CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Excise Appeal No. 40732 of 2017

[Arising out of Order-in-Appeal Nos.524 to 533/2016 (CXA-II) dated 30.12.2016 passed by Commissioner of Central Excise (Appeals-II), 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600 034]

Integral Coach Factory **.... Appellant**
Chennai 600 038.

VERSUS

The Commissioner of GST & Central Excise, **... Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

WITH

(2) Excise Appeal No.40733 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)
(3) Excise Appeal No.40734 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)
(4) Excise Appeal No.40735 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)
(5) Excise Appeal No.40736 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)
(6) Excise Appeal No.40737 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)
(7) Excise Appeal No.40738 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)
(8) Excise Appeal No.40739 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)
(9) Excise Appeal No.40740 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)
(10) Excise Appeal No.40741 of 2017 (ICF Ltd. Vs CGST & Central Excise, Chennai North)

[Arising out of Order-in-Appeal Nos.524 to 533/2016 (CXA-II) dated 30.12.2016 passed by Commissioner of Central Excise (Appeals-II), 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600 034]

APPEARANCE :

Ms. Pooja. V., Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative
for the Respondent

CORAM :

HON'BLE SHRI P. DINESHA, MEMBER (JUDICIAL)
HON'BLE SHRI M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40723-40732.2026

DATE OF HEARING : 25.03.2026
DATE OF DECISION :18.06.2026

Per: Shri P. Dinesha

Facts in brief that are relevant for the purposes of these Appeals as are forth-coming from the common impugned Orders-in-Appeal are that the Appellant are the manufacturers of Railway coaches and parts of Railway coaches, had filed refund applications under Section 11B claiming refund of various amounts for different periods, of the amount which, according to the Appellant, was the duty element paid in excess. The Appellant is admittedly following Batch type costing and the costs were finalized only after completion of a full batch which sometimes extended beyond

one year; at the initial stage the cost of the coaches was not ascertainable and hence, for initial clearances the assessable value at 110% of the cost of such coaches was adopted. After finalization of the cost reports for specific batches, the Appellant had claimed refund of the excess duty paid as the value of coaches after finalization was less than the value adopted in the invoice during relevant periods.

2. Entertaining a belief that the Appellant did not furnish any cost report signed by the registered Accountant, some of the claims were hit by time-bar, invoice did not have batch numbers or other particulars and that the Appellant had collected Proforma charges from Indian Railways which was not included in the value of coaches, for which reasons the refund claims required to be rejected, Show Cause Notices came to be issued. It appears from the record that the Appellant filed detailed explanation and also participated in the personal hearing granted while considering the refund claims and thereafter, *vide* various Orders-in-Original the Adjudicating Authority partly allowed and partly rejected the refund claims. Against the rejected claims, it appears that the Appellant preferred first Appeals before the Commissioner (Appeals) who *vide* common impugned

Orders-in-Appeal rejected the Appeals, the same has resulted in these Appeals before this forum.

3. Ms. M. Pooja, ld. Advocate appeared for the Appellant and Shri M. Selvakumar, ld. Departmental Representative appeared and defended the impugned Orders-in-Appeal; we have carefully considered the submissions made by both sides, examined the documents of the Appeals placed before us; perused the statutory provisions and also authorities/case law relied upon before us.

4. Upon hearing both sides, the following issues arise for determination:

(i) Whether the refund claims are barred by the doctrine of unjust enrichment;

(ii) Whether the refund claims are partly barred by limitation under Section 11B of the Central Excise Act, 1944;

(iii) What is the effect of non-adoption of provisional assessment under Rule 7 of the Central Excise Rules, 2002;

(iv) Whether valuation is required to be determined on CAS-4 basis or in accordance

with Chapter 13 of the Indian Railway Code for Mechanical Department, and

(v) Whether the refund claims are liable to be rejected on the ground that the invoices do not contain batch numbers or cost-sheet references enabling correlation with the final cost records.

