

Question 1

State briefly the circumstances under which a refund claim could be admitted under the proviso to section 11B (2) of the Central Excise Act, 1944. (3 Marks) (May 2011)

Answer

Under proviso to section 11B (2), a refund claim of excise duty made by a buyer/assessee can be admitted only in the following cases:

- (i) Rebate of excise duty on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (ii) Unspent advance deposits lying in applicant's account current;
- (iii) Refund of credit of duty paid on inputs, provided it is payable according to any rule or notification;
- (iv) Refund of duty to manufacturer, if he has not passed on the incidence of duty to another person;
- (v) Refund of duty to buyers, provided he has borne the duty and has not passed on the incidence of the duty to any other person;
- (vi) To any other class of applicant, if borne by any such class of applicants, as may be specified by the Government of India, if the incidence of duty has not been passed on to any other person.

Question 2

Write a short note on the principle of "unjust enrichment" under Central Excise Law.

(2 Marks) (Nov 2009)

Answer

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 burden to the buyer and has already recovered duty from his customer. In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him. It will not be equitable to 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 in accordance with Section 12C of the Central Excise Act 1944.

The principle of unjust enrichment has been held as valid and constitutional by the Apex Court in the famous case of ***Mafatlal Industries Ltd. V U.O.I. 1997 (89) E.L.T. 247.*** In addition, it has also been held in the case of ***CCE V Allied Photgraphics 2004(166)ELT 3*** that doctrine of unjust enrichment applies even when duty is paid under protest.