CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 51956 of 2014

[Arising out of Order-in-Appeal No. 206/CE/Appeal/DLH-14/2013 dated 22.01.2014 passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

M/s GVK Emergency Management and Research Institute ……**Appellant**
STDC Housing Basaveshwaranagar,
Entrance Opp. To Govt. Unani Medical
College, GMS Compound, Magadi Road,
Bangalore, Karanataka-560079

VERSUS

Commissioner of Central Excise, Delhi-IV ……**Respondent**
Plot No.36-37, Sector 32, Opp. Medanta Hospital,
NH-IV, Gurgaon, Haryana-121001

APPEARANCE:

None for the Appellant

Shri Anurag Kumar and Ms. Amita Gupta, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61687/2025

DATE OF HEARING: 15.09.2025
DATE OF DECISION: 19.11.2025

P. ANJANI KUMAR:

M/s. GVK Emergency Management & Research Institute, the appellants, assail the order, dated 26.12.2013 / 22.1.2014, passed by Learned Commissioner (Appeals), vide which the rejection of the

appellants claim for refund of Rs 1,64,91,905, by the order in original dated 1.5.2013, was upheld.

2. Brief facts of the case are that the appellants, have signed an MOU with the Government of Karnataka as a partner to run the ambulance service named "Arogya Kavacha"; the appellant provided management, research, and technology and the Government of Karnataka was to meet 100% of the operating expenditure with full capital investment; the applicant ordered the supply of vehicles from various manufacturers on behalf of the state government, which on clearance and after payment of Central Excise duty were sent to the fabricator M/s Bafna Healthcare Private Limited at Faridabad (hereinafter referred to as" M/s BHPL"). On an investigation conducted against the fabricator M/s BHPL, Revenue entertained a view that the fabrication of ambulances by M/s BHPL amounted to manufacture; therefore, M/s BHPL were required to pay Central Excise duty of Rs. 1,64,91,905 on 105 ambulances cleared to Government of Karnataka. M/s BHPL paid the duty under protest.

2.1. The appellants filed a claim, dated 19.04.2010, seeking refund of the Central Excise duty paid by M/s BHPL under protest; the claim was rejected by Assistant Commissioner, vide letter dated 29.4.2010 on the ground that the Notification No.6/2006-CE dated 01.03.2006 envisages refund to the manufacturer and the appellant not being the manufacturer was not entitled to the refund claim; on an appeal filed by the appellant, Commissioner (Appeals), vide order dated 19.4.2011, directed the authority to deal with the refund claim on merits as per the existing procedure and provisions.

Accordingly, a Show Cause Notice, dated 2.4.2012, was issued; the original authority rejected the refund vide order-in-original dated 1.5.2013; such rejection was upheld by the impugned order dated 26.12.2013 / 22.1.2014. Hence, this Appeal.

3. Nobody appeared on behalf of the appellants. In their written submissions dated 08.04.2025, they submitted that the issues involved in this Appeal are as to whether:

(i). the impugned vehicles (Ambulances) are entitled to the concessional rate in terms of Sl. No. 41A and Sl. No. 34 of Notification.No.6/2006 -CE dated 1.3.2006, as amended;

(ii). the Appellants are entitled to claim the refund of Rs. 1,64,91,605, paid by them, under protest, at the time of provisional release of 105 Ambulances, seized at the premises of M/s BHPL on behalf of the Government of Karnataka.

(iii). the Doctrine of unjust enrichment would apply in the facts and circumstances of the case.

4. They submit that the appellants M/s GVK EMRI, placed orders, on behalf of the State Government, for the supply of vehicles on various manufacturers such as Force Motors, Pithampura, M.P. & others; applicable duty was paid on the said 'Delivery Vehicles' under CETH 8704 21 90; the vehicles are sent to fabricators to convert them into ambulances meant for emergency services; the appellants paid the job work charges to the fabricators M/s BHPL, for fitting medicine cabinets, oxygen cylinder trolleys, attender seats, air conditioning equipment, etc; M/s BHPL were paying Service Tax, entertaining an opinion that the work carried out by them does not

amount to manufacture; on delivery by the fabricators to the appellants, equipment such as Defibrillators, Ventilators, Pulse Oximeters, Stretchers, Wheel Chairs etc., are fitted to make them into full-fledged ambulances; these vehicles are then registered with the RTO Authorities as ambulances.

