CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 10632 OF 2020

[Arising out of OIA-AHM-EXCUS-001-APP-02-2020-21 dated 27.04.2020 issued on 12/06/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

SHRI KRISHNA KESHAV LABORATORIES LTD **Appellant**
Nr. Yogeshwar Estate, B/H Torrent Power Ltd,
Amaraiwadi Road, Ahmedabad,
Gujarat

Vs.

COMMISSIONER (Appeals) CGST, AHMEDABAD **Respondent**
7th Floor, Central GST, Bhavan, Revenue Marg,
Ambawadi, Ahmedabd-15

Appearance:
Shri Vikas Mehta, Consultant for the Appellant
Shri Sunita Menon, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10238/2026

Date of Hearing : 19.01.2026
Date of Decision : 01.04.2026

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned order dated 27th April, 2020 issued on 12.06.2020, passed by the learned Commissioner (Appeals) through which the learned Commissioner rejected the appeal of the appellant and upheld the Order-in-Original dated 23rd August, 2019 passed by the Deputy Commissioner CGST Division Ahmedabad South.

1.1 The facts of the case in brief are that the appellant was holding a valid Central Excise registration no and were engaged in the manufacturing of I. V. Fluids (Salts, Sugar and Electrolytes) falling under Chapter Heading No. 3004. They have filed refund claim on 27th May, 2019 for an amount of Rs. 21,95,560/- under Section 142(3) of the C.G.S.T. Act, 2017 on the ground that they have made double payment of duty by mistake, for the period from March-2016 to March-2017. On verification of the refund claim, it appeared to the Revenue Authorities that claimant has filed refund claim for Rs. 21,95,560/- which includes Rs. 15,72,845/- as Central Excise Duty, Rs. 3,86,788/- as interest and Rs. 2,35,925/- as penalty. Appellants claimed that they had paid the above mentioned amount twice i.e. first time by debiting from Cenvat account throughout the period involved in the claim and second time by making payment through cash, as pointed out by Central Excise Audit at the time when audit was carried out in respect of their unit. It was also reflected from their refund claim that the appellant was availing benefit of Notification No. 01/2011-CE dated 1st March, 2011, as amended, for making payment of Central Excise Duty at the relevant time. The department was of the view that the claimant had filed the E.R.-1 for the month of March-2017 on 8th April, 2017 whereas they have filed the refund claim with the department on 27th May, 2019 i.e. after one year from the filing of E.R.-1 return. Therefore, the refund claim appeared to be hit by the limitation, prescribed in Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017. The department was also of the view that the appellant has not paid the amount of duty under protest nor produced the documents which may prove that the amount of duty was deposited under protest.

1.2 In these circumstances, Show Cause Notice was issued to the appellant. The appellant submitted their reply against the Show Cause Notice. The learned Deputy Commissioner CGST Division-1 Ahmedabad South, after giving opportunity of personal hearing to the appellant, passed Order-in-Original dated 23rd August, 2019 and rejected the refund claim filed by the appellant holding that the appellant is not eligible for refund on the ground that the claim has been preferred beyond the time limit prescribed under Section 11B of the Central

Excise Act, 1944 and they have failed to produce any substantive evidence of payment of duty made by the appellant in wrong manner.

1.3 Aggrieved with the Order-in-Original passed by the learned Deputy Commissioner, the appellant filed appeal before the learned Commissioner (Appeals). The learned Commissioner, by passing impugned order dated 27th April, 2020, rejected the appeal of the appellant and upheld the Order-in-Original passed by the learned Deputy Commissioner.

1.4 Feeling aggrieved from the impugned order dated 27th April, 2020 passed by the learned Commissioner (Appeals), the present appeal has been filed before this Tribunal.

2. The learned Consultant for the appellant submitted that the Order-in-Original passed by the learned Deputy Commissioner and the impugned order passed by the learned Commissioner (Appeals) are not sustainable. In the impugned order passed by the learned Commissioner (Appeals) at para 7.4 on page 9 of the order, it has been observed by the learned Commissioner that in the present case, the amount of credit, for which refund has been claimed has been paid by the appellant during the period from March-2016 to March-2017 and the refund claim for the same has been preferred by them on 27.05.2019, which is clearly beyond the period of limitation prescribed under the statutory provision. There is nothing on record that such an amount has been paid under protest. Therefore, the Adjudicating Authority's decision in holding that the refund of the Cenvat Credit / duty claimed by the appellant was hit by limitation, is correct, under the provision of Section 11B of the Excise Act. The learned Consultant challenged this finding and submitted that the view taken by the learned Deputy Commissioner in the Order-in-Original and the above observations made by the learned Commissioner (Appeals) are erroneous and against the law laid down in **3E Infotech** vs. **CESTAT Chennai** reported in 2018

(18) GSTL 410 (Madras) in which Hon'ble Madras High Court has held that, when Service Tax is paid by mistake, a claim for refund cannot be barred by limitation merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court in **Collector of CE Chandigarh** vs. **Doaba Cooperative Sugar Mills** and therefore, we have no hesitation in holding that the claim of the assessee for the sum of Rs. 4,39,683/- cannot be barred by limitation and ought to be refunded.

2.1 The learned Consultant for the appellant also submitted that the conclusion arrived at by the learned Commissioner in para 7.2 at page 7 of the impugned order is also not sustainable and erroneous. The learned Commissioner has observed that the basic objection of the audit of wrong utilization of Cenvat Credit is not refuted by the appellant. They, themselves, in their calculation-sheet shows that there was a wrong payment of duty of Rs. 15,50,696/- from Cenvat Credit account in respect of goods cleared under Notification No. 1/2011-CE during the disputed period. The proviso to Rule 3(4) of the Cenvat Credit Rules, 2004 stipulated that Cenvat Credit shall not be utilized for payment of any duty of Excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE dated 1st March, 2011 is availed. Thus, the contravention of the provisions of Rule 3(4) of the Cenvat Credit Rules, 2004 is clearly visible in records. It is not a simple case of wrong mode of payment of duty as claimed by the appellant, but, clearly a case of contravention of the provisions of Rule 3(4) of the Cenvat Credit Rules, 2004. It is settled law that when such contravention is committed, the recovery thereof would follow with interest, liability and penalty for contravention. The learned Consultant for the appellant challenged the above finding of the learned Commissioner (Appeals) on the ground that it is erroneous and contrary to the facts available on record because the audit report (which is on the record) clearly states that the appellant had wrongly utilized Cenvat Credit for payment of duty. Consequently, the appellant had to pay the same amount through account current (cash). Thus, the appellant had to make good what according to audit was a mistake of law, payment of duty through Cenvat account.

2.2 I agree with the learned Consultant for the appellant that in view of the facts and circumstances of this case, it cannot be concluded that it is the case of contravention of the provisions of Rule 3(4) of the Cenvat Credit Rules, 2004 rather it is a case of wrong payment of duty of Rs. 15,50,696/- from Cenvat Credit account, in respect of goods cleared under Notification No. 1/2011-CE during the disputed period. There is nothing on record which can prove that the payment of duty from Cenvat Credit account was made by the appellant deliberately so that he is not required to pay the amount of duty in cash from the current account. It appears to be a case of bonafide mistake which cannot be considered as contravention of the provision of Rule 3(4) of Cenvat Credit Rules, 2004.

2.3 The learned Consultant for the appellant prayed that the impugned order passed by the learned Commissioner (Appeals) is erroneous and not sustainable and it may be set aside.

3. The learned Authorised Representative for the department reiterated the impugned order passed by the learned Commissioner (Appeals). The Learned Authorised Representative for the department submitted that the learned Commissioner (Appeals) has rightly concluded in the impugned order that the refund claim has been filed beyond the period of limitation prescribed under statutory provision and the amount of duty was not paid under protest. Therefore, it is clearly barred by limitation and therefore, the learned Deputy Commissioner and the learned Commissioner (Appeals) have rightly rejected the refund claim of the appellant. He has prayed that the impugned order may be upheld and the appeal may be rejected.

4. I have heard the learned Consultant for the appellant and the learned Authorised Representative for the department and perused the records.

