IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Miscellaneous Application No. 40070 of 2024
and
Service Tax Appeal No. 40679 of 2019

(Arising out of Order in Appeal No. 668/2018 (CTA – II) dated 28.12.2018 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai)

Royal Enfield Motors **Appellant**
(A Unit of Eicher Motors Ltd.)
Sriperumbudur
Kancheepuram – 602 105.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri Raghavan Ramabhadran, Advocate for the Appellant
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40523/2025

Date of Hearing : 29.04.2025
Date of Decision: 08.05.2025

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal No. No. 668/2018 (CTA – II) dated 28.12.2018 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai (impugned order).

2. Brief facts of the case are that the appellant had filed a refund claim for an amount of Rs.1,79,46,788/- on 31.10.2017 claiming that the said amount was erroneously collected as service tax by SIPCOT on developmental charges. On verification, it was observed that service

tax paid on developmental charges during the period from 1.6.2007 to 21.9.2016 was liable to be refunded in terms of sec. 104 of Finance Act, 2017 (**FA, 2017**). However, it was noticed that the refund application was time barred. Hence Show Cause Notice dated 14.3.2018 was issued to the appellant proposing to deny the entire amount of refund on the ground that the refund claim was filed with a delay of 31 days, beyond the time-limit stipulated under Section 104 of Chapter V of the Finance Act, 1994 ('Act'). After due process of law, the Original Authority rejected the entire refund claim on the ground of time bar. Aggrieved by the said order, the appellant preferred an appeal before the Ld. Commissioner (Appeals), who rejected the appeal on the same ground. Hence the present appeal before this Tribunal. The appellant also has filed a miscellaneous application dated 13.3.2024 seeking to file additional grounds, submitting that premium / development charges are not liable to service tax on renting of immovable property for our consideration.

3. Shri Raghavan Ramabhadra, Ld. Counsel appeared for the appellant and Smt. O.M. Reena, Ld. Authorized Representative appeared for the respondent.

3.1 Shri Raghavan Ramabhadra the Ld. Counsel for the appellant submitted that pursuant to the introduction of Section 104 of the Act, SIPCOT issued a letter dated 12.09.2017 received by them on 15.09.2017 asking them to file the refund claim with the tax authorities. Until this letter was received, there was no clarity over who must file the refund claim, as Section 104 does not specify who must file the refund claim. They were of the bona fide belief that since

SIPCOT had deposited the service tax with the Government, SIPCOT would file the claim for refund and then make over the amount to the Appellant. Thereafter, the Appellant began collating the necessary information and documents required to file a claim. On 31.10.2017, the Appellant filed a letter seeking refund of the amount paid towards service tax on the development charges paid on application. For the said reasons a delay occurred in making the claim which was beyond the Appellant's control. He submitted that once the time period until 15.09.2017 is excluded, it is evident that the Appellant has indeed filed the refund claim within time. He stated that the said principle has been followed in the following decisions:

A) **Sovereign Agrotech Refinery Private Limited v. Commr. of GST and Central Excise** - 2022 (3) TMI 10 - CESTAT CHENNAI

B) **Dynamic Techno Medicals Private Limited v. Commr. Of CGST and Central Excise** 2021 (4) TMI 888 - CESTAT CHENNAI

C) **Satyam Auto Components Pvt. Ltd. vs Commr. Of GST and Central Excise** 2019 (11) TMI 246 – CESTAT CHENNAI

D) **JSW Dharmatar Port Pvt Ltd vs Union of India** 2019 (20) GSTL 721 (Bom)

The Ld. Counsel fairly conceded that CESTAT Chennai considered the question of refund under Section 104(3) of the Act in **T.V.M. Edible Oil Refineries v. Commissioner of GST and Central Excise** and vide Final Order No. 40697 of 2024 dated 20.06.2024 the majority view was that the refund claim ought to be rejected as being time-barred under Section 104(3) of the Act. He distinguished the said judgment by stating that the Order dated 31.05.2024 did not consider the specific issues whether administrative delays on part of SIPCOT would operate to deprive an assessee of refunds which is legitimately due to the

assessee. He stated that even on merits the onetime upfront amount paid for the long-term lease allotted by SIPCOT to the Appellant, namely development charges or premium, is not exigible to service tax. The introduction of Section 104 was only to give effect to the principle that the development charges are not liable to service tax, and any amounts collected as service tax were to be refunded. Hence, any amount paid towards service tax under an erroneous belief that the activity was exigible to service tax does not hold the character of 'service tax' and ought to be automatically refunded to the Appellant without subjecting the Appellant to the rigors of filing a refund claim and that the retention of any amounts paid by the Appellant will be without authority of law. He placed reliance on the below decisions for the proposition that amounts collected without the authority of law, cannot be subject to the statutory rigors of limitation:

E) **S. Sakthikumar vs. CCE, Madurai** - 2022 (61) G.S.T.L. 364 (Tri. - Chennai) (paragraph 6).

F) **PKF Sridhar & Santhanam LLP vs. CCE** - 2022 (58) G.S.T.L. 423 (Tri. - Chennai) (paragraph 7).

