tubes vs. Commissioner of Central Excise, Gaziabad¹³ which has been upheld by the Allahabad High Court in **Commissioner of Central Excise vs. Advanced Steel Tubes¹⁴**. The other decisions relied on are as under:

- i. **GE BE Private Limited vs Commissioner of Customs, Bangalore, 2008 (228) ELT 285 (Tribunal-Bangalore);**
- ii. **Commissioner of Central Excise, Chandigarh vs. Modi Oil & General Mills, 2007 (210) ELT 342, Punjab & Haryana High Court**
- iii. **Eastern Shipping Agency v. Commissioner of Service Tax, Ahmedabad, 2013 (32) STR 630 (Tribunal Ahmedabad)**
- iv. **Commissioner of Central Excise, Pune v. Rocket Engineering Corporation Limited, 2014 (306) ELT 33 (Bombay High Court)**

vi. The Chartered Accountant Certificate being an expert opinion has to be given credence in absence of any contra evidence produced by the department. The learned counsel referred to the following decisions:

- i. **Principal Commissioner Of Customs ACC (Import) Commissionerate, New Delhi v. Telecare Network (India) Pvt. Ltd., Final Order No. 50390/2023 Dated 24.03.2024 - (CESTAT New Delhi)**
- ii. **Business Overseas Corporation v. CC (Import & General, 2015 (317) E.L.T.637 (Tri. - Del.)**
- iii. **Tirumala Bearings (P) Ltd. v. CCE&C, Visakhapatnam, 2016 (335) ELT 145 (Tri. - Bang.)**
- iv. **Hero Motocorp Ltd. v. CC (Import and General), 2014 (302) E.L.T. 501 (Del.)**
- v. **Suvee Impex Pvt. Ltd. v. CC&ST, Bangalore, 2016 (344) ELT 241 (Tri.-Bang.)**

vii. For the period April 2016 to June 2017, the appellant had deposited the amount of Rs.40,27,76,906/- 'under protest' in the absence of any show cause notice and hence is only a deposit which does not partake the character of duty in terms of the provisions of section 11B.

Submissions of the Revenue

9. The learned Special Counsel for the revenue reiterated the findings as arrived in the impugned order and submitted that each refund claim filed before the authority shall have to pass the test of unjust enrichment and relied on the decision of the Tribunal in **Mahindra Engineering and**

13. 2014(310)ELT 370(Tri.-Del.)

14. 2018 (11)GSTL 341(All.)

Chemical Products Ltd. vs. Commissioner of Central Excise, Pune-I¹⁵

The learned Special Counsel also relied on the short order of the Apex Court in **Parle International Ltd.** whereby the findings of the Gujrat High Court that the doctrine of principle of unjust enrichment is applicable to such deposit was set aside relying on the decision in **Commissioner of Central Excise, Mumbai vs. Allied Photographic India Ltd.** and **Sehkari Khand Udyog Mandal Ltd.** He further submitted that even if a duty has been paid under protest, bar of unjust enrichment is applicable. According to him, the contention that unjust enrichment is applicable to payments made post removal of the goods has no basis since there is no such stipulation in section 11B or 12B of the Act. Referring to the decision of the Apex Court in **Allied Photographic India Ltd.**, supra the learned Special Counsel reiterated the principle that the uniformity in price before and after assessment does not lead to the conclusion that evidence of duty has not been passed on to the buyer as such uniformity could be due to various reasons. He also submitted that the balancesheet of the appellant stipulating the amount of duty as 'expenditure' instead of 'receivable' corroborates that the incidence of duty has been passed on to the customers.

10. On the issue of Chartered Accountant's Certificate, his submission is that they are not decisive and referred to the decisions that the Chartered Accountant's Certificate cannot be accepted singularly and conclusively in the absence of corroborative evidence as noted in the case of **India Agencies vs. CC, Chennai¹⁶** and **GAIL India Ltd. vs. CCE, Gwalior¹⁷**. He also disputed the certificate dated 22.02.2021 issued by the Chartered Accountant on the ground that it nowhere certified that the appellant has not

15. 2019(368) ELT 84 (Tri-Mumbai)

16. 2007(212) ELT 507 (Tri.-Chennai)

17. 2011(264) ELT 393 (Tri.-Del.)

charged the excise duty leviable on lignite rather it simply certifies that they have only charged the price by the challans as approved by RERC.