4.1 I agree with the learned Consultant for the appellant that mistake was committed by the appellant for wrongly utilizing Cenvat Credit for payment of Central Excise Duty on goods cleared by appellant by availing the benefit of Notification No. 1/2011-CE dated 1st March, 2011 which was not permitted in terms of proviso to Rule 3(4) of the Cenvat Credit Rules, 2004. As soon as, the mistake was brought to the notice of the appellant by the audit, the duty was paid by the appellant in cash from the current account along with interest and penalty and therefore, it resulted in double payment of duty by the appellant. On first occasion, it was paid from the Cenvat account and on the second occasion it was paid from account current. These facts have been admitted by the learned Deputy Commissioner in the Order-in-Original dated 23rd August, 2019.

4.2 In **3E Infotech Ltd** vs. **CESTAT Chennai** reported in 2018 (18) GSTL 410 (Madras) the Hon'ble High Court of Judicature, Madras has held that when Service Tax was paid under mistake of law, the refund claim is admissible in respect of period covered by refund application. The relevant portion of the judgment are being reproduced as under:-

> *11. A similar view has been taken by the Bombay High Court in the case of Parijat Construction vs. Commissioner Excise Nashik, reported in 2011 (359) ELT. 113 (Bom.), where the Bombay High Court has held as under:-*
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> *4. We are of the view that the issue as to whether limitation prescribed under Section 118 of the said Act applies to a refund claimed in respect of service tax paid under a mistake of law is no longer res integra. The two decisions of the Division Bench of this Court in Hindustan Cocoa (süpra) and Commissioner of Central Excise, Nagpur v. Ms. SGR Infratech Ltd. (supra) are squarely applicable to the facts of the present case.*

5. Both decisions have held the limitation prescribed under Section 11B of the said Act to be not applicable to refund claims for service tax paid under a mistake of law. The decision of the Supreme Court in the case of Collector of CE, Chandigarh v. Doaba Co-Operative Sugar Mills (supra) relied upon by the Appellate Tribunal has, in applying Section 11B, limitation, made an exception in case of refund claims where the payment of duty was under a mistake of law. We are of the view that the impugned order is erroneous in that it applies the limitation prescribed under Section 11B of the Act to the present case were admittedly appellant had paid a Service Tax on Commercial or Industrial Construction Service even though such service is not leviable to service tax. We are of the view that the decisions relied upon by the Appellate Tribunal do not support the case of the respondent in rejecting the refund claim on the ground that it was bared by limitation. We are, therefore, of the view that the impugned order is unsustainable. We accordingly allow the present appeals and quash and set aside the impugned order, insofar as it is against the appellant in both appeals. We fully allow refund of Rs. 8,96,9621/- preferred by the appellant. We direct that the respondent shall refund the amount to the appellant within a period of three months. There shall be no order as to costs

12. Further, the claim of the respondent in refusing to return the amount would go against the mandate of Article 265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law.

13. On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake, a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court, and therefore, we have no hesitation in holding that the claim of the Assessee for a sum of Rs. 4,39,683/- cannot be barred by limitation, and ought to be refunded.

14. There is no doubt inour minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper, and against the tenets of Article 265 of the Constitution of India. On the facts and circumstances of this case, we deem it appropriate to pass the following direction:-

(a) The application under Section 11B cannot be rejected on the ground that it is barred by limitation, provided for under Section.

(b) The claim for return of money must be considered by the authorities.

15. This Civil Miscellaneous Appeal is ordered accordingly. There shall be no order as to costs."

4.3 In view of the law laid down by Hon'ble Madras High Court in **3E Infotech** case, I am of the opinion that the learned Commissioner has erred in holding that the refund claim of the appellant is barred by limitation, whereas, in the present case the limitation, as provided in Section 11B of the Excise Act, is not applicable as observed by Hon'ble Madras High Court. Therefore, the impugned order passed by the learned Commissioner is liable to be set aside and the appeal is liable to be allowed.

5. The appeal is allowed along with consequential reliefs and the impugned order dated 27.04.2020 passed by the learned Commissioner (Appeals) is set aside.

(Order pronounced in the open Court on 01.04.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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