

2. The Honorable Supreme Court (SC) has in Sahakari Khand Udyog Vs. CCE 181 ELT 328 and CCE Vs. Parle International 188 ELT A81, held that the bar of unjust enrichment shall apply to all refunds.

3. Merely giving an amount the title of revenue deposit shall not ensure, the non passing of its burden to another person. The Bill of Entry which is the importer's own document, alone cannot be used to discharge the onus of proving no-unjust enrichment. The importer must show what was collected from the buyer of such goods.

4. Section 28-C of the Customs Act, 1962 speaks about not only the documents relating to assessment, but also sales invoices and other like documents, to clearly indicate the amount of duty being passed on.

5. As regards captive consumption, the Honorable Supreme Court has, in the case of UOI Vs. Solar Pesticides 116 ELT 401 laid down that, the importer must show from his costing and pricing data that additional amounts paid have not been passed on to others.

6. With respect to captive consumption of capital goods (on which excess duty was paid) also, the CESTAT held that the bar of unjust enrichment shall apply, in the case of ONGC Vs. CCE 156 ELT 794 against which Civil Appeal was dismissed 163 ELT A207 by SC; against which Review Petition was dismissed 167 ELT A 65 by SC; and against which curative Petition was dismissed 184 ELT A166 b SC. This is reaffirmed by the Larger Bench of CESTAT in SRF Ltd.. Vs. C. C. cited at 193 ELT 186.

7. In case of Provisional Assessments, the Hon'ble High Court of Bombay, has in the case of, Bussa Overseas Vs. UOI 158 ELT 135, held that the principles of unjust enrichment shall apply to refunds, arising on finalization of provisional assessments. A SLP filed against this decision was dismissed by the Hon'ble SC at 164 ELT A177.

8. The above legal position, in the matters discussed, shall be kept in mind while finalizing refund claims. The earlier instructions issued including the circular referred above, are modified to the extent these are inconsistent to the above said position.

(NAJIB SHAH)

COMMISSIONER OF
CUSTOMS (IMPORT)

JAWAHARLAL NEHRU CUSTOM HOUSE.

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