11. The issue whether the appellant is eligible to claim the refund and whether the same is hit by the bar of unjust enrichment in terms of section 11B is no longer res integra, having been decided in series of decisions. We would refer to the latest decision passed by this Tribunal in **Chambal Fertilizers and Chemical Ltd. vs. Commissioner, Central Goods and Service Tax, Udaipur**¹⁸ where the Bench had dealt with similar contentions as raised by the appellant herein referring to the earlier decisions of the **Madras High Court in Commissioner of Central Excise, Coimbatore vs. Pricol Ltd** which was subsequently followed by the **Allahabad High Court in Ebiz.com vs. Commissioner of Central Excise, Customs and Service Tax and ors.** and subsequently in **Commissioner of Central Excise, Lucknow vs. Eveready India Ltd.** In all these decisions, the main principle laid down is that any amount deposited during the pendency of adjudication or investigation is in the nature of deposit and therefore, cannot be considered to be towards payment of duty and consequently the principles of unjust enrichment would not apply in the event of claiming refund of such deposit. The decision in **Chambal Fertilizers** being rendered by **Principal Bench** and being latest in point of time is binding on us and we, therefore, hold the issue on merits in favour of the appellant.

12. The appellant has raised other contentions in support of his arguments on merits which we have referred to in the earlier paragraphs. We find that these contentions have also been considered by the **Principal Bench** in the case of **Chambal Fertilizers, supra** and have been decided in favour of the assessee. On the point that the amount deposited was accounted as expenditure in the Profit & Loss Account, the Bench observed that the

18. Final order No.50085/2023 dated 30.01.2023 in ST/52983/2018

method of accounting followed does not impact the admissibility of refund and cannot be made a basis to hold that the incidence of duty had been passed. Reference was made to the decision in **Commissioner of Customs vs. UT Electronics Pvt. Ltd.**¹⁹ where also it has been held by the Tribunal that merely because the excise duty is booked as expenditure in Profit & Loss Account it cannot be said that the incidence of duty had been passed. The Principal Bench also considered that if the price of the goods is fixed by the Government of India, such price cannot be altered by inclusion of any duty and therefore, the issue of unjust enrichment would not be applicable. Reliance was placed on the decision of the Supreme Court in **State of Rajasthan vs. Hindustan Copper Ltd**²⁰. The decision of the **Chennai Bench** in **Commissioner of Central Excise, Coimbatore vs. Flow Tech Power, supra** taking into account the cumulative factors that the price was a composite one fixed by the Ministry of Agriculture and perusing the Chartered Accountant Certificate and also the Profit & Loss Account, concluded that the burden of duty has not been passed on to the buyer rather duty has been paid by the firm. The said decision of the Tribunal was affirmed by the **Madras High Court in Commissioner of Central Excise, Coimbatore vs. Flow Tech Power, supra**.

13. The appellant has placed on record the Certificate of Chartered Accountant dated 22.01.2021 which is based on the financial records made by the appellant i.e., the Books of Accounts, Ledger Accounts and other documents such as invoices and monthly returns of the appellant pertaining to the relevant years to show that the duty incidence has not been passed on to the customers. The Certificate of the Chartered Accountant specifically mentions that the excise duty was charged from their buyers i.e., JSWEBL at the prices approved by RERC, and no additional amount was recovered from them. In the case of **M/s. Chambal Fertilizers and Chemical Ltd.**, the

19. 2019 (12)TMI 1219-CESTAT New Delhi

20. 1997 (11)TMI 516-Supreme Court

Principal Bench observed that the Certificate given by the Chartered Accountant could not have been ignored as the Certificates are issued on the basis of detailed scrutiny of the Books of Account and could not have been ignored in the absence of any evidence to disprove it. Reliance was placed in **Tirumala Bearings (P) Ltd. vs. Commissioner of Central Excise and Customs (Appeals), Visakhapatnam**²¹, where it has been observed that the Certificate of the Chartered Accountant shifts the burden on the revenue to prove the recovery of extra duty collected from the customers by producing evidence but as the revenue failed to advance any evidence to rebut the Certificate, the allegations of unjust enrichment cannot be upheld. In the circumstances, it was observed that the Certificate given by the Chartered Accountant is good evidence to show that the disputed duty amount had not been collected from the customers and the said Certificate could not have been sidelined without production of any evidence to show that the Certificates were wrong. Similar view has been taken by the Tribunal consisting of the same Members in **Principal Commissioner of Customs, New Delhi vs. Telicare Network India Pvt Ltd.**²² where the Revenue vehemently argued that the Chartered Accountant Certificate cannot be relied upon and the Bench noted that on a query from the Bench he could not produce any evidence whatsoever to either establish the fact that duty had been passed on by the respondent or to show that the Chartered Accountant Certificate was incorrect. Hence the opinion of the Chartered Accountant in the form of Certificate is an authentic piece of evidence and cannot be ignored, which in the present case had categorically noted that the appellant has charged the excise duty as fixed by the statutory authority, which itself implies that the appellant had not charged anything over and above the price approved by the RERC.

21. 2016(335) ELT 145 (Tri.- Bang.)