G) **Wolkem India Limited vs. Commissioner of Customs, Tuticorin** - 2019 (368) E.L.T. 1090 (Tri. - Chennai) (paragraphs 8.1, 8.2).

H) **Mera Baba Realty Associate (P) Ltd. vs. CST** - 2017 (49) S.T.R. 257 (Del.) (paragraph 9).

He stated that as per Section 17(1)(c) of the Limitation Act, the period of limitation in an application filed for obtaining relief from the consequences of a mistake would begin from the moment the applicant has discovered the mistake, or from the time when the mistake could

have been discovered with reasonable diligence. He hence prayed that their appeal be allowed.

3.2 Smt. O.M. Reena, Ld. Authorized Representative appearing for the respondent, stated that when there is a conflict between a general and a special provision of a statute, the latter shall prevail. Hence the time limit specified in Section 104 of the Finance Act will prevail over that of Section 11B of the Central Excise Act as made applicable. The Tribunal being a creature of statute cannot travel beyond the specific provisions of the statute and condone the delay in filing the claim when such a provision does not exist in the statute itself. She stated that this Tribunal in **T.V.M. Edible Oil Refineries** (supra) in a similar matter of delayed refund claim held the majority view that the refund claim ought to be rejected as being time-barred under Section 104(3) of the Act. She further stated that the issue even on merits, which is not an issue in this appeal, but has been raised by the appellant, has been settled by a Larger Bench of the Tribunal, in the case of **Rajasthan State Industrial Development & Investment Corporation Ltd Vs CCE & ST, Alwar** vide Interim Order Nos. 1/2025 dated 27.01.2025, wherein it was held that the value of "premium" or "salami" is exigible to service tax under "renting of immovable property" for the period prior to 01.07.2012 under section 65(105) (zzzz) of the Finance Act and from 01.07.2012 under section 66B of the Finance Act. She hence prayed that the appeal may be rejected.

4. We have heard the parties to the dispute and have carefully perused the appeals, the miscellaneous application and related documents. We find that the foundation of the issue is spelt out in SCN

dated 14.03.2018, and is built on two issue, (i) time bar and (ii) unjust enrichment, the relevant portion of which is reproduced below;

> 3(b). As per Section 104 (2) of the Finance Act, 2017 the levy and collection of service tax on the onetime payment of "Development Charges" charged and collected with Service Tax by the SIPCOT, a State Govt. Industrial Development Corporation of Tamil Nadu, is eligible to be refunded as sub-section (1) of Section 104 retrospectively exempted the service tax leviable on the said development charges during the period starting with 1-6-2007 to 21-9-2016 (both days inclusive). The said Finance Act inserting the above section 104 received assent of the President of India and become effective from 1.4.2017. Whereas the assessee has filed refund claim of Rs.1,79,46,788/- on 31.10.2017 which is beyond 6 months' time limit prescribed under Sec.104(3) and, hence, hit by time bar.
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> i.e. the last date to file the present Refund claim of Rs. 1,79,46,788/- is 30.09.2017, whereas the assessee has filed the Refund claim on 31.10.2017 i.e. beyond the time limit, which attracts time bar, hence it appears that the assessee is not eligible for refund due to time bar.
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> 4. As per the claim of the assessee, they have paid service tax to SIPCOT and in tum SIPCOT paid Service Tax to the Department. Whereas the assessee did not furnish any evidence proving that the said service tax not passed to anyone and that 'unjust enrichment' is not applicable in their case."

4.1 The OIO dated 19.07.2018, while accepting that the rule of unjust enrichment was not applicable in the case, at para 9(a), has rejected the refund claim on the grounds of time bar without examining the issue on merits. The question whether SIPCOT has taken credit of the tax paid is not an issue here. The Commissioner (Appeals) vide the impugned order dated 28.12.2018 did not find any infirmity in the OIO and rejected the appeal. Relevant portion is reproduced below;

> "7. It is observed that as per Section 104(2) of the FA, 2017, the levy and collection of service tax on the onetime payment of Development charges, charged and collected with service tax by the SIPCOT is eligible to be refunded as sub-section (1) of Section 104 retrospectively exempted the service tax leviable on the said development charges during the period starting with 1.6.2007 to 21.09.2016 (both days inclusive). In terms of Section 104(3) a separate period of limitation has been prescribed and it is a special provision providing for a relief to the persons who have allotted industrial plots either on long term lease or otherwise. Section 104(3) provides that an application of claim of refund of service tax shall be

made within a period of six months from the date on which the Finance Bill, 2017 receives the assent of the President. The Finance Bill, 2017 was passed on 01.04.2017 hence the last date for filing the refund claim was 30.09.2017. As the appellant filed the refund claim on 31.10.2017, which is beyond 6 months' time limit prescribed under Section 104(3) of the FA, 2017, it is hit by time bar and thus I find that the respondent has correctly rejected the refund claim as time barred and the impugned order is upheld.

