CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 41097 of 2018

(Arising out of Order-in-Appeal No. 45/2018 (CTA-I) dated 30.01.2018 passed by Commissioner of GST and Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 304)

M/s. Oil and Natural Gas Corporation Ltd. **...Appellant**
Karaikal Asset, Neravy Complex,
Neravy,
Karaikkal – 609 604.

Versus

Commissioner of GST and Central Excise **...Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue,
Puducherry – 605 001.

APPEARANCE:

For the Appellant : Mr. Raghav Rajeev, Advocate
For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40721 / 2026

DATE OF HEARING : 26.03.2026
DATE OF DECISION : 12.06.2026

Per Mr. VASA SESHAGIRI RAO

This appeal is directed against the Order-in-Appeal No. 45/2018 (CTA-I) dated 30.01.2018 (hereinafter referred to as the "Impugned Order") upholding rejection of refund of Oil Industry Development Cess (OID Cess) claimed by M/s. Oil and Natural Gas Corporation Ltd., Karaikkal

(hereinafter referred to as the "Appellant") on the ground of unjust enrichment. The Appellant is engaged in the exploration and production of crude oil and had cleared crude oil to Chennai Petroleum Corporation Limited (CPCL) under a Crude Oil Sale Agreement (COSA). The dispute is for the period from March 2016 to May 2016, during which OID Cess was paid at ad valorem rate pursuant to Notification dated 28.03.2016 issued under Section 15 of the Oil Industry (Development) Act, 1974. The Appellant subsequently claimed refund contending that excess cess was paid on an incorrect assessable value.

2. The Appellant, having realized that OID Cess had been paid in excess during the period from March 2016 to May 2016 due to adoption of an incorrect assessable value, filed a refund claim of Rs.4,42,08,044/- under Section 11B of the Central Excise Act, 1944. The original adjudicating authority rejected the claim on the ground that the Appellant failed to establish that the incidence of duty had not been passed on, thereby attracting unjust enrichment. Being aggrieved, the Appellant preferred an appeal before the Commissioner (Appeals), who, vide the Impugned Order, upheld the rejection, holding that the burden under Section 12B had not been discharged.

3. Being aggrieved, the Appellant is now before this Tribunal.

4. The Ld. Advocate Shri Raghav Rajeev appeared on behalf of the Appellant and advanced arguments in support of the appeal. The Ld. Authorized Representative Shri Anoop Singh appeared for the Respondent/Department and supported the findings in the Impugned Order.

5. The Ld. Counsel for the Appellant submitted that the price of crude oil is governed by the COSA entered into with CPCL, wherein the pricing mechanism is based on Schedule B which excludes certain duties and taxes. It was contended that OID Cess, not being part of Schedule B, is to be borne by the seller and is not passed on to the buyer. Reliance was placed on Chartered Accountant certificates and buyer confirmations to establish that the incidence of duty has not been passed on. It was further submitted that valuation under Section 4 of the Central Excise Act must be understood in the context of cum-duty price, and that excess payment arose due to adoption of ex-duty value instead of cum-duty value. The Appellant relied upon several judicial precedents including ONGC decisions and other Tribunal rulings to contend that unjust enrichment is not attracted where duty burden is not passed on.

6. The Ld. Authorized Representative for the Department reiterated that Section 12B of the Central Excise Act raises a statutory presumption that duty incidence has been passed on to the buyer, and that the burden lies upon the Appellant to rebut the same with cogent evidence. It was contended that mere production of certificates is insufficient and that the pricing structure indicates that duty forms part of transaction value. The Department relied upon the verification report and findings in the impugned order to argue that unjust enrichment has not been disproved.

7. Upon hearing both sides and perusal of records, the following questions arise for determination: -

i. Whether the refund of OID Cess claimed by the Appellant is admissible on merits in terms of valuation under Section 4 of the Central Excise Act, 1944 read with Section 15 of the Oil Industry (Development) Act, 1974 and Notification dated 28.03.2016, in the context of the COSA with M/s. CPCL.

ii. Whether the refund claim is hit by the doctrine of unjust enrichment in terms of Section 11B read with Section 12B of the Central Excise Act, 1944.

