IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal Nos. 40785 and 40786 of 2016

Arising out of Order-in-Appeal Nos. 224&225/2015 (CXA-I) dated 23.10.2015 passed by the Commissioner of Central Excise (Appeals - I), No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Reckitt Benckiser (India) Private Ltd. **...Appellant**
(Previously known as M/s. Reckitt Benckiser (India) Ltd.,)
No. 176, SIPCOT Industrial Complex,
Hosur – 635 126.

Versus

Commissioner of GST and Central Excise **...Respondent**
Salem Commissionerate,
No. 1, Foulks Compound,
Anai Road,
Salem – 636 001.

APPEARANCE:
For the Appellant : Mr. Raghav Rajeev, Advocate
For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 25.08.2025
DATE OF DECISION : 18.12.2025

FINAL ORDER Nos. 41500-41501 / 2025

Order:-

Excise Appeal Nos. E/40785 and 40786/2016 have been filed by M/s. Reckitt Benckiser (India) Private Ltd. (hereinafter known as 'Appellant') against the Orders-in-Appeal Nos.224 & 225/2015(CXA-I) dated 23.10.2015 passed by the Commissioner of Central Excise (Appeals),

Chennai remanding the matter to the adjudicating authority by setting aside the order passed by the Adjudicating authority thereby denying the refund of excess duty paid in pursuance of finalization of provisional assessment under Central Excise Rules.

2. Brief facts are that the Appellants are manufacturers of Para Chloro Meta Xylenol (PCMX), classifiable under tariff sub-heading 29089990 of the First Schedule to the Central Excise Tariff Act, 1985. The said product was cleared for home consumption, export, and on stock-transfer basis to their sister units at Mysore (Karnataka) and Sitarganj (Uttarakhand) for use in the manufacture of Dettol Antiseptic Liquid and Dettol Soap. For the period from 2009 to 2010, the Appellants resorted to provisional assessment under Rule 8 of the Central Excise Valuation Rules, 2000, owing to fluctuations in the exchange rate of the imported raw material *viz.,* Meta Xylenol. During the material time, both PCMX manufactured by the Appellants and the Dettol products manufactured by their sister units were subject to statutory price control under the Essential Commodities Act, 1955, read with the Drugs (Prices Control) Order, 1995, administered by the Department of

Pharmaceuticals and Ministry of Chemicals & Fertilizers, Government of India.

3. Dettol Antiseptic Liquid manufactured by the Appellants' sister unit at Mysore was not liable to excise duty, as it was an alcohol-based preparation falling under the purview of State Excise. The PCMX manufactured by the Appellants was also captively consumed by their sister units in Himachal Pradesh and Uttarakhand for manufacture of Dettol Soap, which was cleared without payment of duty under Area-Based Exemption Notification No. 50/2003-CE dated 10.06.2003. These units did not avail any Cenvat credit on the PCMX received. For the relevant period, the Appellants adopted value based on CAS- 4 for 2008, on the basis of 110% of the cost of production. Upon finalization of the provisional assessment for 2009-2010 vide Order dated 31.10.2010 issued by the Deputy Commissioner of Central Excise, Hosur, it was determined that the Appellants had paid excess duty of Rs. 20,15,073/- and Rs. 15,24,304/-, on account of the difference between the provisionally adopted value and the value finalized. The Deputy Commissioner of Central Excise, Hosur had observed that the Appellants were entitled to refund under Section 11B of the Central Excise Act, 1944. Accordingly, the Appellants had filed two refund claims

in Form-R, both dated 23.04.2013, seeking refund of the excess duty paid on PCMX.

4. After the due process of law, the Assistant Commissioner of Central Excise, *vide* Orders-in-Original Nos. R-311/2013-14 and R-312/2013-14 dated 07.10.2013, sanctioned refund of the excess duty determined upon finalization of the provisional assessment for the year 2009-2010. Aggrieved by the said Orders-in-Original, the Department preferred appeals before the Commissioner of Central Excise (Appeals). The Commissioner (Appeals), by the impugned Orders-in-Appeal, set aside the refund orders and remanded the matter to the adjudicating authority for the limited purpose of examining whether the incidence of duty had been passed on to the Appellants' sister units and thereafter to decide the refund claims in accordance with law.

5. Aggrieved by the orders passed by the Commissioner (Appeals), the present appeals have been filed by the Appellants before this forum.