5. The appellants submit also that the Department was of the opinion that the said Vans after fabrication / fitment of a few items, by M/s BHPL, are liable to be classified under CHS No. 8703 33 92 of CETA, 1985 as "Specialized Transport Vans such as Ambulances, Prison Vans and the like"; as the vehicles were required urgently, for implementing "Aarogya Kavacha Scheme", differential duty of Rs. 1,64,91,605/- was paid under protest as informed vide letter dated 22.1.2010; even though the vehicles are classifiable under CSH 8703 33 92 of CETA 1985, concessional rate of duty is available in terms of in terms of Sl. No. 41A and Sl. No. 34 of Notification.No.6/2006 -CE dated 1.3.2006; as the appellants have paid duty on behalf of the Government of Karnataka, who have also given a No Objection Certificate, they are eligible to claim the refund.

6. The appellants submit further that Learned Commissioner (Appeals) has not appreciated the facts on record, in the light of the Memorandum of understanding between the Government of Karnataka and the appellant; a careful reading of the above, would show that the appellant would act as sole State Level Nodal Agency to provide Emergency Response Services across the State in public, private partnership and in coordination with Public Agency /

Government Department; in this background, the Appellants placed the orders for manufacture of 105 vehicles on M/s Force Motors and for fabrication on M/s BHPL; the Ambulances were sent to the Districts, after registering the with the Jurisdictional Regional Transport Officers (RTOs) in the name of the respective District Health & Family Welfare Officers; the ambulances were totally under the operational control of the appellant to provide the necessary patient care in emergencies; the available evidence clearly shows that it was the appellants who floated the Tenders; placed POs on the manufacturers and fabricators; took delivery from M/s BHPL; got them registered with the RTO's, in the name of the District Health & Family Welfare Officers concerned, on behalf of the Dept. of Health & Family Welfare, Govt. of Karnataka.

7. The appellants would submit in addition that the appellant paid duty of Rs 1,64,91,605, through M/s BHPL, as the appellants are not registered as a manufacturer under the Central Excise Act, 1944 or the Rules made thereunder; further, the Secretary to the Government of Karnataka, Health & Family Welfare Department vide his letter dated 26.12.2009, authorised the appellants not only to make necessary payments to the CE Department under protest but also to claim the refund from the Central Excise Authorities; the Appellants also submitted a copy of the 'No objection' dated 27.1.2010 given by M/s BHPL, stating that the duty was paid by the appellants and m/s BHPL have no objection for the claim of refund of differential duty paid by the appellants; Appellants also submitted a Chartered Accountant's Certificate dated 17.4.2010, to the effect

that the appellants have paid Rs. 1,64,91,605/- towards differential duty.

8. The appellants would submit that in terms of Section 11B(2)(e) provides that the Assistant/Deputy Commissioner shall pay to the Applicant, if such amount is relatable to the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person; in the instant case, it is evident that the appellants have paid duty and have not passed on the same to anyone else; the provisions of Section 11B should be read harmoniously with the provisions of Notification. No. 6/2006 - CE dated 1.3.2006; the differential duty was paid by the Appellants as buyers; M/s BHPL have given a No Objection letter dated 27.1.2010; they rely on decision of the Tribunal in the case of Mc Nally Bharat Engineering Company Ltd 2006 (194) ELT 318 (Tri. Bang.). They submit that the objective of a Notification should not be defeated since such notifications are issued for achieving certain social objectives and in pursuance of public policy. They rely on Oblum Electrical Industries Pvt Ltd 1997 (94) ELT 449 (SC), HMM Ltd 1996 (87) ELT 593 (SC) and Rupa& Co 2004 (170) ELT 129 (SC). The submit that the Government of Karnataka, vide Letter No. HFW/52/STQ/ 2009 dated 26.12.2009 and 26.12.2010, authorised the appellants to pay the duty and differential duty and to seek refund if any; Chartered Accountant certified the payment of duty by the appellant.