5. For convenience, the issues are taken up seriatim.

6. The first issue is whether the refund claim is hit by unjust enrichment. The refund claims in this case are admittedly the off-shoot of excess Excise Duty paid by the Appellant on clearance of railway coaches to Indian Railways. There is also no dispute that the Duty was discharged at the time of clearance on the basis of estimated cost of production. Subsequently, upon finalization of actual cost, wherever the actual cost was found to be lower than the estimated cost adopted at the time of clearance, excess duty would become refundable. The same were claimed as refund *vide* various refund applications.

7. The Department appears to have rejected the refund claims, *inter alia*, on the ground that the bar of unjust enrichment under Section 11B is attracted.

8. We are unable to agree with the said finding. It is not in dispute that the Appellant, Integral Coach Factory, is a production unit functioning under the Ministry of Railways, Government of India. The coaches manufactured by the Appellant are supplied to Indian Railways for deployment in railway operations. The supplies are valued under Rule 8 of the Central Excise Valuation Rules, 2000 on cost of production basis. The value adopted at the time of clearance is based on estimated cost and remains liable to revision upon final determination of actual cost. The excess duty claimed as refund is thus a consequence of subsequent cost finalization and not on account of any commercial price variation.

9. The coaches supplied by the Appellant are not sold by Indian Railways as marketable goods. They are utilized as rolling stock for transportation operations. The Appellant has placed reliance on cost records and final cost statements to demonstrate that the excess duty arose solely on account of

downward revision of the cost of production after finalization of batch costing. It is not the case of the Revenue and nor has the Revenue brought on record any material to establish that the incidence of such excess duty was recovered from any independent buyer or that the Appellant derived any commercial gain therefrom.

10. This Tribunal, in the Appellant's own case in Excise Appeal No.42334 of 2018, *vide* Final Order Nos. 41641-41646/2019 dated 05.12.2019, while considering a similar refund claim, has held that unjust enrichment was not attracted and has thus allowed the refund. The Bench has relied upon the judgment of the Hon'ble Madras High Court in **Sescot Sheet Metal Works Ltd.** [2015 (321) E.L.T. 545 (Mad.)] and also noticed the acceptance of the said position in Board Circular No. 1063/2/2018-CX dated 16.02.2018. relevant observations are as under:

> "9. Decision of the Hon'ble High Court of Madras dated 20-3-2015 in CMA 828 of 2008 in respect of M/s. SESCOT Sheet Metal Works Ltd. [2015 (321) E.L.T. 545 (Mad.)]
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> 9.1 Department has accepted the aforementioned order of the Hon'ble High Court of Madras. The issue examined by the Hon'ble Court was whether unjust enrichment would apply to State Government undertaking which applied for refund under Notification No. 111/88-C.E., dated 1-3-88. Hon'ble Supreme Court in Mafatlal Industries case referred as [2002-TIOL-54SC-CX-CB] held that the doctrine of unjust enrichment will not apply to the State, as the State represents the people of the country. Relying on the same Hon'ble High Court observed that department itself accepted that party is a State funded,

> State controlled and State monitored organisation supplying goods to Civil Supplies Corporation, which is another organ of the State. Such goods are used in relation to Public Distribution System. Hon'ble High Court therefore allowed the party's appeal."

11. The ratio of the aforesaid order/decision squarely applies to the facts of the present case as well. The Revenue has not demonstrated any distinguishing feature warranting a different conclusion. Accordingly, we are of the view and hold that the Appellant has successfully rebutted the statutory presumption under Section 12B and established that the incidence of the excess duty has not been passed on to any other person. Consequently, rejection of refund in the impugned order on the ground of unjust enrichment is unsustainable and is set aside.

12. We will now consider the next issue, viz. refund claims filed beyond one year are barred by limitation, which pertains to limitation.