8. We now proceed to examine the issues arising for determination in the light of the statutory framework, the

provisions governing the levy of Oil Industry Development Cess (OID Cess), the terms of the Crude Oil Sale Agreement (COSA), the applicable notifications, the factual matrix of the case, and the judicial precedents relied upon by both sides, upon careful consideration of the rival submissions and the material available on record including the invoices, refund claim and the verification report.

Issue (i): Whether the Appellant is entitled to refund of excess OID Cess paid on account of incorrect valuation

9. The core issue here lies in determining whether the Appellant has established that excess OID Cess was paid during the relevant period due to adoption of an incorrect assessable value and whether such excess payment is refundable in law. At the outset, it is necessary to examine the statutory scheme under which OID Cess is levied. Section 15 of the Oil Industry (Development) Act, 1974 provides that cess shall be levied and collected as a duty of excise on crude oil produced in India. The nature of levy underwent a significant change by virtue of Notification dated 28.03.2016, whereby the earlier specific rate was replaced by an ad valorem levy at 20% of the value of crude oil. Once the levy assumes an ad valorem character, the determination of value necessarily attracts the principles of valuation under Section 4 of the Central Excise Act, 1944.

10. Section 4 of the Central Excise Act, defines "transaction value" as the price actually paid or payable for the goods when sold, excluding duties and taxes. It is well settled that where the price charged is inclusive of duty, the assessable value has to be derived by treating such price as cum-duty and work back the duty element. This principle has been consistently recognized in judicial precedents, including the decision of the Hon'ble Delhi High Court in *I.T.C. Ltd. [1987 (30) E.L.T. 321(Del)],* wherein it was held that the computation of assessable value must necessarily exclude the duty component and that valuation must reflect the real value of the goods exclusive of taxes.

11. Applying the above principles, the Appellant has contended that during the period March 2016 to May 2016, OID Cess was erroneously discharged on the ex-duty price of crude oil instead of treating the sale price as cum-duty price. This, according to the Appellant, resulted in payment of cess on a value which itself did not exclude the duty element, thereby leading to excess payment. We find that this contention is borne out from the refund verification report, which clearly records that cess was paid at 20% on the sale price and that excess payment arose due to adoption of ex-duty value instead of cum-duty value. The report quantifies

the excess payment and does not dispute the methodology subsequently adopted by the Appellant.

12. The role of COSA in determining the nature of transaction value assumes crucial importance. A careful reading of COSA reveals that the price payable by CPCL is determined strictly in accordance with Schedule B, which sets out the pricing formula based on international benchmarks and includes specified elements such as base price and VAT. It is not in dispute that OID Cess is not included in Schedule B. On the contrary, the agreement expressly provides that taxes and duties not specified therein shall be borne by the seller, i.e., the Appellant. This contractual framework clearly indicates that the price charged to CPCL is independent of OID Cess and does not vary with the incidence of such cess.

13. The invoices placed on record further reinforce this position. The invoices clearly show that the total value charged to CPCL consists only of base value and VAT, with no inclusion of OID Cess. This indicates that the sale price is not structured to include cess. A clearer appreciation of the Appellant’s claim of excess payment emerges from the manner in which OID Cess was computed during the relevant period. It is seen from the records and the refund verification

report that for the months of March 2016, April 2016 and May 2016, the Appellant discharged cess at the rate of 20% on the sale price of crude oil (excluding VAT), treating such price as if it were exclusive of duty. However, in terms of Section 4 of the Central Excise Act, 1944, once the transaction value does not separately recover duty and is governed by a pricing mechanism under the COSA, the price is required to be treated as a cum-duty price. In such a situation, the correct assessable value ought to be derived by backing out the duty element from the sale price. In other words, where the sale price is taken as ₹100, the correct assessable value would be ₹100 ÷ 1.20, i.e., ₹83.33, and the duty payable would be 20% of ₹83.33, i.e., ₹16.67. However, by adopting the incorrect methodology, the Appellant paid duty of ₹20 on the same value of ₹100, thereby paying excess duty of ₹3.33. This error continued uniformly for March 2016, April 2016 and May 2016, as the same method of computation was followed for all clearances during the said period. The refund verification report itself records that the cess was paid at 20% on the sale price and that the excess payment arose due to adoption of ex-duty value instead of cum-duty value, and quantifies the excess amount accordingly. Thus, the excess payment is not a matter of dispute or interpretation but is a direct mathematical consequence of applying the rate of duty on an

inflated value which already included the duty component, resulting in payment of duty on duty.

