CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41551 of 2018

(Arising out of Order-in-Appeal No. 119/2018 (CTA-II) dated 23.03.2018 passed by Commissioner of CGST and Central Excise (Appeals II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Woory Automotive India Private Limited **...Appellant**
AIB MMDA Industrial Complex,
Maraimalai Nagar,
Chennai – 603 209.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, 2054/1,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

<u>APPEARANCE:</u>
For the Appellant : Mr. S. Jayanth, Consultant
For the Respondent : Mr. N. Satyanarayana, Authorized Representative

<u>CORAM:</u>
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

<u>FINAL ORDER No. 40537 / 2026</u>

DATE OF HEARING : 06.01.2026
DATE OF DECISION : 27.04.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal filed by M/s. Woory Automotive India Pvt. Ltd. (hereinafter referred to as "the appellant") is directed against Order-in-Appeal No. 119/2018(CTA-II) dated 23.03.2018 passed by the Commissioner of Central Tax (Appeals) (hereinafter referred to as "the impugned order"), whereby Order-in-Original No. 461/2017 dated 20.10.2017 passed by the Assistant

Commissioner, rejecting the refund claim of Rs. 47,15,913/- filed by the appellant under Section 11B of the Central Excise Act, 1944, has been upheld.

1.2 The facts briefly stated are that the appellant is engaged in the manufacture of actuators and control heads classifiable under Chapter 84 of the Central Excise Tariff Act, 1985.The appellant had effected clearances during the period January 2014 to March 2015 at a price of Rs. 260/- per unit as per purchase orders issued by the buyer M/s Visteon. Subsequently, on account of escalation in raw material costs, the appellant sought to revise the price to Rs. 390/- per unit and issued a supplementary invoice dated 31.03.2015, discharging differential duty amounting to Rs. 47,15,913/-. However, the buyer refused to accept the revised price and declined payment of the differential amount. In these circumstances, the appellant filed a refund claim on the ground that the enhanced price was never realized and therefore duty paid on such differential value is not legally payable. The Department rejected the claim holding that valuation was correctly done under Section 4 and that refund is time barred under the provisions of Section 11B of Central Excise Act, 1944.

2. Aggrieved by the impugned Order, the appellant is before this Tribunal.

3. The Ld. Consultant Shri S. Jayanth appeared on behalf of the Appellant. The Ld. Authorized Representative Shri N. Satyanarayana appeared for the Revenue.

4. The Ld. Consultant for the Appellant submitted that: -

i. The valuation of excisable goods has to be determined strictly in terms of Section 4(1)(a), which contemplates the price actually paid or payable at the time and place of removal. It is contended that the transaction value stood crystallized at Rs. 260/- per unit and all statutory requirements stood satisfied at the time of clearance. The subsequent unilateral price revision, not accepted by the buyer, does not constitute a valid transaction value.

ii. It was further submitted that the duty paid on supplementary invoice is in the nature of excess duty paid under mistake of law and is refundable. Reliance is placed on the decision in *Commissioner of Central Excise v. Amul Industries Pvt. Ltd. 2014 (313) E.L.T. 727 (Tri. - Ahmd.),* wherein it has been held that duty is not payable on unrealized price escalation.

iii. The appellant distinguished the judgment of Addison & Co. Ltd. v. Commissioner of Central Excise and

submitted that the said decision deals with subsequent price reduction and not with a case where enhanced price was never accepted. It is also contended that there is no unjust enrichment as the buyer has neither paid the differential price nor availed any credit.

5. *Per Contra*, the Revenue reiterated the findings of the impugned order and submitted that duty liability arises at the time of clearance and once the assessee itself has reassessed the value and paid duty, the same cannot be reopened. It is contended that valuation under Section 4 must reflect correct assessable value including any cost escalation.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions and the case laws cited.