8. The appellant stated that they were under the impression that one year time limit would apply to the instant case as per Section 11B of the CEA, 1944. In this regard, in the impugned order, the respondent has clearly held that in terms of Section 11B(5)(B)(f) of CEA, 1944, the relevant date means the date of payment of duty. The date of payment of duty in this case was 15.09.2014 and therefore, the application for refund had not been filed within one year from the relevant date. In this case the refund application made by the appellant is in accordance with Section 104 and in terms of sub-section 104(3), a separate period of limitation has been prescribed and the said provision starts with a non obstante clause and therefore, the appellant cannot refer to Section 11B of the CEA, 1944 as Section 104 is a special provision providing for a relief to the persons who have allotted industrial plots either on long term lease or otherwise.

9. Regarding the contention of the appellant that they had provided bonafide reasons for the delay in filing of refund application, I agree with the impugned order that the stated reasons are not valid grounds for delay in filing of the claim. In respect of the case laws cited by the appellant I find that the original authority has countered all these citations and came out with a reasoning how the same could not be made applicable in the instant case which is found acceptable.

10. In view of the above, I do not find any infirmity in the impugned order and find that the appeal is liable for rejection."

The appellant before us, has prayed that the impugned order dated 28.12.2018 may be set aside with consequential relief.

4.2 We find that the appellant has not contested that there has been a delay in filing the refund claim. Their main plea is;

i) The claim should have been filed by SIPCOT who had deposited the service tax with the Government. SIPCOT's 'administrative delay' in asking them to file the refund claim has resulted in the claim being filed 6 months after the passing of the Finance Bill, 2017, i.e. 31 days beyond the time-limit stipulated under Section 104 of Chapter V of the Finance Act, 1994.

ii) In **JSW Dharmatar Port** (supra) the Hon'ble Bombay High Court held that, the time taken by the Ministry in processing and granting certificate under Section 103 of the Act to enable the assessee to file refund claim must be ignored for the purpose of computing the limitation for making refund application.

iii) Since the amount paid was not 'service tax' it ought to be automatically refunded to the Appellant without filing a refund claim.

iv) As per Section 17(1)(c) of the Limitation Act, the period of limitation in an application filed for obtaining relief from the consequences of a mistake would begin from the moment the applicant has discovered the mistake

iv) On merits the onetime upfront amount paid for the long-term lease allotted by SIPCOT to the Appellant, namely development charges or premium, is not exigible to service tax.

We shall take up the issues sequentially.

5. <u>The claim should have been filed by SIPCOT who had deposited the service tax with the Government.</u>

We find that the issue relating to whether the final consumer of goods or service can also file a refund claim has been examined by one of us [Shri M Ajit Kumar, Member (Technical)], in **K. Ramani Vs Commissioner of GST & Central Excise, Coimbatore** [Final Order No. 41551/2024, Dated: 03.12.2024]. The relevant portion is extracted below;

> 5. **Whether only the Trust was eligible to claim the refund and not an individual who has ultimately paid the tax?**
>
> 5.1 It is stated at para 13 of the impugned order, that the appellant had not paid the tax to the government account in relation to which he is seeking refund and he has no locus standi

to file the refund claim in terms of section 11 B(1). The relevant portion is reproduced below;

> "In terms of Section 11B(1), the person claiming refund has to furnish documents or evidences to establish that the amount of duty / service tax and interest in relation to which refund is claimed was actually collected from him or paid by him. In the instant case, the Appellant had produced receipt showing the payment of Rs.4,49,564/- to the Trust and in support of their claim of subject refund, they have furnished a challan of the Trust showing the payment of Service Tax of Rs.4,39,055/- to the Government account. <u>It is quite clear that the Appellant had not paid the tax to the Government account, in relation to which he is seeking refund and he has no locus standi to file the refund claim in terms of section 11B(1).</u> . . . . . (emphasis added)

5.2 Section 11B(1) of the CEA 1944, which pertains to the claim for refund of duty and interest, states that 'any person' claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed. The expression "any person" is of wide amplitude. The Act thus does not confine a claim of refund only to the person who has collected and deposited the tax in the government coffers. However, section 12B of CEA 1944, contains an important presumption that needs to be overcome before sanction of refund to an applicant.

5.3 As per section 12B of CEA 1944, the presumption is that the incidence of duty has been passed on to the final buyer. Every person who has paid duty, unless the contrary is proved by him, is deemed to have passed on the full incidence of such duty to the buyer of such goods [or consumer of such service]. The provisions of CEA 1944 mandate amongst other things that the person claiming refund should substantiate that the incidence of duty has not been passed on by him to any other person. The inclusion of the 'presumption' by way of section 12B was to ensure that the person who finally pays the tax from his own resources is the only one who is reimbursed by the refund otherwise the amount is to be deposited in the Consumer Welfare Fund. In the impugned case the appellant states that the tax, though illegal, has finally come to be collected from him and the incidence of the tax has come to finally rest with him as being the final consumer. Hence he is eligible for the refund and there is no unjust enrichment involved.