14. We also find that the Appellant has corrected the methodology from June 2016 onwards by adopting cum-duty valuation. This conduct supports the contention that the earlier payments were made under a mistaken understanding of valuation principles. It is a settled proposition that excess duty paid due to incorrect valuation is refundable, subject to the doctrine of unjust enrichment.

15. The Appellant has relied upon several judicial precedents in support of this proposition. In *Indian Oil Corporation Ltd. v. CCE [2005 (180) E.L.T. 202]*, the Tribunal held that excess duty paid due to erroneous computation of assessable value is refundable and that the Department cannot retain amounts collected without authority of law. Similarly, in the Appellant's own case *M/s. Oil and Natural Gas Corporation Limited Versus The Commissioner of GST & Central Excise, Tiruchirappalli 2024 (6) TMI 1417 - CESTAT CHENNAI (LB).*

> *"On the merits the Division Bench (Member (Judicial) and Member (Technical) in their separate opinions) found that CBEC Circular dated 07.01.2014 clarified that Education Cess and Secondary & Higher Education Cess are not to be calculated on cesses levied under Acts administered by departments other than the Department of Revenue but only collected by the Department of Revenue. The members accepted that EC and SHEC were paid on OID Cess as a consequence of mistake of law and that the*

> *appellant produced contractual provisions, buyer's certificate, CA certificate, invoices and contemporaneous correspondence to demonstrate that the cess burden was borne by the appellant and not passed on to buyers. The Tribunal recorded that, on the evidence placed before it, the appellant satisfied the unjust enrichment test. These findings on mistake of law and non-passing on of burden were made in favour of the appellant……."*

The Tribunal has held that once excess payment is established and the Department does not dispute the computation, refund cannot be denied on merits.

16. We also find that the principle underlying these decisions is rooted in Article 265 of the Constitution, which mandates that no tax shall be collected except by authority of law. Where excess amount is collected due to incorrect application of valuation provisions, retention of such amount would be contrary to constitutional mandate.The Department has not brought on record any material to dispute the correctness of the Appellant's computation or the methodology adopted post-June 2016. The rejection of refund on merits is therefore not sustainable. The entire basis of rejection is unjust enrichment, which is separately dealt with under Issue (ii).

17. In view of the above, we hold that the Appellant has successfully established that excess OID Cess was paid due to incorrect valuation methodology, namely adoption of ex-duty value instead of cum-duty value. The excess

payment is therefore refundable in principle. Accordingly, issue (i) is decided in favour of the Appellant.

Issue (ii): Whether the refund is barred by unjust enrichment

18. We now proceed to examine whether the refund claim is hit by the doctrine of unjust enrichment. The Department's case is founded on the presumption under Section 12B of the Central Excise Act, whereas the Appellant seeks to rebut the same through contractual documents, invoices, certificates and judicial precedents. Section 11B of the Central Excise Act provides that refund shall be granted only if the incidence of duty has not been passed on to any other person. Section 12B creates a statutory presumption that duty has been passed on unless the contrary is proved. However, it is equally well settled that such presumption is rebuttable and the burden can be discharged through cogent evidence.

19.1 We find that the primary and most decisive evidence relied upon by the Appellant is the Crude Oil Sale Agreement (COSA), particularly the provisions contained in Schedule B governing pricing and taxes. A careful and detailed examination of the relevant clauses, as placed on record at pages 75, 76 and 78 of the appeal paper book, reveals that the pricing mechanism under COSA is

exhaustive and self-contained, and only those elements expressly provided therein can form part of the transaction value recoverable from the buyer. In this regard, para 5(ii) of Schedule B, which specifically deals with KG, EOA and Cauvery crudes, assumes critical importance. The said clause categorically provides that "the actual applicable Sales Tax/VAT shall be payable by Buyer at the prevailing rates." There is no mention whatsoever of Oil Industry Development Cess (OID Cess) as a component recoverable from the buyer. The absence of OID Cess in this clause is not accidental but deliberate, particularly when the agreement expressly identifies and allocates tax components such as VAT.

19.2 Further, a holistic reading of Schedule B shows that wherever any levy is intended to be shared or borne by the buyer, the same is specifically provided. For instance, in respect of Mumbai Offshore crude, provisions are made for sharing of Sales Tax/VAT, Customs Duty and even Notional Calamity Contingent Duty (NCCD). However, in stark contrast, for Cauvery crude, the agreement restricts the buyer's liability only to applicable Sales Tax/VAT and does not extend it to any other levy. This distinction is of considerable legal significance. It demonstrates that the parties to the contract have consciously excluded OID Cess

from the price components chargeable to the buyer. In commercial contracts of this nature, where the pricing formula is detailed and specific, the inclusion of one levy and exclusion of another must be given full effect. The express inclusion of VAT and the complete absence of OID Cess in Schedule B leads to an inescapable conclusion that OID Cess is not intended to be recovered from the buyer and is to be borne by the seller.

19.3 Further, the pricing template contained in Appendix-B (page 78 of the paper book) further reinforces this position. The computation of final price includes specified elements such as FOB price, pipeline/FPSO charges, taxes and duties (limited to customs duty and sales tax components) and NCCD, wherever applicable. Notably, even in this detailed pricing build-up, OID Cess does not find place as a recoverable component.

19.4 Thus, the COSA, read as a whole, clearly establishes that OID Cess is not part of the transaction value charged to CPCL. The agreement operates as a complete code governing price determination, and in the absence of any contractual provision permitting recovery of OID Cess, it cannot be inferred that such duty has been passed on. On the contrary, the contractual scheme conclusively

demonstrates that the incidence of OID Cess is borne by the Appellant.

20. The invoices placed on record further corroborate this position. The invoices do not show any element of OID Cess, and the total value comprises only base price and VAT. This indicates that the Appellant has not recovered cess from CPCL. In commercial transactions, invoices constitute primary evidence of the price charged, and absence of duty component therein is a strong indicator of non-passing of duty.

21. We find that the Appellant has placed on record cogent and independent documentary evidence in the form of a Chartered Accountant's certificate dated 14.3.2017 (Page 136) and a confirmation issued by the buyer M/s Chennai Petroleum Corporation Limited (CPCL), dated 14/3/2017 both of which conclusively establish that the incidence of OID Cess has not been passed on. A perusal of the Chartered Accountant's certificate issued by M/s V. Narayanasamy & Co. clearly certifies that the refund amount of OID Cess claimed by the Appellant pertains to excess cess paid during the period March 2016 to May 2016 and, more importantly, that such cess has been borne by the Appellant itself and has not been passed on to CPCL or any other

person. The certificate further records that, as per the terms of the Crude Oil Sale Agreement read with Schedule B, OID Cess is to be borne by ONGC and therefore the question of passing on the incidence does not arise. It is also stated that the certification is based on examination of accounting records, documents and explanations furnished by the Appellant, thereby lending credibility and evidentiary value to the certification.

22. This position is independently corroborated by the certificate dated 8.3.2017 issued by CPCL (Page 139), the recipient of the goods, wherein CPCL has categorically confirmed that it has not paid any amount towards OID Cess to the Appellant on purchase of crude oil during the relevant period. The said confirmation is unequivocal and leaves no ambiguity, as it directly addresses the core requirement under Section 11B read with Section 12B, namely whether the duty burden has been passed on to the buyer. The buyer, being the ultimate recipient of the goods and the person who would have borne the incidence if passed on, has expressly stated that no such amount has been paid by it.

23. When both these documents are read together, they form a complete chain of evidence. The Chartered Accountant’s certificate establishes, based on books of

account and contractual terms, that the duty burden has been borne by the Appellant, while the CPCL certificate provides direct confirmation from the recipient that no such duty has been recovered from it. These two pieces of evidence operate in tandem and mutually reinforce each other. The Department has not brought on record any contrary evidence to discredit these documents or to show that the duty has in fact been recovered from CPCL.

24. In the absence of any rebuttal evidence, and in view of the clear, consistent and corroborative nature of the CA certificate and buyer confirmation, we are of the considered view that the Appellant has successfully discharged the burden cast upon it under Section 12B of the Central Excise Act. The presumption of passing on of duty stands effectively rebutted by these documents, which constitute credible and substantive evidence of non-passing of incidence.