Submissions on behalf of the Respondent

9. Learned Authorised Representative reiterates the findings of the impugned order and submits that the Ambulances cleared by the

fabricator and handed over to the Government of Karnataka had undergone the process of manufacture and therefore invited the imposition of Central Excise duty at the time of clearance; as the Central Excise duty was paid correctly, there was no excess payment of duty is there for which the instant refund claim has been filed; the appellants were neither a manufacturer nor a buyer of the said vehicles and thus cannot be considered as the buyer for the purpose of Section 11 B(2)(e) of the Central Excise Act, 1944. He submits that the refund claim was rightly rejected on the following grounds:

- M/s BHPL paid the duty on confirmation of the duty vide OIO No. dated 02.04.2011.
- The exemption as per the Notification No. 6/2006-dated 01.03.2006 is subject to the conditions as mentioned at Sl. No. 8 of the said notification that the manufacturer pays duty at the time of clearance of the vehicle; takes credit of the amount equal to the amount of duty paid in excess, in the Account Current and thereafter files a claim for refund of the said amount of duty before the expiry of six months from the date of payment of duty, along with documents mentioned therein.
- Such refund claim will be dealt by the Deputy/Assistant Commissioner of Central Excise, as the case may be, in the manner prescribed therein.
- Section 11 B of the Central excise act, 1944, read with notification number 6/2006 CE dated 01.03.2006 permits

refund of duty only to either the manufacturer or the buyer of the excisable goods subject to the condition that he has not passed on the incidence of such duty to any person; in the instant case, M/s BHPL were the manufacturers and Government of Karnataka the buyer.

- the registration certificates issued by the Regional Transport Authority also depict the owner registration in the name of District Health and Family Welfare Officer; there was no invoice or bill raised by the applicant or to them, it is not possible to a ascertain as to whether the applicant has passed on the burden of Central excise duty to the Government of Karnataka or not.
- the MOU also does not indicate whether the appellant is obligated and bound to bear the duties and taxes; sub para-B of heading VI Derivables of the MOU, clearly indicates that the ownership of capital asset shall vest with the government of Karnataka for which they released Rs 87.07Cr, as estimated capital expenditure; Ambulances were a form of initial capital assets belonging to government of Karnataka. Owner of the vehicles is Government of Karnataka and not by the appellants.

10. Learned Authorised Representative submits further that the appellants have not discharged the burden to prove that the incidence of duty has not been passed on to others. Hon’ble Supreme Court in the case of M.R.F. Ltd. v. Commissioner 2008 (224) ELT. A99 (SC.) where in it was held that burden to prove that

incidence of duty was not passed on is on the assessee. Hon'ble Supreme Court held further in the case of Addison & Co. Ltd. 2016 (339) ELT 177 (S.C.) that though a consumer can make an application for refund, verification is to be done as to who bore the burden of excise duty. He submits that in the instant case, the appellants are not even consumers.

11. None for the appellants. Heard the Leaned Authorised Representative for the appellants and perused the records of the case. Under the MOU entered in to by the appellants with the Government of Karnataka, they were required to run the ambulance service named "Arogya Kavacha"; to provide management, research, and technology and the Government of Karnataka was to meet 100% of the operating expenditure with full capital investment. The appellants ordered the supply of vehicles from various manufacturers on behalf of the state government, which on clearance and after payment of Central Excise duty were sent to the fabricator M/s BHPL; on the completion of fabrication the vehicles were fitted with some more equipment and were delivered to the concerned District officers in the ministry of Health and Family Welfare, Government of Karnataka after registering the same in the name of the District officers. Revenue entertained a view that the fabrication of ambulances by M/s BHPL amounted to manufacture and therefore, M/s BHPL were required to pay Central Excise duty of Rs. 1.64 on 105 ambulances cleared to Government of Karnataka. M/s BHPL paid the duty under protest. The appellants claim that they have paid the duty on behalf of the Government of Karnataka

and M/s BHPL and got the vehicles released; The Government of Karnataka has authorised them to pay the applicable duties and to claim refunds with Central Excise Authorities in this regard; M/s BHPL have given a no objection certificate that the appellants may claim refund. On the other hand the revenue rejected the refund for the reason that the appellants are not a manufacturer or a buyer to avail refund; the conditions laid down in the notification No. 6/2006 CE dated 01.03.2006 are not fulfilled; that the appellants do not conform to the criterion as per section 11(B) (2) (e) and the appellants failed to discharge the burden of proof that the incidence of duty was paid by them and not passed on to others.