13. Admittedly, the Appellant did not resort to provisional assessment under Rule 7 of the Central Excise Rules, 2002; duty was paid at the time of clearance on estimated cost of production. It is the case of the Appellant that the excess payment became ascertainable only upon finalization of

actual cost and, therefore, refund ought to be considered with reference to such date. Though the submission has considerable and equitable force, but the statutory scheme under Section 11B does not permit acceptance thereof in the facts of the present case for the following reasons :

14. Section 11B prescribes a limitation period of one year from the relevant date. In the absence of provisional assessment under Rule 7, the assessments made at the time of removal are required to be treated as 'final assessments'. Refund of excess duty paid in such circumstances could thus be claimed only under Section 11B subject to fulfilment of the conditions and limitation prescribed therein.

15. No statutory provision has been brought to notice under which the date of finalization of actual cost could be treated as the **'relevant date'** for the purposes of Section 11B where assessments were never made provisional in accordance with Rule 7. The substantive right to seek refund may survive; however, in the absence of provisional assessment, the remedy can only be pursued under Section 11B which is again subject to the limitation prescribed therein. Therefore, to the extent that the refund claims have

been filed beyond the statutory period of one year from the relevant date contemplated under Section 11B, the same are liable to be rejected as time-barred. However, claims filed within the prescribed period shall be admissible, subject to verification of quantification and other requirements of this order.

16. Next issue is regarding the effect of non-adoption of provisional assessment under Rule 7. In this regard, there is no dispute that the Appellant did not seek provisional assessment under Rule 7. Rule 7 provides a statutory mechanism for provisional assessment in cases where an Assessee is unable to determine the value of excisable goods or the rate of duty at the time of clearance. Such procedure requires an application by the assesse which would be examined by and subject to permission by the proper officer and execution of the prescribed bond.

17. In the present case, although the cost of production was initially estimated and subsequently revised after ascertainment of actual cost, no such statutory procedure was invoked. In our considered view, where valuation under Rule 8 is based upon estimated cost and actual cost

becomes available only subsequently, the proper statutory course available to the Assessee would have been to seek provisional assessment under Rule 7. However, the failure to adopt provisional assessment does not extinguish the substantive entitlement to seek refund of excess duty. Perhaps the consequence of not following Rule 7 could be that the Appellant cannot claim the benefit of formal finalization of provisional assessment and any refund claim would thus be necessarily governed by Section 11B, including the limitation prescribed therein.

18. Equally, the fact that the Department accepted the payment of differential duty whenever actual cost exceeded estimated cost cannot, by itself, render the assessments provisional in law.

19. In view of the above discussions, we hold that:

- the assessments cannot be treated as 'provisional' in the absence of compliance with Rule 7;
- refund claims are maintainable, but only under Section 11B; and

- such claims remain subject to the limitation prescribed thereunder.

20. The next issue is, 'whether refund can be rejected for want of correlation between invoices and batch-cost records. It is the case of the Revenue that the refund claims are not capable of verification since the invoices did not contain batch numbers or cost-sheet references and, therefore, the excess duty paid cannot be correlated with the clearances in question. We are unable to accept this contention as a ground for outright rejection of the refund claims. It is not in dispute that the Appellant has consistently followed a batch-costing system under which the final cost of production is determined only after completion of manufacture and clearance of the relevant batch of coaches. It is also not in dispute that whenever such finalization resulted in enhancement of cost the consequential differential duty liability was accepted and discharged on the basis of the same costing methodology and supporting records. Hence, having accepted the very same methodology for determination and recovery of differential duty, the Department cannot reject the methodology itself for refund purposes solely on the ground that batch numbers were not

reflected on the invoices, unless it is demonstrated that the claims are incapable of verification or that the supporting records are unreliable.

21. At the same time, the burden equally lies upon the Appellant to establish through cost sheets, production records, coach-wise or batch-wise statements, dispatch particulars and such other contemporaneous records as may be necessary, the correlation between the clearances and the excess duty claimed to have been paid. The absence of batch numbers on invoices may justify detailed verification of the claim, but cannot, by itself, constitute a valid ground for denial of refund. Accordingly, we deem it appropriate that while examining the admissibility and quantification of refund claims pursuant to this order, the Adjudicating Authority shall consider the records produced by the Appellant for establishing the correlation between the relevant clearances, batch-costing records and the excess duty claimed as refund. Such verification shall be undertaken in the same manner as would be adopted while determining and recovering differential duty arising from finalization of the cost of production. Refund shall not be denied merely because batch numbers are not reflected on

the invoices, if the requisite correlation can otherwise be established from the records produced. It is needless to point out that the Appellant also co-operate with the Adjudicating Authority and assist with all evidences that are necessary in this regard for speedy disposal.