7. Upon consideration the following questions arise.

i. Whether the differential duty paid on supplementary invoices, arising from unilateral price revision not accepted by the buyer, forms part of the assessable value under Section 4 of the Central Excise Act, 1944, and consequently whether such duty is refundable when such price revision was not accepted by the buyer?

ii. Whether the refund, if otherwise admissible, is barred by the doctrine of unjust enrichment under Section 11B of the Central Excise Act, 1944.

8. We now proceed to examine the issues arising for determination in the present appeal, one by one, seriatim.

Issue No. (i): Valuation under Section 4 and Refundability of Differential Duty

9.1 The issue for consideration is whether the differential duty paid by the appellant on supplementary invoices, arising from unilateral price revision, forms part of the assessable value under Section 4 of the Central Excise Act, 1944 when such price revision was not accepted and paid by the buyer and consequently whether such duty is refundable. We find that Section 4, as amended with effect from 01.07.2000, adopts the concept of "transaction value", i.e., the price actually paid or payable at the time and place of removal, replacing the earlier concept of "normal price". The legislative intent is to base valuation on the real commercial transaction between the parties and not on any notional or hypothetical value. In terms of Section 4(1)(a), where goods are sold and the buyer and seller are not related and price is the sole consideration, such transaction value shall be the assessable value, and only when these

conditions are not satisfied can recourse be made to Section 4(1)(b) read with the Valuation Rules, 2000.

9.2 It is also pertinent to examine the terms of the purchase orders placed by the buyer, which governed the transaction at the time of clearance. The records indicate that the clearances were effected strictly in terms of the agreed price of Rs. 260/- per unit as reflected in the purchase orders. Further, the costing statement for the period January 2014 to March 2015, duly certified by a Cost Accountant, also substantiates that the selling price of the goods was Rs. 260/- per unit. There is no material to show that the purchase orders contained any clause permitting unilateral revision of price by the appellant. In the absence of any contractual provision enabling such revision, the subsequent issuance of supplementary invoices remains a unilateral act on the part of the appellant without binding effect on the buyer. This reinforces the position that the revised price never attained the character of “price payable” under Section 4.

9.3 In the present case, it is not in dispute that the goods were cleared at a price of Rs. 260/- per unit as per the purchase orders issued by the buyer. The buyer and seller are unrelated, and the price agreed at the time of clearance constituted the sole consideration. Therefore, all the

conditions of Section 4(1)(a) stood satisfied at the time of removal, and the assessable value stood crystallized at that stage. The subsequent issuance of supplementary invoice by the appellant seeking to revise the price to Rs. 390/- per unit was admittedly unilateral. The buyer refused to accept the revised price and did not pay the differential amount. The supplementary invoice was not accepted and stood cancelled. The question that arises is whether such unilateral revision, not accepted by the buyer, can alter the assessable value.

9.4 We note that the expression "price actually paid or payable" occurring in Section 4 assumes significance. The term "payable" cannot be interpreted in isolation; it must denote a legally enforceable obligation. In the absence of acceptance by the buyer, the revised price never became payable in the eyes of law. Therefore, the supplementary invoice does not represent a valid transaction value.

9.5 Now, the reliance placed by the Revenue on *Addison & Co. Ltd. v. Commissioner of Central Excise 2016 (8) TMI 1071 - Supreme Court* requires to be carefully. In the said case, the Hon'ble Supreme Court dealt with a situation where the transaction between the parties was complete at a particular price and the duty incidence had

already been passed on to the buyer, and thereafter a downward revision of price was sought to be relied upon for claiming refund. In such circumstances, the Court held that refund is not admissible. However, the present case stands on a fundamentally different footing, inasmuch as the revised price itself was never accepted by the buyer and no additional consideration was ever realized. Therefore, the factual foundation required for application of the said judgment is absent, rendering the same inapplicable to the facts of the present case. We also find that the reliance placed by the Revenue on *MRF Ltd. v. Collector of Central Excise 1997(92) ELT 309(SC)* is also not applicable to the facts of the present case. In the said decision, the Hon'ble Supreme Court dealt with a situation where the price of the goods stood finally determined and accepted between the parties at the time of clearance, and subsequent variations or discounts were sought to be applied thereafter. The Court held that duty liability is to be determined on the basis of the price prevailing at the time of removal and cannot be altered on account of subsequent price adjustments. However, in the present case, the distinguishing feature is that the enhanced price reflected in the supplementary invoices was never accepted by the buyer and did not result in any concluded transaction or legally enforceable obligation. Thus, unlike in MRF, there was no finalized transaction at the revised price