5.4 As held by Constitutional Courts a tax is seen as composed of two elements: the person, thing or activity on which the tax is imposed and the incidence of tax. [See: **M/s. Chhotabhai Jethabhai Patel & Co. Vs Union of India & Another** - AIR 1962 SC 1006]. The incidence of tax would be relevant in construing whether a tax is a direct or an indirect one. The ultimate incidence of an indirect tax need not be on the person who collects and pays the tax but is on the ultimate consumer of the good or service on whom the tax rests. [See **State of Karnataka Vs Drive-In Enterprise** - (2001) 4 SCC 60 (13)]. He cannot further pass on the incidence of tax to a third person. It is this person who is free from

the concept of 'unjust enrichment' having paid the money himself, who is the rightful recipient of the refund.

5.5 A 3 Judge Bench of the Hon'ble Supreme Court in its judgment in **Commissioner, Central Excise, Madras Vs M/S. Adison & Co. Ltd** [AIR 2016 SUPREME COURT 4007 / 2016 (10) SCC 56], held as under;

> "21. **That a consumer can make an application for refund is clear** from paras 98 and 99 of the judgment of this Court in Mafatlal Industries (supra). We are bound by the said findings of a Larger Bench of this Court. **The word 'buyer' in Clause (e) to proviso to Section 11-B (2) of the Act cannot be restricted to the first buyer from the manufacturer.** Another submission which remains to be considered is the requirement of verification to be done for the purpose of finding out who ultimately bore the burden of excise duty. It might be difficult to identify who had actually borne the burden but such verification would definitely assist the Revenue in finding out whether the manufacturer or buyer who makes an application for refund are being unjustly enriched. If it is not possible to identify the person/persons who have borne the duty, the amount of excise duty collected in excess will remain in the fund which will be utilized for the benefit of the consumers as provided in Section 12-D." (emphasis added)

5.6 From the discussions above, it is clear that it is the appellant who has borne the ultimate incidence of the tax, and not the Trust, who is the eligible claimant of the refund and is not barred from claiming the same. Further the question of unjust enrichment also does not arise as the amount has been paid from the appellants own resources and has not been shown to have been passed on. The appeal on this issue hence succeeds.

5.1 The legal position that a consumer of goods (which now includes services) could claim refund was clarified by the Hon'ble Supreme Court as early as 1997 in its judgment in **Mafatlal Industries**. Hence when a special section was introduced for claiming refund within a limited period, it was widely publicized and it was for the parties concerned to examine and decide as to who should make an application for refund. The Latin maxim *'vigilantibus non dormientibus jure subveniunt'* states that 'law assists those who are vigilant and not those who are indolent.' The explanation hence is a mere excuse and carries no merit.

6. <u>In JSW Dharmatar Port (supra) the Hon'ble Bombay High Court held that, the time taken by the Ministry in processing and granting certificate under Section 103 of the Act to enable the assessee to file refund claim must be ignored for the purpose of computing the limitation for making refund application.</u>

6.1 The facts of the case in **JSW Dharmatar Port** (supra) was that the exemption from duty would be available as per subsection (1) of Section 103 subject to the condition that the Ministry of Civil Aviation or the Ministry of Shipping, Government of India certifies that the contract had been entered into before 01.03.2015. The petitioner applied for such certificate to Ministry of Shipping on 17.10.2016. The Ministry granted the certificate on 31.01.2017. The petitioner applied for refund on 27.06.2017. In this order, the said authority referred to the provisions contained in Section 103 of the Finance Act, 1994 and held that the refund applications were barred by the period of limitation of six months prescribed therein. The Hon'ble Court found that on one hand, the statute requires the certificate of the concerned Ministry before exemption from duty can be claimed, at the same time, the statute mandates that the refund application must be made within a certain time frame. They were, therefore, of the opinion that the time consumed by the ministry in processing and granting certificate, as referred to in subsection (1) of Section 103, must be ignored for the purpose of computing the limitation for making refund application under sub section (3) of Section 103 of the Finance Act, 1994. We find that there is no such requirement / condition for an applicant to file

any certificate for the grant of refund and hence the facts are distinguished.

6.2 Accepting the appellants plea would mean rendering the provision of time limit in the section otiose. Unscrupulous / clever applicants for refund or those indolent towards their rights could always pass of the delay as having been caused due to the time taken in waiting for certain documents / certificate from third parties who are not performing any official duty. For example, a certificate for the nonuse of the duty paid towards availing credit or reversing credit etc. from the next stage buyer / consumer or a Chartered Accountant. Statutory timelines are not to be circumvented in a manner allowing unscrupulous / clever applicants to seek concessions or those who have slept over their rights to revive stale claims, at a later date. Further the appellant in their written submission refers to delay in filing the claim as an 'administrative delay' by SIPCOT. There is nothing to show that the delay was administrative in nature, by way of any official / departmental impediment. The use of the colourable term appears to be meant to seek an advantage by clothing a delay as an official one and which is covered by judgments of Constitutional Courts. More so, they have not shown any letters / correspondences made by them to SIPCOT urging them to pay back the money collected from them as tax.

6.3 As regards the Tribunal judgments cited by the appellant, it is seen that in **Sovereign Agrotech Refinery** (supra), **Dynamic Techno Medicals** (supra) and **Satyam Auto Components** (supra), have been passed by the same Ld. Single Member. The orders after

noting the period of delay found that there was no delay on the part of the appellant and hence found that the rejection of refund was 'not justified'. The decision did not discuss the provisions and principles of law applicable in applying the provisions of the section, including the rules of interpretation of statutes or discuss important Constitutional Court judgments on how statutes should be interpreted. The order is hence of limited precedential value. Being decisions of a Single Member it is also not binding on us.

6.4 While analysing and interpreting Section 104 of the Finance Act 1994, it would be apposite to refer to rules laid down by Hon'ble Apex Court in **Chief Commissioner of Central Goods and Service Tax & Ors. Vs. M/s Safari Retreats Private Ltd. & Ors.** [(2025) 2 SCC 523], pertaining to interpretation of taxing statutes, which are reproduced hereunder:-

> "RULES REGARDING THE INTERPRETATION OF TAXING STATUTES
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> 25. Regarding the interpretation of taxation statutes, the parties have relied on several decisions. The law laid down on this aspect is fairly well-settled. The principles governing the interpretation of the taxation statutes can be summarised as follows:-
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> a. **A taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise**;
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> b. **If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the legislature to step in and remove the absurdity**;
>
> c. **While dealing with a taxing provision, the principle of strict interpretation should be applied**;
>
> d. If two interpretations of a statutory provision are possible, the Court ordinarily would interpret the provision in favour of a taxpayer and against the revenue;
>
> e. In interpreting a taxing statute, equitable considerations are entirely out of place;

f. A taxing provision cannot be interpreted on any presumption or assumption;

g. A taxing statute has to be interpreted in the light of what is clearly expressed. The Court cannot imply anything which is not expressed. Moreover, the Court cannot import provisions in the statute to supply any deficiency;

h. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly;

i. If literal interpretation is manifestly unjust, which produces a result not intended by the legislature, only in such a case can the Court modify the language;

j. Equity and taxation are strangers. But if construction results in equity rather than injustice, such construction should be preferred;

k. It is not a function of the Court in the fiscal arena to compel the Parliament to go further and do more;

l. When a word used in a taxing statute is to be construed and has not been specifically defined, it should not be interpreted in accordance with its definition in another statute that does not deal with a cognate subject. It should be understood in its commercial sense. Unless defined in the statute itself, the words and expressions in a taxing statute have to be construed in the sense in which the persons dealing with them understand, that is, as per the trade understanding, commercial and technical practice and usage." (emphasis added)

[Also see: Judgment of a nine-judge Bench of the Hon'ble Supreme Court in **Superintendent & Legal Remembrancer, State of West Bengal Vs Corporation of Calcutta** - (1967) 2 SCR 170]. In **Martin Burn Ltd. Vs The Corporation of Calcutta** [AIR 1966 SC 529], the Apex Court, observed as under:–

"A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not."

6.5 We had earlier noted that in this case there is no dispute that the claim has been filed with a delay of 31 days. Hence in terms of the Section 104 it is time barred. As stated in the Safari judgment the said

provision must be read as it is, with no additions and no subtractions on the grounds of legislative intendment or otherwise. We find that in **JSW Dharmatar Port**, cited by the appellant, itself the Hon'ble High Court held that the limitation prescribed is mandatory. It further stated that Section 103 of the Finance Act, 1994 (which is similar to Section 104 as per which the refund has been filed in this case), is a complete mechanism for recognition of exemption, refund of the tax so exempted with retrospective effect and the mechanism for claiming such refund. Such limitation period cannot be interpreted as merely directory, particularly when subsection (3) in addition to providing the period of limitation, overrides any other provisions of the chapter, which may be to the contrary.

6.6 We hence find that the judgments cited by the appellant are distinguished and do not support their case.

7. <u>Since the amount paid was not 'service tax' it ought to be automatically refunded to the Appellant without filing a refund claim.</u>

7.1 The issue whether an amount paid as indirect tax ought to be automatically refunded, has been dealt with elaborately under the landmark nine Judge verdict of the Hon'ble Supreme Court in **Mafatlal Industries Ltd. & Ors. v. Union of India & Ors.** [(1997) 5 SCC 536], 1997 (89) E.L.T. 247 (SC)], decided by a majority of 8:1. The passages relevant to the issue under discussion is reproduced below;

> 16. Article 265 of the Constitution is declaratory in nature. It says that "no tax shall be levied or collected except by authority of law". This no doubt means that taxes collected contrary to law have to be refunded. But where a taxing enactment contains provisions providing for and governing the refund of taxes collected without the authority of law, the validity of such provisions, if and when questioned, has to be examined with reference to other provisions of

the Constitution. **Article 265 does not itself lay down any criteria for testing the validity of a statute. When it speaks of "law", it no doubt refers to a valid law but the validity of a law has to be determined with reference to other provisions in the Constitution.**

*****. *****. *****

21. With respect to the second category of cases, there is a good amount of controversy. While the Union of India says that such claims of refund should be put forward and determined only under and in accordance with the provisions of the Act and the Rules, the contention of the appellants-petitioners is that even in such cases a suit or writ is maintainable on the ground that the tax has been collected without the authority of law, i.e., contrary to Article 265 of the Constitution. In other words, while according to the Union of India, such claims of refund should be filed within the time prescribed by the Act and the Rules and should and can be dealt with only under the provisions of the Act and the Rules, the appellants-petitioners say that such claims can be made in suits and writ petitions as well and that too without reference to the period of limitation prescribed in Rule 11 or Section 11B, as the case may be.

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"68. Re. : (I) : . . . **The language could not have been more specific and emphatic. The exclusivity of the provision relating to refund is not only express and unambiguous but is in addition to the general bar arising from the fact that the Act creates new rights and liabilities and also provides forums and procedures for ascertaining and adjudicating those rights and liabilities and all other incidental and ancillary matters, as will be pointed out presently. This is a bar upon a bar** - an aspect emphasised in Para 14, and has to be respected so long as it stands. The validity of these provisions has never been seriously doubted. . . . . . **To repeat - and it is necessary to do so - so long as Section 11B is constitutionally valid, it has to be followed and given effect to.** We can see no reason on which the constitutionality of the said provision - or a similar provision - can be doubted. It must also be remembered that Central Excises and Salt Act is a special enactment creating new and special obligations and rights, which at the same time prescribes the procedure for levy, assessment, collection, refund and all other incidental and ancillary provisions. As pointed out in the Statement of Objects and Reasons appended to the Bill which became the Act, the Act along with the Rules was intended to "form a complete central excise code". The idea was "to consolidate in a single enactment all the laws relating to central duties of excise". **The Act is a self-contained enactment. It contains provisions for collecting the taxes which are due according to law but have not been collected and also for refunding the taxes which have been collected contrary to law, viz., Sections 11A and 11B and its allied provisions.** Both provisions contain a uniform rule of limitation, viz., six months, with an exception in each case. Sections 11 and 11B are complimentary to each other.

To such a situation, Proposition No. 3 enunciated in Kamala Mills becomes applicable, viz., **where a statute creates a special right or a**

liability and also provides the procedure for the determination of the right or liability by the Tribunals constituted in that behalf and provides further that all questions about the said right and liability shall be determined by the Tribunals so constituted, the resort to civil court is not available - except to the limited extent pointed out therein. Central Excise Act specifically provides for refund. It expressly declares that no refund shall be made except in accordance therewith. The Jurisdiction of a civil court is expressly barred - vide sub-section (5) of Section 11B, prior to its amendment in 1991, and sub-section (3) of Section 11B, as amended in 1991. It is relevant to notice that the Act provides for more than one appeal against the orders made under Section 11B/Rule 11. Since 1981, an appeal is provided to this Court also from the orders of the Tribunal. While Tribunal is not a departmental organ, this court is a civil court. In this view of the matter and the express and additional bar and exclusivity contained in Rule 11/Section 11B, at all points of time, it must be held that any and every ground including the violation of the principles of natural justice and infraction of fundamental principles of judicial procedure can be urged in these appeals, obviating the necessity of a suit or a writ petition in matters relating to refund. **Once the constitutionality of the provisions of the Act including the provisions relating to refund is beyond question, they constitute "law" within the meaning of Article 265 of the Constitution. It follows that any action taken under and in accordance with the said provisions would be an action taken under the "authority of law", within the meaning of Article 265.**

In the face of the express provision which expressly declares that no claim for refund of any duty shall be entertained except in accordance with the said provision, it is not permissible to resort to Section 72 of the Contract Act to do precisely that which is expressly prohibited by the said provisions. In other words, it is not permissible to claim refund by invoking Section 72 as a separate and independent remedy when such a course is expressly barred by the provisions in the Act, viz., Rule 11 and Section 11B. For this reason, a suit for refund would also not lie. Taking any other view would amount to nullifying the provisions in Rule 11/Section 11B, which, it needs no emphasis, cannot be done. ***It, therefore, follows that any and every claim for refund of excise duty can be made only under and in accordance with Rule 11 or Section 11B, as the case may be, in the forums provided by the Act. No suit can be filed for refund of duty invoking Section 72 of the Contract Act.*** So far as the jurisdiction of the High Court under Article 226 - or for that matter, the jurisdiction of this court under Article 32 - is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. **It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.**

69. There is, however, one exception to the above proposition, i.e., where a provision of the Act whereunder the duty has been levied is found to be unconstitutional for violation of any of the constitutional limitations. This is a situation not contemplated by the Act. The Act does not contemplate any of its provisions being declared unconstitutional and therefore it does not provide for its

