

## Central Excise:

Commissioner of Central Excise, Madras Vs. Addison & Co. - 73  
Taxmann 319 ( SC )( 2016 )

Assessee claimed refund of excise duty on additional discount which was rejected by the Dept. On appeal, the CESTAT held that refund of duty is possible only when the assessee proves that he has not passed on the incidence of duty to his customers & held in favour of revenue. On further appeal by the assessee, the High Court holding in favour of the assessee held that refund towards additional deduction cannot be denied on the ground that there was no evidence to show who the final customer is. Sec. 11-B of the Act cannot be construed as having reference only to the ultimate customer & that it would be sufficient for the assessee to show that he did not pass on the burden of duty to another person.

On further appeal, the Supreme Court held that there is a statutory presumption u/s 12-B of the Act that the incidence of duty has been passed on to the ultimate customers. The assessee who did not bear the burden of duty, though entitled to claim refund, cannot claim as he would be unjustly enriched.

The Apex Court further held, that Section 11-B(2)(e) of the Act enables a buyer in downstream to make a claim for refund of duty paid. If no such claim is made, the excess collection of duty will remain with Investors' Fund which will be utilized for the benefit of consumers.