at any point of time. The supplementary invoice represents only a unilateral claim and not a modification of an existing contract. Therefore, the ratio of the said judgment, which proceeds on the basis of an accepted and completed transaction, is clearly distinguishable and does not apply to the present case.

9.6 On the other hand, the Hon'ble Supreme Court in *CCE v. Fiat India Pvt. Ltd. 2012 (8) TMI 791 - Supreme Court* has clearly laid down that transaction value under Section 4 can be disregarded only in situations where price is not the sole consideration or where the transaction is not at arm's length. The Court further emphasized that unless such exceptional circumstances exist, the price agreed between the parties at the time of clearance must be accepted as the assessable value. In the present case, there is no allegation that the transaction between the appellant and the buyer was not at arm's length or that the price of Rs. 260/- per unit was influenced by any extra-commercial consideration. Therefore, the original transaction value alone is required to be adopted.

9.7 In the present case, the enhanced price sought to be introduced through supplementary invoices was never accepted by the buyer and did not result in any legally

enforceable obligation. The contemporaneous letter dated 13.07.2015 issued by the buyer clearly establishes that the supplementary invoice was not accepted, the amount was not accounted in the books and no CENVAT credit was availed. Thus, the revised value never crystallized into a transaction value within the meaning of Section 4. Consequently, the duty paid on such notional and unrealized value cannot be sustained.

9.8 On the contrary, the principle applicable to the present case is laid down in *Commissioner of Central Excise v. Amul Industries Pvt. Ltd. 2014 (313) E.L.T. 727 (Tri. - Ahmd.),* relied upon by the Appellant , wherein it has been held that where efforts to realize enhanced consideration fail, the same cannot form part of assessable value. In Para 9 of the Order, it has been held that

> *"………… No doubt, the subsequently enhanced value, raised by way of supplementary invoices, if recovered by the assessee from their customers is required to be treated as assessable value and the assessee would have been liable to pay duty on the same. However the question arises that where the efforts made by an assessee to realize some more amount from their customers towards the value of the goods sold by them do not succeed, whether the assessee is required to pay duty on such amount or not. The answer to the above question would be an emphatic 'No'".*

A similar view has been taken in *CCE, Pune-I Versus Faurecia Automotive Seating (India) Pvt Ltd. 2017 (11) TMI 333 - CESTAT MUMBAI,* relied upon by the Appellant , wherein in Para 4 of the Order it was held that: -

> *"……….accordingly, value which is paid or payable at the time of removal of the goods was the price which was charged in the main invoice. The supplementary invoice was raised subsequently for the price variations. The said price was not chargeable at the time of the clearance of the goods. Moreover, the customer has refused to accept that supplementary invoice and returned the same back to the respondent. Accordingly, firstly this amount was not payable at the time of clearance and subsequently also the same was not paid by the customer therefore excise duty paid in respect of supplementary is payment of excess duty which is correctly refundable to the respondent."*

No contrary decision has been brought on record by the Revenue to take a different view.

9.9 The attempt of the Department to justify the revised value on the basis of cost escalation is untenable, as Section 4 does not permit substitution of transaction value by cost-based valuation except in circumstances covered under Section 4(1)(b), which are absent in the present case. Accordingly, the valuation adopted at the time of clearance under Section 4(1)(a) is final and cannot be altered by unilateral, unaccepted supplementary invoices, and the differential duty paid by the appellant does not correspond to any legally valid assessable value.

9.10 Once it is held that the differential duty was not legally payable, the consequence is that such an amount is refundable under Section 11B. The retention of such duty by the Revenue would amount to collection of tax without

authority of law which is impermissible in view of Article 265 of the Constitution of India.