> consequences. Rule 11/Section 11B are premised upon the supposition that the provisions of the Act are good and valid. **But where any provision under which duty is levied is found to be unconstitutional, Article 265 steps in.** In other words, the person who paid the tax is entitled to claim refund and such a claim cannot be governed by the provisions in Rule 11/Section 11B. The very collection and/or retention of tax without the authority of law entitles the person, from whom it is collected, to claim its refund. A corresponding obligation upon the State to refund it can also be said to flow from it. This can be called the right to refund arising under and by virtue of the Constitutional provisions, viz., Article 265. **But, it does not follow from this that refund follows automatically.** Article 265 cannot be read in isolation. It must be read in the light of the concepts of economic and social justice envisaged in the Preamble and the guiding principles of State Policy adumbrated in Articles 38 and 39 - an aspect dealt with at some length at a later stage. The very concept of economic justice means and demands that unless the claimant (for refund) establishes that he has not passed on the burden of the duty/tax to others, he has no just claim for refund. It would be a parody of economic justice to refund the duty to a claimant who has already collected the said amount from his buyers. The refund should really be made to the persons who have actually borne its burden - that would be economic justice. Conferring an unwarranted and unmerited monetary benefit upon an individual is the very anti-thesis of the concept of economic justice and the principles underlying Articles 38 and 39. Now, the right to refund arising as a result of declaration of unconstitutionality of a provision of the enactment can also be looked at as a statutory right of restitution. It can be said in such a case that the tax paid has been paid under a mistake of law which mistake of law was discovered by the manufacturer/assessee on the declaration of invalidity of the provision by the court. Section 72 of the Contract Act may be attracted to such a case and a claim for refund of tax on this score can be maintained with reference to Section 72. This too, however, does not mean that the taxes paid under an unconstitutional provision of law are automatically refundable under Section 72. Section 72 contains a rule of equity and once it is a rule of equity, it necessarily follows that equitable considerations are relevant in applying the said rule - an aspect which we shall deal with a little later. **Thus, whether the right to refund of taxes paid under an unconstitutional provision of law is treated as a constitutional right flowing from Article 265 or as a statutory right/equitable right affirmed by Section 72 of the Contract Act, the result is the same - there is no automatic or unconditional right to refund.** *(emphasis added)*

As per the judgment a refund arises;

i) where the charging section of a statutory provision ("law") is itself challenged by an assessee for an **unconstitutional levy** as it is violative of some provision of the Constitution, and succeeds then the claim for refund arises outside the provisions of the Act. [See para 17 of judgment]

ii) where the tax is collected by the authorities under a statute by misconstruction or wrong interpretation of the provisions of the Act, Rules or Notifications or by an erroneous determination of the relevant facts, i.e., an **illegal levy**. In this class of cases, the claim for refund arises under the provisions of the Act. In other words these are situations contemplated by and provided for by the Act and the Rules. [See para 18 of judgment]

7.2 However, all refund claims except that of an unconstitutional levy must be filed and adjudicated under the refund provisions of the Central Excises and Salt Act 1944 (as made applicable in Service Tax matters also) or the Customs Act 1962, as the case may be.

7.3 It is also noticed that a Larger Bench of this Tribunal in **Veer Overseas Ltd. v. CCE, Panchkula** decided on 27 March, 2018, [2018 (4) TMI 910 – CESTAT Chandigarh] heard the following reference;

> "(a) Whether in respect of the claim for refund of illegal levy of Service Tax or of Service Tax collected without authority of law, the statutory time limit prescribed in terms of Section 11B of Central Excise Act 1944 will be applicable or not?".

The majority of two Members discussed the Mafatlal Judgment and held that the statutory limit prescribed in section 11B of the Excise Act would be applicable to refunds claimed for payments relating to FA, 1994, relying on the Supreme Courts judgment in Mafatlal Industries. They held as under;

> 9. The Apex court in Mafatlal Industries Ltd. (supra) observed that the Central Excise Act and the Rules made thereunder including Section 11B too constitute "law" within the meaning of Article 265 and that in the face of the said provisions – which are exclusive in their nature" no claim for refund is maintainable except and in accordance therewith. The Apex court emphasized that "the provisions of the Central Excise Act also constitute "law" within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under "the authority of law" within the meaning of the said Article".
>
> 10. Having examined various decided cases and the submissions of both the sides, we are of the considered view that <u>a claim for refund</u>

> <u>**of service tax is governed by the provision of Section 11B for period of limitation. The statutory time limit cannot be extended by any authority as held by the Apex court.**</u>
>
> (emphasis added)

7.4 As per the discussions above no case for automatically refunding money collected as 'service tax' has been made out. In fact as per Section 73A of the Finance Act 1994, reproduced below, any amount collected as Service Tax, in any manner shall forthwith be paid to the credit of the Central Government.

> **73A. Service Tax Collected from any person to be deposited with Central Government**
>
> (1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made thereunder from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.
>
> <u>**(2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.**</u>
>
> (emphasis added)

Once the amount is collected as Service Tax and is deposited to Government any refund can be claimed only as per the provisions of the said Act. As stated in the **Mafatlal industries** judgment (supra), even a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier.