22. Next issue is regarding valuation to be based on CAS-4 or Chapter 13 of the Indian Railway Code which is pertaining to valuation.

23. The Appellant contends that cost of production ought to be determined as per Chapter 13 of the Indian Railway Code for Mechanical Department, with which we agree.

24. The valuation of goods captively consumed or otherwise not sold is governed by Rule 8 of the Central Excise Valuation Rules, 2000 which requires determination of assessable value on the basis of cost of production. For determination of cost of production under Rule 8, CAS-4 has consistently been recognized and adopted as the accepted costing standard in excise valuation matters. The statutory valuation mechanism under the Central Excise law cannot be substituted by internal costing methodologies followed for

administrative, budgeting or accounting purposes within the Railways. The Indian Railway Code may govern internal costing, budgeting and accounting procedures of the Railways but however, such internal/departmental instructions cannot override the valuation framework prescribed under the Central Excise Act and the Valuation Rules framed thereunder.

25. Excise duty being a levy under a fiscal statute, assessable value must necessarily be determined in accordance with the statutory provisions governing valuation. Accordingly, we hold that valuation for the purposes of Rule 8 is required to be determined on the basis of CAS-4 alone and certainly not on the sole basis of Chapter 13 of the Indian Railway Code.

26. Last issue is about the Refund relating to spares. We find from the records that the Commissioner (Appeals), while passing the impugned order, has held that the Appellant was not eligible for refund in respect of spares amounting to Rs.34,44,404/- for which he has placed reliance upon TRU Letter F. No. 334/1/2012-TRU dated 01.06.2012. We find that the Appellant has not specifically

assailed the said finding in the present Appeals. No independent ground has been raised challenging denial of refund in respect of spares, nor were any substantive submissions advanced before this Tribunal on that issue. In the absence of any specific challenge to that part of the impugned order, therefore, we find no reason to interfere with the finding recorded by the Commissioner (Appeals) insofar as it relates to refund pertaining to spares. Accordingly, that portion of the impugned order is upheld.

27. In view of the above, we are of the view that:

- Refund claims are not barred by unjust enrichment and rejection on this ground is therefore cannot sustain the same is accordingly set aside;

- Refund claims filed within the period prescribed under Section 11B are admissible, subject to verification of quantification and compliance with the directions contained in this order;

- Refund claims filed beyond the period prescribed under Section 11B are barred by limitation and are liable to rejection;

- In the absence of provisional assessment under Rule 7, the assessments cannot be treated as 'provisional' in law. Refund claims are therefore governed by Section 11B;

- Valuation for the purposes of Rule 8 is required to be determined on the basis of CAS-4 and not on the basis of Chapter 13 of the Indian Railway Code;

- Refund shall not be denied merely because the invoices do not contain batch numbers, provided the Appellant establishes the requisite correlation through batch-costing records and other contemporaneous documents. The Adjudicating Authority shall verify such records in the same manner as would be undertaken for determination of differential duty arising from finalization of cost;

- Denial of refund insofar as it pertains to spares as upheld by the Commissioner (Appeals) relying upon TRU Letter F. No. 334/1/2012-TRU dated 01.06.2012, is sustained.

The matter is remanded to the Adjudicating Authority for the limited purpose of verification of quantification, limitation, correlation of records and consequential determination of the refund amount admissible in terms of this order.

28. In the light of the above discussion, the impugned order is modified to the above extent; the Appeals are partly allowed and partly remanded as indicated above, with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 18.06.2026)

sd/-
(M. AJIT KUMAR)
Member (Technical)

sd/-
(P. DINESHA)
Member (Judicial)

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