<u>THEORY OF UNJUST ENRICHMENT</u>

<u>IN CASE DUTY PASSED ON INDIRECTLY TO BUYER</u>

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The term “unjust enrichment” is used to describe a situation when a person undeservedly gets enriched. In the context of refund in Central Excise, the principle of unjust enrichment is the first and foremost principle which is kept in mind by the sanctioning authorities. If the manufacturer has charged excise duty to his buyer, it is clear that he has passed on the incidence to the buyer and has already recovered duty from his customer. In such cases, refund of excise duty paid to the manufacturer will amount to excess and undeserved profit to him. It will not be equitable to the refund the duty to him as he will get double benefit- first from the customer and again from the Government. This is called “Unjust Enrichment”. Refund of duty should, therefore, be paid to the customer who has borne the burden of duty. Since it is practically not feasible to identify such customers on individual basis, the amount of refund is credited to Consumer Welfare Fund. The doctrine of Unjust Enrichment is applicable in all duties and not only restricted to excise duty.

Now the most important question arises whether the duty which has not been passed to buyer directly but has been claimed as expenditure can be refunded?

The answer is **NO**. In the case of **Union of India And Others v/s Solar Pesticide Pvt. Ltd.** Honb’le Supreme Court held that

“The use of the words "incidence" of such duty..." is significant. The words "incidence of such duty" means the burden of duty. To put it differently the expression "incidence of such duty" in relation to its being passed on to another person would take it within its ambit not only the passing of the duty directly to another person but also cases where it is passed on indirectly. This would be a case where the duty paid on raw material is added to the price of the finished goods which are sold in which case the burden or the Incidence of the duty on the raw material would stand passed on to the purchaser of the finished product. It would follow from the above that when the whole or part of the duty which is incurred on the import of the raw material is passed on to another person then an application for refund of such duty would not be allowed."

In the above said case the Honb'le Supreme Court was very clear that even if the duty has been passed on indirectly to the buyer even in that case refund of duty cannot be allowed. Therefore if any duty is claimed as expenditure than it is very clear that the assessee has set the price of its finished goods in such a way to recover its cost and in that way the assessee has passed on the incidence of duty onto the buyer and consequently he cannot claim refund of such duty

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