12. We find that the appellant is not a manufacturer or a buyer of the impugned goods, the differential duty paid on which the appellant seeks to claim as refund. The vehicles are not registered in their names. They are not the owners of the vehicles. No invoice or any document that can be recognized or correlated with the scheme of Refund under the Central Excise Act, is produced by the appellant. The appellant has signed a memorandum of understanding (MOU) with the Government of Karnataka to run the ambulances under the Arogya kavacha scheme. The appellants claim that the duty that was required to be paid by the fabricator M/s BHPL was in fact paid by them. The MOU also doesn’t appear to recognize the appellants as owners of the Vehicles. As per the MOU they are to maintain, upkeep and ply the ambulances as and when required. Government of Karnataka has sanctioned Certain amount for the running of the scheme. There is no mention of the

reimbursement of taxes if any paid by the appellant. If the appellant has undertaken the activity as per MOU or as part of Corporate Social Responsibility, they cannot enrich themselves at the cost of the Government. However, we are not going in to this issue as its beyond the mandate of the Bench.

13. However, as far as the refund in question is concerned the fact remains that the Central Excise Law recognizes only the manufacturer for the purposes of payment of duty. It also recognizes the Purchaser of the vehicles for the purposes of Refund. The appellant is not established to be either of them. He is not even a consumer. The appellant could not produce any evidence to show that they are the buyers or owners or the consumers of the vehicles who have borne the incidence of duty and have not passed on to others. All that the appellants presented is the correspondence between them, Government of Karnataka and the fabricator. If M/s BHPL had paid the duty, they were eligible to claim refund as per the Central Excise Act and Rules made thereunder and the Notification no 6/2006. We find that condition No.8 of the said Notification prescribes certain conditions as follows.

> *8. (a) The manufacturer pays duties of excise at the rate specified under the First Schedule and the Second Schedule read with exemption contained in any notification of the Government of India in the Ministry of Finance (Department of Revenue), at the time of clearance of the vehicle;*
> *(b) the manufacturer takes credit of the amount equal to the amount of duty paid in excess of that specified under this exemption, in the Account Current, maintained in terms of Part V of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs and thereafter files a claim for refund of the said amount of duty before the expiry of six months from the date of payment of duty on the said motor vehicle, with the Deputy*

Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, along with the following documents, namely:-

(1) an intimation that the amount of refund of duty claimed has been credited by the manufacturer in his Account Current, also stating the amount of credit so taken;

(2) a certificate from an officer authorized by the concerned State Transport Authority, to the effect that the said motor vehicle has been registered for sole use as ambulance or taxi, as the case may be, within three months, or such extended period not exceeding a further period of three months as the said Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, may allow, from the date of clearance of the said motor vehicle from the factory of the manufacturer;

(3) a copy of the document evidencing the payment of excise duty, as mentioned in paragraph (a) above;

(4) where the manufacturer has collected an amount, as representing the duties of excise, in excess of the duties payable under this exemption from the buyer, an evidence to the effect that the said amount has been duly returned to the buyer; and

(5) where the manufacturer has not collected an amount, as representing the duties of excise, in excess of the duties payable under this exemption from the buyer, a declaration by the manufacturer to that effect;

Within seven days of the receipt of the said claim for refund, the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, after such verification, as may be necessary, shall determine the amount refundable to the manufacturer and shall intimate the same to the manufacturer. In case the credit taken by the manufacturer is in excess of the amount so determined, the manufacturer shall, within five days from the receipt of the said intimation, reverse the said excess credit from the said Account Current maintained by him. In case the credit availed is lesser than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount; and

> *The recovery of the credit availed irregularly or availed in excess of the amount of credit so determined, and not reversed by the manufacturer within the period specified under paragraph (c) above, shall be recovered as if it is a recovery of duty of excise erroneously refunded. In case such irregular or excess credit is utilized for payment of excise duty on clearance of excisable goods, the said goods shall be considered to have been cleared without payment of duty to the extent of utilization of such irregular or excess credit.*