8. <u>As per Section 17(1)(c) of the Limitation Act, the period of limitation in an application filed for obtaining relief from the consequences of a mistake would begin from the moment the applicant has discovered the mistake</u>

8.1 The Finance Act 1994, is a self-contained Code exhaustive of the matters dealt with therein. The purpose of the Act is to levy a tax on

service, assess and collect the same. It follows, therefore, that all the provisions contained in the Act have been designed with the object of achieving that purpose. We find that the Hon'ble Supreme Court in **Sakuru Vs Tanaji** [AIR 1985 SUPREME COURT 1279], examined the applicability of the Limitation Act 1963, before bodies other than Courts such as quasi-judicial Tribunals or executive authorities. It held:

> 3. After hearing both sides we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench in Venkaiah's case is perfectly correct and sound. It is well settled by the decisions of this Court in **Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli** (1970) 1 SCR 51 : (AIR 1969 SC 1335), **Nityananda M. Joshi v. Life Insurance Corpn. of India** (1970) 1 SCR 396 : (AIR 1970 SC 209) and **Sushila Devi v. Ramanandan Prasad** (1976) 2 SCR 845 : (AIR 1976 SC 177) that **the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified. powers conferred on Courts under the Codes of Civil or Criminal Procedure.** The Collector before whom the appeal was preferred by the appellant herein under S. 90 of the Act not being a Court, the Limitation Act, as such, hid no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of S. 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of S. 5 of the Limitation Act for condonation of the delay in the filing of the appeal, The only provision relied on by the appellant in this connection is S. 93 of the Act which, as it stood at the relevant time, was in the following terms :-
>
> > "93. Limitation - Every appeal and every application for revision under this Act shall be filed within sixty days from the date of the order against which the appeal or application is filed and the provisions of the Indian Limitation Act, 1908 shall apply for the purpose of the computation of the said period."
>
> On a plain reading of the section it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to 'computation of the period of limitation' . The provisions relating to computation of the period of limitation are contained in Ss. 12 to 24 included in Part III of the Limitation Act, 1963. Section 5 is not a provision dealing with 'computation of the period of limitation'. It is only after the process of

> computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period under S. 5 can arise. We are, therefore, in complete. agreement with the view expressed by the Division Bench of the High Court in Venkaiah's case that S. 93 of the Act did not have the effect of rendering the provision of Sec. 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector.

8.2 Again a three Judge Bench of the Supreme Court in **COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE Vs M/s HONGO INDIA (P) LTD** [2009-TIOL-48-SC-CX-LB], examined the issue of the Limitation Act being applicable to Central Excise matters. The Hon'ble Court held;

> 20) Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to High Court. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. **In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.** In other words, the applicability of the provisions of the Limitation Act, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court. The scheme of the Central Excise Act, 1944 support the conclusion that the time limit prescribed under Section 35H(1) to make a reference to High Court is absolute and unextendable by court under Section 5 of the Limitation Act. **It is well settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Act.**
>
> 21) In the light of the above discussion, we hold that the High Court has no power to condone the delay in filing the "reference application" filed by the Commissioner under unamended Section

> 35H(1) of the Central Excise Act, 1944 beyond the prescribed period of 180 days and rightly dismissed the reference on the ground of limitation.

8.3 The judgments cited by the appellant pertaining to **M.P. Steel Corporation v. Commissioner of Central Excise** [2015 (319) E.L.T. 373 (S.C.)] and **IVP Limited v. Union of India** [2018 (8) G.S.T.L. 356 (Bom.)], pertain to the time spent by the appellant in prosecuting wrong proceedings which are bona fide with due diligence, before wrong departmental authorities can be excluded while computing the period of limitation. The facts in this case do not relate to such a delay and are distinguished.

8.4 Based on the judgments of the Hon'ble Supreme Court in **Sakuru Vs Tanaji** and **Hongo India** (supra) above we find that the Limitation Act is not applicable to the Finance Act 1994 and hence the appellants plea on this account fails.

9. <u>On merits the onetime upfront amount paid for the long-term lease allotted by SIPCOT to the Appellant, namely development charges or premium, is not exigible to service tax.</u>

9.1 We find that the SCN issued in this case did not make out a charge regarding the levy of tax. The Original Authority and the Ld. Commissioner Appeals has accordingly not discussed the issue on the merits of the levy. Hence the plea of the appellant on the exigibility of the activity to service tax submitted in the miscellaneous application filed by them is found to be beyond the SCN and is rejected as inadmissible at this stage as it would allow a totally new proceedings to be started.

9.2 Apart from our own findings, we find that the dispute in **T.V.M. Edible Oil** (supra) which was heard by three Members [which included

Shri M Ajit Kumar, Member (Technical)], found that a refund claim was squarely covered by the provisions of section 104(3) of the Finance Act 1994 and the claim should be filed within six months from the date on which the Finance Bill 2017 received the assent of the President as stated there in. It is a well-accepted norm of judicial discipline that a Bench of lesser quorum / strength should follow the view taken by Bench of larger quorum / strength, in a case whose ratio covers the legal issue involved in the impugned matter. We hence comply with the same.

10. Having discussed the issue as above, we find that the lower authority has taken a view which is reasonable, legal and proper and we find ourselves in agreement with the impugned order. We hence find no merits in the appeal and the miscellaneous application filed by the appellant and reject the same.

(Pronounced in open court on 08.05.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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