25. The Appellant has relied upon a long line of judicial precedents in support of its contention that the doctrine of unjust enrichment is not attracted in the facts of the present case, which are discussed as follows.

26. In *Amadalasa Cooperative Sugars Ltd. [2009 (15) S.T.R. 501],* the CESTAT Bangalore held in Para 6 of the Order that where the contract price does not permit recovery of duty separately, unjust enrichment is not applicable. This principle squarely applies in the present case, where COSA excludes OID Cess from price.

27. In the case of *Commissioner of Central Excise, Jaipur-II Versus Roopa Ram Suthar 2014 (35) S.T.R. 583 (Tri. - Del.)* in Para 6 of the Order it was held that

> *"……The appellate Commissioner concluded that analysis of the invoices issued by the appellant clearly disclosed that no Service Tax component was included in and collected from the customers by the assessees; that the assessees had remitted Service Tax by treating the gross amount received as inclusive of Service Tax; that in an agreement with Oil India Ltd., the recitals disclose that the agreed rates were inclusive of all the taxes leviable; but however there was no specific collection of Service Tax. Learned appellate Authority relied on the decisions of this Tribunal in M/s. Sandeep Metal Craft Ltd. v. CCE, Nagpur reported in 2008 (85) R.L.T. 845 CESTAT = 2008 (226) E.L.T. 428 (Tribunal) and in M/s. Amadalavalasa Cooperative Sugars Ltd. v. CCE reported in 2007 (80) R.L.T. 35 (CESTAT) = 2007 (219) E.L.T. 526 (Tribunal) = 2009 (15) S.T.R. 501 (Tribunal), to conclude that were the contract price is inclusive of duty, there cannot be unjust enrichment."*

28. The Hon'ble Gujarat High Court in *Dharival Industries Ltd. [2014 (303) E.L.T. 496 (Guj.)]* has clarified that where invoices do not reflect duty and other evidence supports the assessee, the burden stands discharged. The Court distinguished Allied Photographics [2004 (166) E.L.T. 3 (S.C.)] and held that the doctrine must be applied pragmatically.

29. Further, in *Indian Oil Corporation Ltd. [2005 (180) E.L.T. 202 (Tri.-Del.)],* the Tribunal held that where excess duty is paid due to valuation error and not recovered from buyer, unjust enrichment does not apply. The same reasoning applies hereto.

30. From a cumulative reading of the aforesaid decisions, a clear, consistent and settled legal position emerges that the doctrine of unjust enrichment is to be applied on the basis of substantive evidence and not on presumptions or conjectures.

31. Applying the above principles to the facts of the present case, it is evident that the COSA does not permit recovery of OID Cess from the buyer, the invoices do not reflect any such duty component, and independent evidence in the form of Chartered Accountant certification and Buyer's confirmation establishes that no such burden has been passed on. Therefore, the Appellant has successfully discharged the burden of rebutting the presumption under Section 12B, and the doctrine of unjust enrichment is not attracted. We also find that the Department's reliance on the presumption under Section 12B is misplaced in view of the evidence produced by the Appellant. Such presumption

stands rebutted when the assessee produces contractual documents, invoices and certificates demonstrating non-passing of OID Cess.

32. The argument that cum-duty concept implies passing of duty is also untenable. Cum-duty is a valuation principle and cannot be used to infer unjust enrichment. The legal fiction cannot be extended beyond its intended statutory purpose. We also note that the Department has not produced any evidence to show that CPCL has borne the burden of OID Cess. In absence of such evidence, the presumption cannot override documentary proof.

33. In view of the above, we hold that the Appellant has successfully rebutted the presumption under Section 12B and established that the incidence of OID Cess has not been passed on. The refund is therefore not hit by unjust enrichment.

34. Accordingly, issue (ii) is decided in favour of the Appellant.

35. In view of the foregoing findings, we hold that the Appellant is entitled to refund of excess OID Cess paid during the period March 2016 to May 2016, as the same has

been paid on an incorrect assessable value and the incidence of such cess has not been passed on to the buyer.

36. The impugned order rejecting the refund on the ground of unjust enrichment is set aside. The appeal is allowed with consequential relief, if any, in accordance with the law.

(Order pronounced in open court on 12.06.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

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

MK