14. We find that not only the appellant but also M/s BHPL, the manufacturer fabricator of the impugned goods, have not fulfilled any of the conditions and have not followed any procedure laid down as above. Under the Circumstances, it would be impossible for the Revenue authorities to process the Refund claim and grant refund. If the appellant wished to obtain the refund of duty paid in terms of the above notification, it was incumbent upon them to satisfy the authorities that they satisfy the conditions and are eligible for the refund and that they have followed the prescribed procedures. A perusal of the above notification indicates that the fabricator, M/s BHPL as manufacturers were only eligible to apply for the refund provided, they satisfied the conditions. It is not the case. Instead, the appellant claims the refund of duty, paid by the manufacturer citing some internal arrangement between them and the manufacturer. Understandably, the law does not permit such claims. It has been held by the Hon'ble Supreme Court in a number of cases that the burden to prove the eligibility is on the person who claims the exemption or benefit. If the statute prescribed that the refunds under the said notification shall be operationalized and granted as per the procedure laid down, the same must be followed. In the

instant case, the appellant doesn't even fulfil the eligibility criteria even if one could argue that the procedures can be relaxed. When even the mandatory and substantive conditions are not fulfilled, the appellant has no *locus standi* to claim the refund.

15. We find that the Hon'ble Supreme Court held in the case of UOI Vs Mahendra Singh in Civil Appeal no. 4807 of 2022 (in Civil appeal No 19886 of 2019) as follows.

> *15. A three Judge Bench of this Court in a judgment reported as Chandra Kishore Jha v. Mahavir Prasad & Ors.10, held as under*
> *"17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935 36) 63 IA 372: AIR 1936 PC 253 (II)], Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322: 1954 SCR 1098], State of U.P. v. Singhara Singh [AIR 1964 SC 358: (1964) 1 SCWR 57].) An election petition under the rules could only have been presented in the open court up to 16-5 1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....*
> *16. The said principle has been followed by this Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors.11 wherein this Court held as under:*
> *"14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure....*
> *16. We further find that the Hon'ble supreme Court of India held in the case of State of Jharkhand & others Vs Ambey cements and another (2005) 1 SCC 368 that*
> *24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the industrial policy and the exemption notifications.*
> *25. In our view, the failure to comply with the requirements renders the writ petition filed by the*

> *respondent liable to be dismissed. While mandatory rule must be strictly observed, substantial compliance might suffice in the case of a directory rule.*
> *26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein.*

17. We further find that Hon'ble supreme Court, in the case of Union of India & Ors. Versus VKC Footsteps India Pvt Ltd (Civil Appeal No 4810 of 2021) 2021 (9) TMI 626 - Supreme Court, held that

> *60.*
> *……*
> *…… But abstract doctrine cannot be a ground for the Court to undertake the task of redrawing the text or context of a statutory provision. This is clearly an area of law where judicial interpretation cannot be ahead of policy making. Fiscal policy ought not be dictated through the judgments of the High Courts or this Court. For it is not the function of the Court in the fiscal arena to compel Parliament to go further and to do more by, for instance, expanding the coverage of the legislation (to liquor, stamp duty and petroleum) or to bring in uniformity of rates. This would constitute an impermissible judicial encroachment on legislative power. Likewise, when the first proviso to Section 54(3) has provided for a restriction on the entitlement to refund it would be impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature has provided. If the legislature has intended that the equivalence between goods and services should be progressively realized and that for the purpose of determining whether refund should be provided, a restriction of the kind which has been*

imposed in clause (ii) of the proviso should be enacted, it lies within the realm of policy.

18. In view of the above, we find that the appellant could not establish their eligibility for the refund in question. We hold that they are neither a manufacturer nor buyer nor the owners of vehicles and thus have not fulfilled the substantive conditions for refund. Therefore, we find no reasons whatsoever to interfere with the impugned order. Accordingly, we do not find any merit in the appeal.

19. Accordingly, the appeal is rejected.

(Order pronounced in the open court on 19/11/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK