

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
SZB, CHENNAI

COURT : Division Bench III

**EXCISE APPEAL No. E/40838/2013**

(Arising out of Order-in-Appeal No. 1/2013 dated 22.01.2013 passed by the Commissioner of Central Excise (Appeals) Coimbatore).

**M/s. Mak Controls & Systems (P) Ltd.**

No. 7/41B, Avinashi Road,  
Civil Aerodrome Post,  
Coimbatore-641 014.

**Appellant**

Vs.

**Commissioner of Central Excise & ST (Appeals)**

6/7 A.T.D Street, Race Course Road,  
Coimbatore-641 018.

**Respondent**

**APPEARANCE**

For the appellant/respondent: Shri S. Durairaj, Advocate

For the respondent/appellant: Shri M. Ambe, DC (A.R)

**CORAM**

**Hon'ble MS. SULEKHA BEEVI C.S., MEMBER JUDICIAL**

**Hon'ble Shri VASA SESHAGIRI RAO, MEMBER TECHNICAL**

Date of Hearing: **17.02.2023**

Date of Pronouncement: **02.03.2023**

**FINAL ORDER No. 40102/2023**

**Order : Per Hon'ble Suleka Beevi C.S.**

Brief facts are that the appellant filed refund claim for the refund of central excise duty in regard to 6 nos. of "Service Air Trolley" (SAT 300) supplied to Indian Air Force under invoices

No. 96, 97 & 98, all dated 01.08.2009. It is the case of the appellant that though the invoices mentioned central excise duty on the goods supplied, they have not collected the duty from the buyer as the goods are exempted from central excise duty. It is contended that duty incidence has not been passed on to the buyer. A Show cause notice was issued to the appellant proposing to reject the refund claim mainly on the ground of unjust enrichment. After due process of law, the original authority rejected the refund claim and the same was upheld by the Commissioner (Appeals). Hence, this appeal.

2.1 Learned Counsel Shri S. Durairaj appeared and argued on behalf of the appellant. It is submitted by the learned Counsel that Indian Air Force had issued supply order dated 27.08.2008 to the appellant for supply of "Service Air Trolley" - CTH 88039000 of Central Excise Tariff Act, 1985. As per this order the unit price is Rs.37,94,000/- and the total price is Rs.2,65.58,000/- It was very clearly mentioned in the supply order that excise duty is 'Nil' as these items are exempted under Notification No. 6/2006-CE (Sl.No.54B and 54C) dated 01.03.2006. However, by mistake, appellant had raised the invoice by splitting the composite value of Rs. 37,94,000/- into assessable value and excise duty. Thus the excise duty was shown as Rs. 2,88,826/- and the price of the item were shown as Rs. 35,05,174/-. Subsequently, appellant on realising the mistake had filed a refund claim for Rs. 17,32,949/- which is excise duty paid on these invoices. The refund claim has been

rejected on the ground of unjust enrichment. The learned Counsel submitted that the appellant has not collected the excise duty from the buyer (IAF) which is established from the supply order which indicates "nil" excise duty. Appellant wrongly assumed that the price of the goods is inclusive of excise duty and split the value in the invoices; that therefore there is no collection of excise duty from the buyer. The appellants have also furnished a certificate issued by Air HQtrs., Directorate of Procurement (IPW), N. Delhi, to support their contention that the basic price does not include central excise duty. Further, that in appellant's own case, the Tribunal vide Final Order No.107/2009 dated 02.02.2009 had held that the appellant is eligible for refund in a case where supply was made to another customer and when the appellant had wrongly mentioned the excise duty in the invoices.

2.2. It is urged by the learned Counsel that both the authorities below have doubted the certificate issued by the Air HQtrs. Dated 02.10.2010 and denied the refund claim on the ground of unjust enrichment. It is submitted that the appellant has furnished the Chartered Accountant Certificate along with audited Financial Statement for the relevant period, which would show that the amount is as receivables in their Balance Sheet. The learned Counsel prayed that the appeal may be allowed.

3. Learned AR Shri M. Ambe appeared and argued for the department. He supported the findings in the impugned order. The learned AR adverted to Section 12 B of the Central Excise

Act, 1944 and argued when the invoices are raised mentioning the duty element a presumption has to be drawn that the incidence of duty has been passed on the customers. The appellant has not been able to rebut this presumption. The appellants have raised the invoices fully knowing that the goods are exempted from central excise duty. The authorities below have correctly held that the incidence of duty has been passed on to the buyer and therefore rejected the refund claim of the appellant. Moreover, appellant has furnished the Chartered Accountant certificate and audited financial statement only before the Tribunal and these documents were not presented before the authorities below. Therefore these documents cannot be accepted. The learned AR prayed that the appeal may be dismissed.

4. Head both sides.

5. The issue to be analysed is whether the appellant is eligible for refund. Undisputedly, the appellants have mentioned the excise duty in the invoices. Then presumption envisaged in Section 12 B of the Central Excise Act, 1944 is attracted. However, this presumption is a rebuttable one. It is for the appellant to establish that they have not collected the duty from the buyer. Appellant has furnished a certificate from the buyer to show that price in the supply order is without including the excise duty. The appellant has now produced Certificate issued by the Chartered Accountant along with relevant Financial Statement, to establish that the incidence of duty has not been

passed on to the buyer. However, these documents require verification as these were not presented before the authorities below. We are, therefore of the considered opinion that the matter requires to be remanded to the original authority, who shall consider the issue of refund afresh on the basis of the documents including the CA certificate and the audited financial statement produced by the appellant. The appellant shall be given an opportunity of personal hearing.

6. The impugned order is set aside. The matter is remanded to the original authority in above terms. Appeal is allowed by way of remand.

(Order pronounced in the Open Court on **02.03.2023** )

**(SULEKHA BEEVI C.S.)  
MEMBER JUDICIAL**

**(VASA SESHAGIRI RAO)  
MEMBER TECHNICAL**