6. The Ld. Advocate Mr. Raghav Rajeev, representing the Appellants firstly reiterated the submissions as incorporated in the grounds of appeal and mainly emphasized on the following contentions:

i. The Department's appeals against Orders-in-Original Nos. R-311/2013- 14 and R-312/2013-14 dated 07.10.2013 are not maintainable, being time-barred under Section 35E of the Central Excise Act and, therefore, without jurisdiction. There was a delay of more than 45 days from the date of despatch of the orders in their receipt by the Review Cell-an aspect which was not examined. The statutory limitation must be computed from the date of despatch of the orders and not from the date of entry in the Internal Control (IC) Register of the Review Cell, as erroneously done. In support of this above contention, the Ld. Counsel has placed reliance on the decision of this Tribunal in *Commissioner of Customs, Chennai v. Sarvan Safety Equipment (P) Ltd., 2020 (9) TMI 343 (CESTAT Chennai).*

ii. The impugned Orders-in-Appeal has been passed in gross violation of the principles of natural justice, inasmuch as the Commissioner (Appeals) had failed to furnish the documents specifically sought by the

Appellants to demonstrate whether the review directions issued under Section 35E(3) of the Central Excise Act, 1944 were within the prescribed period of three months. The refusal to supply the relied-upon records has deprived the Appellants of an effective opportunity to contest the maintainability of the Department's appeal.

iii. The price of PCMX manufactured by the Appellants is subject to Government control. Accordingly, the doctrine of unjust enrichment has no application to the present case. The Ld. Counsel submits that the issue is no longer res integra, as several judicial forums have consistently held that the bar of unjust enrichment is inapplicable where the price of the goods is fixed or regulated by the Government. In support of his contention, reliance is placed on the following decisions: -

   a. *State of Rajasthan & Ors vs. Hindustan Copper Ltd. - 1997 (11) TMI 516-SC.*
   b. *Hindustan Copper Ltd. vs. Commr. Of C.Ex., Jaipur 2010 (261) ELT 943 (Tri. Del.).*
   c. *Vedanta Ltd. vs. CC, Tuticorin 2018 (6) TMI 528 CESTAT, Chennai*
   d. *Commr. Of Cus., Tuticorin vs. Vedanta Ltd. 2024 (3) TMI 878 - CESTAT, Chennai.*

iv. The Ld. Counsel argues that the findings of the Commissioner (Appeals) holding that Government-fixed prices are irrelevant for determining value under Rule 8 for captive consumption are unsustainable. Further, the

Ld. Counsel argues that the principle that unjust enrichment does not apply where prices are controlled by the Government is equally applicable to cases which involve stock-transfer transactions and captive consumption also. In support of this contention, the Ld. Counsel places reliance on the judgments of the Hon'ble Supreme Court in *State of Rajasthan & Ors. v. Hindustan Copper Ltd., 1997 (11) TMI 516 (SC),* and the Tribunal's decision in *Hindustan Copper Ltd. v. Commissioner of Central Excise, Jaipur, 2010 (261) ELT 943 (Tri. Del.),* wherein it has been held that the bar of unjust enrichment is inapplicable even in cases of captive consumption when the price is subject to statutory control.

v. The Ld. Counsel further contends that the Appellants' sister units, to whom PCMX was stock-transferred, had not availed any credit on the said goods. In the absence of any credit availment by the receiving units, it is submitted that the incidence of duty has not been passed on, and therefore the doctrine of unjust enrichment is inapplicable to the present case. In this regard, the Ld. Counsel draws the attention to the declarations furnished by the sister units (at Pages 63 and 64 of the Paper Book), expressly confirming that no

credit was availed on the PCMX received on stock-transfer basis. Further, reliance is placed on paragraphs 3 and 6 of Orders-in-Original Nos. R-312/2013-14 and R-311/2013-14 dated 07.10.2013, wherein the adjudicating authority has duly recorded the fact of non-availment of credit by the Appellants' sister units for the relevant period.

vi. The Ld. Counsel further submits that, in the Appellants' own case for the year 2006, refund arising out of the finalization order dated 10.08.2007 had been sanctioned by the Department on the very same issue. No appeal was preferred by the Department against the said refund sanction. It is therefore contended that the Department, having accepted the position for an earlier period, the department cannot take a contrary stand for a subsequent period on an identical issue.

7. The Ld. Authorized Representative Mr. M. Selvakumar appeared and argued for the department. He reiterated the findings of the impugned order dated 23.10.2015.

8. Heard both the sides and carefully considered the submissions of the Ld. Advocate and the Ld. Authorized Representative and also evidence as available in appeal records.

9. The primary issue to be determined is whether the refund sanctioned to the appellants is hit by the application of principle of unjust enrichment?

10. From the facts on record, it is evident that the PCMX manufactured by the Appellants was transferred only to their own sister units, as already noted. In such circumstances, the question of passing on the incidence of duty does not arise. This position is supported by the decision in *Pearl Polymers v. CCE, Bangalore, 2015 (317) ELT 617,* wherein it was held that no unjust enrichment arises in cases of stock transfer to one's own units. Likewise, in *Banzali Engineering Polymer Ltd. v. CCE, Bhopal, 2015 (317) ELT 718,* the Tribunal reiterated that the doctrine of unjust enrichment is inapplicable to stock-transfer transactions.

11. The above decisions clearly establish that in cases of stock transfer, the question of passing on the duty burden do not arise. Further, in the present case, the prices of the goods were not fixed by the appellants but were mandatorily determined by the Government under the Essential Commodities Act, 1955 read with the Drug (Prices Control) Order, 1995. This crucial fact further supports the appellants' position.

