After the Larger Bench decision in the case of **BDH Industries Limited vs CCE (Appeals), Mumbai –I** (**2008-TIOL-1211-CESTAT-MUM-LB)**, taking re-credit on own motion (*suo motu*) had been in a serious commotion.

A brief re-cap:

In the BDH case *supra*, duty was inadvertently debited twice and after noticing the mistake, the assesse, *suo motu* took back the credit in his books considering it as an accounting error, without any sanction or permission from the department. As expected, the Revenue objected.

When the issue reached the Tribunal, as there were conflicting judgments in **Motorola India Pvt. Ltd (2006-TIOL-168-CESTAT-BANG)** & **Comfit Sanitary Napkins (I) Pvt. Ltd. (2004-TIOL-995-CESTAT-BANG**), reference was made to the Larger Bench for resolving the dispute.

After considering the arguments on both side, the Larger bench observed as:

> *12. We find that there is no provision under Central Excise Act and Rules allowing suo moto taking of credit of refund without sanction by the proper*

officer. The appellant's contention that refund in respect of duty paid twice cannot be considered as refund of duty and is only the accounting error does not appeal to us as the debit entry made in the accounts is towards payment of duty only and therefore refund of these amounts has to be considered as refund of duty only. The PLA account and the credit accounts are required to be submitted to the department and any correction carried therein, need to have department's sanction. We also note that the law relating to refund has been fully analyzed by the Apex Court in the case of Mafatlal Industries (cited supra) which makes it very clear that all types of refund claim be there of excess duty paid or otherwise are to be filed under section 11B and have to pass the proof of not passing on the incidence of duty to others. The recent decisions of Hon'ble Supreme Court in the case of Sahakari Khand Udyog and Others clearly laid down that all refunds have to pass through doctrine of unjust enrichment, even if it is not so expressly provided for in the statute. From these decisions it clearly emerges that all types of refund have to be filed under section 11B of the Central Excise Act and no suo motu refund can be taken unless and until the department is satisfied that the incidence of duty has not been passed on.

13. In view of above, we answer the reference made to us by holding that all types of refund have to be filed under Central Excise Act and Rules made thereunder and no suo moto credit of the duty paid in excess may be taken by the assessee. The matter is now sent back to the referral bench for passing appropriate orders on the appeal before it.

In effect, the LB held that **there is no provision under Central Excise Act and Rules allowing *suo moto* taking of credit of refund without sanction by the proper officer and *no suo moto refund can be taken unless and until the department is satisfied that the incidence of duty has not been passed on.***

From that day, life had been made very miserable. Though the two referral judgements, namely, Motorola and Comfit *supra*, dealt with the re-credit of the duty debited, the Revenue denied any and all types of re-credits by the assessee, be it an accounting error or an arithmetical error, citing the Larger bench decision in BDH.

In a recent and a reasoned judgement, the Hon'ble High Court of Madras in the case of ICMC has decided a case, wherein, the assesse had taken *suo motu* re-credit of the input services credit already reversed by him.

For ready reference, the relevant excerpts of the decision are:

> *"The objection of the Revenue herein is that even for a reversal of an entry, the assessee should have followed Section 11B of the Central Excise Act, 1944 lest there would be unjust enrichment. Consequently, there could be no such thing as suo motu reversal, except through a petition made under Section 11 B of the Central Excise Act, 1944.*
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> *13. We do not subscribe to the view expressed by the Revenue. Admittedly, the assessee originally availed the Cenvat Credit on service tax for discharging its liability. However, for sound reasons, it reversed the credit. Strictly speaking, in this process, there is only an account entry reversal and factually there is no outflow of funds from the assessee to result in filing application under Section 11B of the Central Excise Act, 1944 claiming refund of duty. The contention of the Revenue that even in reversal of the entry there is bound to be an unjust enrichment has no substance or based on any legal principle, since, what is availed off by the assessee is only a credit on the duty paid on the services rendered…*

14. We do not find any good ground to hold that it was a case of refund of duty falling under Section 11B of the Central Excise Act, 1944 and that the assessee was to comply with the provisions of Section 11B of the Act…

16. We do not for a moment deny the fact that a sum of Rs.3,21,308/- for which suo motu credit was taken by the assessee was forming part of Rs.5,38,796/-, which was earlier reversed by the assessee. On the admitted fact, Rs.3,21,308/- represented the enumerated input services as given under Rule 6(5) of the Cenvat Credit Rules, 2004, we have no hesitation in accepting the plea of the assessee that on a technical adjustment made, the question of unjust enrichment as a concept does not arise at all for the assessee to go by Section 11B of the Central Excise Act, 1944.

17. In the circumstances, we set aside the order of the Tribunal and allow the appeal filed by the assessee and hold that legally speaking there is no impediment in the asseesee taking suo motu credit of the sum of Rs.3,21,308/-. In the light of the above, we allow the appeal."

And after nearly 5 years of eclipse, there is sunshine.