22. Final Order No. 50390/2023 dated 24.03.2023 in C/51677/2022

14. Lastly, we come to the issue of the deposit of the duty amount 'under protest' by the appellant during the period April 2016 to June 2017, in respect of which no show cause notice itself was issued by the department. In view of series of decisions as cited above, the deposit made by the appellant cannot be characterised as 'duty' in terms of section 11B of the Act. The amount deposited by the appellant during this period was only by way of abundant caution as the very basis of initiating any proceedings is by issuing the show cause notice itself, however, the stage in the present case is when the show cause notice has not been issued. We, therefore, conclude that the amount deposited during the period April 2016 to June 2017 was a mere deposit which cannot be subjected to the bar of unjust enrichment and the appellant is entitled to claim the refund thereof.

15. The issue of refund of the amount deposited 'under protest' during adjudication/investigation has been consistently held to be a simple deposit which is not hit by the bar of unjust enrichment was affirmed by the Karnataka High Court in **Commissioner vs. Motorola India Pvt. Ltd.**²³ where the appeal filed by the revenue was dismissed and the view taken by the Tribunal was affirmed observing that there was no unjust enrichment. Subsequently, the **Madras High Court in Pricol Ltd** and the **Allahabad High Court in Ebiz.com and Eveready Ltd.** upheld the view. We may also refer to the decision of the High Court of Delhi in the case of **Team HR Services Pvt. Ltd.**²⁴ 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

23. 2008 (221)ELT 489 (Kar.)

24. 2020 (38) GSTL 457-Delhi High Court

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 depositor till the depositor is held entitled in law 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."

16. The learned Special Counsel for the revenue has cited several decisions in support of his submissions. We would like to refer to the decision of the Apex Court in *Commissioner of C. EX, Mumbai v Allied Photographics India Ltd*²⁵ where the manufacturer had paid the differential disputed excise duty under protest pending final assessment, which was ultimately decided in their favour. The issue which the Court considered was whether incidence of duty was passed on by the manufacturer to its distributor and whether the distributor in turn had passed on the burden to its dealers, however in view of the fact that the manufacturer in the earlier proceedings before the High Court had conceded that it had passed on the duty burden to its distributor, the Court analysed that 20% of the total price paid by the distributor represented the duty recovered by the manufacturer as part of the sale price and therefore it was highly improbable for a distributor to incur cost of purchase, which included 20% element of duty in addition to the purchase price without passing on the burden to its dealers. The Court noted the peculiar facts that it was the distributor buying the products from the manufacturer and reselling them to its dealers and therefore, the cost of purchase is a relevant factor. The Court, therefore concluded that uniformity in price before and after the assessment does not lead to the inevitable conclusion that incidence of duty

has not been passed on to the buyer as such uniformity may be due to various factors. We are, therefore, of the opinion that the decision cited is not applicable in the facts of the present case. Along with the said decision, the Apex court in **Commissioner vs. Parle International Ltd**²⁶ and also in Commissioner of **C. Ex. Jaipur v Birla Corporation Ltd** decided the issue in favour of the revenue relying on the decision in **Allied Photographic India Ltd** and hence no reliance can be placed thereon.

17. Since we have relied on the recent decision of the Principal Bench in **Chambal Fertiliser & Chemicals Ltd** which covers all the contentions raised by the appellant herein, the earlier decision in **Mahindra Engineering & Chemical Products Ltd** would not really have any relevance. Moreover, the Tribunal drew the analogy that scheme of section 11B treats the deposits in Personal Ledger Account as central excise duty, relying on the decision of the Apex Court in **CIT v M/s Modipon Ltd** where the issue involved was whether the assessee is entitled to claim deduction under section 43B of the Income Tax Act, 1961 in respect of the excise duty paid in advance in the Personal Ledger Account and it was concluded that the nature of deposits made in PLA are also central excise duty for the purpose of section 43B. Thereafter, the main thrust of the decision was to distinguish between the payment of pre-deposit as per the direction of the Court and the payment of duty. In fact, the decisions relied on by the learned Counsel for the appellant were not even considered on the ground that they were in relation to refund of pre-deposit. Hence no reliance can be placed on the said decision.

18. The decision in **Collector of Central Excise Chandigarh vs. Doaba Cooperative Sugar Mills**²⁷ is distinguishable on facts and hence is not applicable.

26. 2005(188) ELT A81(SC)

27. 1988 (37) ELT 478 (S.C.)

19. The reliance placed by the learned Special Counsel on **JCT Ltd vs. Commissioner of Central Excise**²⁸ is completely misplaced as the doctrine of unjust enrichment was considered in the general sense and the price of the goods was inclusive of duty, which meant that the assessee had already recovered the duty from the customers.

20. In view of the discussion above, the impugned order passed by the Commissioner (Appeals) is unsustainable and is hereby set aside and the order of the adjudicating authority dated 04.09.2019 is restored with consequential relief. The miscellaneous application for stay filed by the appellant is disposed of as infructuous as the appeal itself has been decided on merits. The appeal, accordingly, stands allowed.

(Pronounced on 16th December/2024)

(Binu Tamta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

Archana

28. 2004(163)ELT 467(Tri.Del.)