12. When prices are controlled by government as in the present case, the manufacturers cannot charge any amount over the fixed price determined by the government. Consequently, any excess duty determined to be in excess consequent to finalization of provisional assessment, cannot be treated as having passed on the duty burden to another person, and the question of unjust enrichment does not arise.

13. It is a well-settled principle that the doctrine of unjust enrichment does not apply when the prices are fixed by the Government, since no excess amount can be collected beyond the controlled price. The Tribunal in the case of *M/s. National Aluminium Company Ltd. vs. Commr. of CGST & Excise, Rourkela - 2024 (7) TMI 1041* has held as follows: -

*"**9**. We further take note of the fact that the appellant is selling the goods on the basis of LME price index. Therefore, the issue is to be examined when the goods are sold by the appellant on the basis of LME Price Index, whether Revenue would hit by unjust enrichment or not ? The said issue is examined by the Hon'ble Apex Court in the case of State of Rajasthan & Ors. V. Hindustan Copper (supra), wherein the Hon'ble Apex Court has observed as under :*

> *"2. On the question of refund, an affidavit of Shri Rashant Swarup, authorised representative of the respondent, has been filed wherein it has been stated that there is no question of any unjust enrichment of the respondent as a result of the refund of the excise duty paid on rectified spirit because the respondent has not passed on the duty to any consumer of the final product, viz., copper, manufactured by the respondent. It has been stated in the said affidavit that the price of copper has always been fixed by the Mineral & Metal Trading Corporation (MMTC) on the basis of the prevailing price fixed by the London Metal Exchange (LME) and this was done not only for the period in question but also for prior and subsequent period and that only such price could be charged and that no part of the duty in respect of rectified spirit captivity consumed in the manufacture of copper could be added to the price of copper which was fixed on the basis of the LME prices. We have no reason to doubt the correctness of the aforesaid statement contained in the said affidavit. In the circumstances, no case is made out for interference with the direction contained in the impugned judgment of the High Court regarding refund of excise duty paid by the respondent on import of rectified spirit used in the manufacture of copper. The appeals are, therefore, dismissed. No order as to costs."*

***10**. The said issue has been further examined by this Tribunal in the case of M/s Vedanta Limited Vs. Commissioner of Customs, Tuticorin (supra) and this Tribunal relying on the decision of the Hon'ble Supreme Court in the case of State of Rajasthan & Others Vs. Hindustan Copper Limited (supra), held that the appellant has passed the bar of unjust enrichment. The said decision was again followed by this Tribunal in the case of Commissioner of Customs,Tuticorin Vs. Vedanta Limited reported in 2024 (3) TMI 873-CESTAT Chennai, wherein this Tribunal has observed as under :*

> *"5. We have carefully perused the documents placed on record and we have also perused the final order of this Bench in the respondent's own case. In Final Order Nos.40781 to 40784/2018 dated 13.3.2018, relied upon by the First Appellate Authority as well as the respondent, we find that there is no change in the facts; admittedly, the price prevailing in LME was in no way under the control of*

the respondent and further, this Bench in the respondent's own case has categorically held that the final product price is based on the price prevailing in LME which has no relation to the cost of raw material including customs duty, for which reliance has been placed on the decision of the Hon'ble Supreme Court in the case of State of Rajasthan & Ors. Vs. Hindustan Copper Limited – (1998) 9 SCC 708."

***11**. This issue again examined by this Tribunal in the case of Chambal Fertilizers and Chemicals Limited (supra) wherein this Tribunal has observed as under :*

"19. It further needs to be noted that the price of the goods has been fixed by the Government of India. The cost of goods manufactured by the appellant is ascertained on the basis of cost of inputs, which are, gas and cost of production, plus profit. Considering the nature of goods, and for the purposes of extending subsidy thereon, the Government of India determined the Maximum Retail Price of the goods for sale to the ultimate buyers. The difference between the cost of production and the Maximum Retail Price is reimbursed by the Government of India to the appellant. If the price of goods is fixed by the Government of India, such price cannot be altered by inclusion of any duty. Thus, the issue of unjust enrichment would not be applicable. This is the view taken by the Supreme Court in State of Rajasthan v. Hindustan Copper Limited (1998) 9 SCC 708."

***12**. Admittedly, in this case, the appellant is selling aluminium on the basis of LME Price Index. In that circumstances, relying on the above said judicial pronouncements, we hold that the bar of unjust enrichment is not applicable to the facts of this case.*

14. The appellant has submitted that they were granted refund for an earlier period on the same issue, and the Department had not challenged that order before any higher forum.

15. In the absence of any contrary evidence from the Revenue, and in adherence to judicial discipline, restricting

the analysis on merits, as it clearly establishes the appellant's eligibility for the refund. Accordingly, I hold that the impugned Orders-in-Appeal No. 224-225/2015 dated 23.10.2015 are held to be unsustainable and so ordered to be set aside, prima facie on merits.

16. Thus, the appeals are allowed with consequential relief(s), if any as per the law

(Order pronounced in open court on 18.12.2025)

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

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