9.11 Accordingly, it is held that the differential duty paid by the appellant on the basis of so-called supplementary invoices, arising out of unilateral price revision not accepted by the buyer, is not in accordance with the law and is refundable.

Issue No. (ii): Unjust Enrichment

10.1 Having held that the appellant is entitled to refund, it is necessary to examine whether such refund is barred by the doctrine of unjust enrichment under Section 11B of the Central Excise Act, 1944, which mandates that refund shall not be granted if the incidence of duty has been passed on to another person, the burden being on the claimant to establish that such incidence has not been so passed on.

10.2 In the present case, the factual position is clearly established from the records, including a letter dated 13.07.2015 issued by the buyer M/s Visteon Climate Control India Pvt. Ltd., wherein the buyer has categorically confirmed that it has not accepted the supplementary invoice raised by the appellant, have not paid the amount claimed

thereunder, has not accounted the same as purchase in its books of accounts, and has not availed CENVAT credit of the excise duty paid thereon, while also requesting cancellation of the said invoice. This contemporaneous evidence clearly establishes that the differential amount has not been realized by the appellant and that the incidence of duty has not been passed on to the buyer in any manner whatsoever.

10.3 It is further observed that the said amount remains unrealized and is reflected in the books of accounts of the appellant as receivable, and there is no evidence to indicate availment of credit by the buyer. The adjudicating authority has rejected the refund on the ground of unjust enrichment without properly appreciating these facts, whereas the doctrine cannot be applied on presumptions but must be based on evidence. In the absence of any contrary material, it is held that the incidence of duty has not been passed on and the bar of unjust enrichment is not attracted.

10.4 The doctrine of unjust enrichment has been elaborately considered by the Hon'ble Supreme Court in *CCE v. Allied Photographics India Ltd. 2004 (166) E.L.T. 3 (S.C.),* wherein it has been held that the burden lies on the claimant to establish that the incidence of duty has not been passed on and such determination must be based on evidence. In

the present case, the evidence on record clearly establishes that the differential amount was not realized from the buyer and no credit has been availed; therefore, the requirement laid down by the Hon'ble Supreme Court stands satisfied and the bar of unjust enrichment is not attracted.

10.5 It is also observed that the Department has not brought on record any evidence to establish that the incidence of duty has been passed on by the appellant, either by way of realization of higher amount from the buyer or through availment of higher CENVAT credit. In the absence of any contrary evidence from the Department, and in view of the settled position that unjust enrichment is a matter of factual determination, it cannot be presumed that the incidence of duty has been passed on. Accordingly, the bar of unjust enrichment under Section 11B is not attracted.

10.6 Before concluding, it is also necessary to examine whether the refund claim is barred by limitation under Section 11B of the Central Excise Act, 1944. The records indicate that the supplementary invoice was issued and differential duty was paid on 31.03.2015. The refund claim was filed on 22.09.2015. In terms of Section 11B, the relevant date in the present case is the date of payment of duty. Since the refund claim has been filed within a period of

one year from the relevant date, the same is well within the prescribed period of limitation and is not hit by time bar.

11.1 In view of the foregoing findings, it is held that the differential duty paid on the basis of supplementary invoices, arising out of unilateral price revision not accepted by the buyer, does not form part of the assessable value under Section 4 of the Central Excise Act, 1944 and is therefore legally to be paid to the applicant. The reliance placed on MRF Ltd. v. Collector of Central Excise and Addison & Co. Ltd. v. Commissioner of Central Excise is distinguishable on facts, whereas the ratio laid down in Commissioner of Central Excise v. Amul Industries Pvt. Ltd. is squarely applicable.

11.2 It is further held that the bar of unjust enrichment under Section 11B is not attracted, as the incidence of duty has never been passed on.

12. Accordingly, the impugned Order-in-Appeal No. 119/2018 (CTA-II) dated 23.03.2018 is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 27.04.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK