

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

(E-Hearing)

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70075 of 2021

(Arising out of Order-In-Appeal No.NOI-CUSTM-001-APP-804-20-21 dated 19/10/2020 passed by Commissioner (Appeals) CGST, Noida)

M/s Ratan Textiles Pvt. Ltd.

.....Appellant

(F-200-201, EPIP, Sitapur,
Jaipur, Rajasthan 302022)

VERSUS

Commissioner of Customs, Noida

....Respondent

(Concor Complex, Greater Noida, 201311)

APPEARANCE:

Shri Jatin Mahajan, Advocate for the Appellant

Shri Manish Raj, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70339/2024

DATE OF HEARING : 30.05.2024

DATE OF DECISION : 30.05.2024

SANJIV SRIVASTAVA:

The present appeal is directed against Order-in-Appeal NOI-CUSTM-001-APP-804-20-21 dated 19/10/2020 passed by Commissioner (Appeals) CGST, Noida. By the impugned order learned Commissioner (Appeals) has held as follows:-

"3. I have carefully gone through the submissions of the appellant and I find that the contention of the appellant that the provisions of Section 27 of the Customs Act, 1962 will not be applicable in the instant case is not acceptable. Section 27 is the only provision in the entire Customs Act which allows refunds of amount deposited by any person or persons and there is no other provision under which the Customs Authorities can process any claim for refund under the Customs Law. Therefore, if the provisions of Section 27

is not applicable, the proper officer will also not be competent to entertain or grant the refund of the claim for refund that has been made by the appellant before the proper officer. Since statutory authorities cannot function in vacuum, the proposition that Section 27 is not applicable is without any legal basis, which will be self defeating and also against interest of the appellant themselves.

4. *Section 27 of the Customs Act, 1962 prescribed the condition for filing an application for refund before the expiry of one year, from the date of payment, which is the outer limit for filing any claim for refund under the provisions of the Act. The proviso to Section 27 stated that the limitation of one year shall not apply where any duty or interest has been paid under protest, and as such, in this particular case, the limitation period of one year from the date of deposit will not be applicable as the amounts were deposited under protest. The protest was taken up further by the appellant in the form of appeal before the Commissioner (Appeals), which was concluded by rejection of their appeal by the Commissioner (Appeals) in his order dated 21.06.2012. The protest was further taken up by the appellant in their subsequent appeal before the Hon'ble Tribunal and the CESTAT vide their Final Order No. A/71646-71650/2017-SM[BR] dated 10.11.2017 ultimately decided the case in their favour, and thus the protest was vacated by the Tribunal vide their order dated 10.11.2017.*

5. *In view of the factual position as stated above, the payment of such amounts made by the appellant under protest was already vacated by the Hon'ble Tribunal, and the protest does not continue to be operational after the final order of the Tribunal in their favour. However, the appellant claimed the refund only after the expiry of more than 20 months on 26.07.2019, which was not in conformity with the provisions of Section 27 of the Customs Act, 1962. Sub-section 1(B)(b) of Section 27 clearly stated that **"where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any Court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction"**.*

6. *In this given factual situation, the protest, was already concluded vide order dated 10.11.2017 of the CESTAT, and the said amount has become refundable from that date. However, he appellant remained silent till 25.07.2019, and therefore, the provision of Sub-section 1(B)(b) of Section 27 is squarely applicable and squarely attracted, which cannot have any other meaning in this instant proceeding. The statutory limitation is sacrosanct and it is to be implemented as it is vigorously. The Supreme Court in the case of*

Porcelain Electrical Mfg. Co. reported in 1998 (98-ELT-583) clearly laid down the law on the issue of limitation, and ordered that any claim filed before departmental authorities is to be governed by the time limit provided under the statute and that the general law of limitation is not available. It is also held by the Hon'ble Kerala High Court in the case of Southern Surface Finishers vs Asstt. Commissioner, of Central Excise reported 2019 (28-GSTL-202) that even in a case where tax is not payable, the limitation under the statute shall apply as held by the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. vs UOI reported in 1997 (89-ELT-247).

7. In view of the clear position of law on the issue, I find that the refund application was clearly barred by limitation and the Dy. Commissioner of Customs, Noida is correct in rejecting the refund claim on the grounds of limitation which is also found to be legal and proper, and does not require any interference. The failure of the appellant to take timely action as per the provision of Section 27 of Customs Act, 1962 has become fatal to them in the given facts and circumstances of the case.

8 Accordingly, I reject appeal bearing No. 111/CUS/ NOIDA/ APPL/NCUS/2020-21 filed by M/s Ratan Textiles Pvt. Ltd., F-200-201, EPIP, Sitapur. Jaipur-302022 (Rajasthan) and upheld the Order-in-Original No. 11/Refund/Noida Customs/2020 dated 29.04.2020. "

2.1 The Appellant has filed a refund claim for refund of Rs 1,45,000/- vide their letter dated 10.07.2019 received by the jurisdictional officer on 26.07.2019, in pursuance of Tribunal's Final Order No.71646-71650/2017 dated 10.11.2017. Tribunal had held as follows:-

"5. From perusal of the show cause notice, I find that no valuation of the goods proposed to be exported have been done as a result of the purported inspection. Thus, I find that the allegation of overvaluation is without any basis. Thus, the show cause notice is held to be not maintainable as it does not disclose the gist of allegation, the appellants were required to meet. Accordingly the impugned order is set aside. The appellant are entitled to consequential relief, in accordance with law. All appeals are allowed."

2.2 This refund claim has been rejected by the Original Authority on the ground that they have been filed beyond the prescribed period of limitation as per Section 27.

2.3 Appellant challenged the said order rejecting their refund claim who has vide impugned order dismissed the appeals.

2.4 Aggrieved Appellant has filed the appeal.

3.1 I have heard Shri Jatin Mahajan, Advocate appearing for the Appellants and Shri Manish Raj, Authorized Representative appearing for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that,-

- terms duty or interest used in Section 27 are not equivalent to word penalty and fine.
- thus the limitation as prescribed for claiming their refund of duty and interest could not be applicable to the present case. Reliance is placed on the decision in following cases:-
 - Rajendra Mechanical Industries Ltd. [2005 (180) E.L.T. 183].
 - Abdulla Gani [2013 (298) E.L.T. 221].
 - Evershine Marbles & Exporters P. Ltd. [2009 (245) E.L.T. 398].
- There is no time limit prescribed under Section 27 for refund of final penalty. Reliance is placed on the decision in case of Cooper Pharma [2017 (357) E.L.T. 929 (Tri.-Del.)].
- Undisputedly these amounts were paid under protest for the release of confiscated goods and the appeal has been allowed with consequential relief by the Tribunal.
- As this is a consequential refund as per the said order Revenue was bound to pay the same and could not have been rejected on the ground of limitation as these amounts were deposited under protest.
- The period of limitation should not be applied for rejecting this refund claim where amounts are deposited under protest:-

- Shri Ajudhia Sugar Mills Ltd.. [2018 (364) ELT 437].
- Shimnit Infrastructure Pvt. Ltd. [2018 (363) E.L.T. 527].
- Triveni Engineering & Industries [2018 (363) E.L.T. 331].

➤ the impugned order needs to be set aside and the refunds to be allowed in favour of appellants

3.3 Learned Authorized Representative reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned order along with submissions made in the appeal and during the course of arguments.

4.2 The chronology of events leading to the refund claims in dispute is as depicted in the table below:-

Sr. NO.	DATES	EVENTS
1	20.09.2011	Shipping Bill No 5483931 dt. 20.09.2011 for export of 100% Cotton Powerloom Printed Woven Made up was filed by the Appellant. The goods were confiscated by the Department under the pretext of mis-declaration and an option to redeem the same was given to the Appellant only on payment of a redemption fine and a penalty. The appellant deposited the fine and penalty.
2	10.11.2017	Being aggrieved by the Order for imposition of redemption fine and penalty, an appeal was filed by the Appellant before the Commissioner (Appeals). Commissioner (Appeals) upheld the Order-in-Original vide Order in Appeal No 166/Cus/Apl/Noida/2012 dtd. 21.06.2012. An appeal was filed before Tribunal and the said appeal was allowed with consequential relief vide Order bearing FO No.71646-71650/2017 dated 10.11.2017.
3	26.07.2019	In pursuance of the Order of Tribunal dated 20.11.2017, a refund application was filed by the Appellant before the Deputy Commissioner of Customs, Noida, for refund of Rs. 1,45,000/-.
4	29.04.2020	The Refund Application was rejected vide the Order In-Original No. 11/Refund/Noida Customs/2020 dated 29.04.2020 passed by Deputy Commissioner of Customs, Noida.

5	19.10.2020	An appeal was filed before the Commissioner (Appeals) against the Order dated 29.04.2020 and the same was dismissed by the impugned order.
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4.3 Undisputedly the appeals filed by the Appellants against confiscation of the goods and penalty imposed have been set aside by the Tribunal. While allowing the appeals tribunal has categorically observed **"Accordingly the impugned order is set aside. The appellants are entitled for consequential relief, in accordance with law."** It is a settled law that any amount which becomes due to the appellant consequent to an Appellate order the deposits should have been refunded to the appellant. In case of **G S Radiators Ltd [2005 (179) ELT 222 (T)]** following was held:

"3. On a careful consideration of the submissions made by both the sides, I find that in this case the question of limitation will not apply as provided under Section 11B of the Central Excise Act as the amount paid by the appellants on the direction of the department was being contested by them from the adjudicating stage till they won the appeal 6 Service Tax Appeal No.70360 of 2018 before the Tribunal. Therefore, such payment will be considered as payment under protest. Tribunal under its Final Order had given direction to give consequential relief to the appellants which should have been given by the department. But instead of giving them refund, they rejected it on time-bar which is not correct. In view of the above, I find that payment made by the appellants has to be considered as payment under protest and the refund should be allowed to them if otherwise in order. The appeal is, therefore, allowed."

4.4 Similar view was expressed by the tribunal in case of **Hawkins Cookers Ltd. [2017 (346) E.L.T. 298 (Tri. - Mumbai)]** observing as follows:

"5. I find that the original dispute raised by the department is that the admissibility of Cenvat credit in respect of packing material. Due to the dispute, appellant reversed the Cenvat credit. On the said dispute appellant succeeded partly before the Tribunal. Accordingly, amount reversed was claimed as a refund. I find that this is not a case of refund of excise duty paid on final product whereas originally it is an amount of Cenvat credit which was reversed under protest and on succeeding, the appellant claimed refund. In my considered view, even there is no need of filing refund claim in case of

succeeding in a matter of dispute on Cenvat credit. In the present case, even if the amount is towards reversal of Cenvat credit but it is as good as avilment of fresh Cenvat credit therefore unjust enrichment is not applicable for avilment of Cenvat credit. In the present case also refund of Cenvat credit need not to be undergone the test of unjust enrichment. The judgment cited by the Id. Counsel supports the case of the appellant. I therefore set aside the impugned order and allow the appeal of the appellant."

4.5 In case of **USV Ltd. [2016 (45) S.T.R. 83 (Tri. - Mumbai)]** following has been held:

"5. The judgments relied upon by the Id. Counsel are applicable as in those judgment, it has been held that the refund of any amount deposited during the investigation and proceedings the limitation of 1 year from the date of deposit shall not apply. In the present case also the refund is not hit by limitation...."

4.6 In case of **Mangalam Cement Ltd. [2011 (24) S.T.R. (T-Del)]** following has been observed:

"6. It stands held that, after considering various precedent decisions, that the amounts deposited during the 7 Service Tax Appeal No.70360 of 2018 course of investigation and appropriated by the adjudicating authority on confirmation of demand, are required to be refunded without deciding the same on the terms of limitation, when such confirmation orders are set aside by the higher authorities. By following the above decision, we hold that the claims filed by the appellants for refund of Service Tax deposited under the directions of the authorities and subsequently confirmed by the adjudicating authority but set aside by the Commissioner (Appeals) are required to be sanctioned, without applying the bar of limitation reckoned from date of deposit...."

4.7 Board has vide Circular No.984/8/2014-CX dated 16.09.2014 clarified as follows:

"5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has

decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not."

4.8 In case of **Abdulla Gani [2013 (298) E.L.T. 221 (Bom)]**, Hon'ble Bombay High Court has held as follows:

"9. Strictly speaking, Section 27A applies to a claim of refund of duty or interest and does not specifically refer to the payment of interest on a refund of penalty or on pre-deposit effected before the Appellate Tribunal or, for that matter, before the appellate authority. In Commissioner of Central Excise, Hyderabad v. I.T.C. Limited - 2005 (179) E.L.T. 15 (S.C.), the issue before a Bench of three learned Judges of the Supreme Court in a batch of appeals was whether a pre-deposit made as a pre-condition for the hearing of an appeal under the Central Excise Act, 1944 was, on the assessee being ultimately successful, refundable to the assessee with interest. The Tribunal had in diverse orders issued directions for the payment of interest on refunds of pre-deposit. Before the Supreme Court, the Solicitor General stated that the Central Board of Excise and Customs proposed to issue a circular in connection with the payment of interest on all such pre-deposits, a draft of which was placed on the record of the Supreme Court. The Supreme Court directed the payment of interest in terms of the draft circular. A circular was issued by the CBEC on 8 December, 2004 reiterating that in terms of the directions of the Supreme Court, pre-deposits must be returned within three months from the date of the order passed by the Appellate Tribunal or court unless there was a stay on the order by a superior court and that the Board had decided to implement CESTAT orders already passed for payment of interest in compliance of which interest payable would be paid forthwith."

4.9 When fines and penalties are being set aside Revenue is duty bound to refund the said amounts as all for implementation of the order of the Appellate Authority. Such implementation of the order Appellate Authority could not have been fully closed by relying upon the provisions of Section 27 as per the Customs Act Section 27 of the Customs Act define the relevant date in case where refund of duty becomes due in the light of the orders of

the Appellate Authorities, Courts or Tribunal. Provisions of 27 reproduced below:-

"[27. Claim for refund of duty

²[(1) Any person claiming refund of any duty or interest,-

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

PROVIDED that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

PROVIDED FURTHER that the limitation of one year shall not apply where any duty or interest has been paid under protest: ³[PROVIDED ALSO that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.]

Explanation: For the purposes of this sub-section, "the date of payment of duty or interest in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:-

(a) **in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the**

limitation of one year shall be computed from the date of issue of such order;

- (b) ***where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;***
- (c) ***where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment]."***

4.10 In case of **Cooper Pharma [2017 (357) E.L.T. 929 (T-Del)]** following was held:

"6. *I find that as a consequence of the order dated 18-8-2004 [2004 (174) E.L.T. 143 (Tribunal)] passed by the Tribunal, the appellant has filed the formal application before the jurisdictional authorities, claiming refund of Rs. 1,50,000/- paid as penalty. Section 11B ibid deals with filing of refund application in respect of Central Excise duty. Since there is no specific mention about refund of penalty in Section 11B ibid, I am of the view that time limit prescribed therein would not have any application for sanction of such refund amount. Further, the amount in question was recovered by the Department under Section 11 ibid, before disposal of appeal by the Tribunal in setting aside the said penalty amount. Since as a consequence of the Tribunal's order, the appellant has claimed the refund amount, the same cannot be retained by the Department on the ground that no appeal against the order dated 3-2-2000 was filed by the appellant."*

4.11 From the perusal of the above provisions it is noted that period of limitation of one year does not apply when the amount claimed as refund have been paid under protest. Section only recognizes the fact of payment of amounts under protest. It does not recognize the vacation or such a protest once it is established that the amount claimed as refund were paid under protest. I do not see any reason why such a condition can be imported within the statute which has been not provided. In case of **Dilip Kumar & Company [2018 (361) E.L.T. 577 (SC)]** following has been observed:-

"16. The purpose of interpretation is essentially to know the intention of the Legislature. Whether the Legislature intended to apply the law in a given case; whether the Legislature intended to exclude operation of law in a given case; whether Legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation. Apart from the general principles of interpretation of statutes, there are certain internal aids and external aids which are tools for interpreting the statutes.

17. The long title, the preamble, the heading, the marginal note, punctuation, illustrations, definitions or dictionary clause, a proviso to a section, explanation, examples, a schedule to the Act etc., are internal aids to construction. The external aids to construction are Parliamentary debates, history leading to the legislation, other statutes which have a bearing, dictionaries, thesaurus.

18. It is well accepted that a statute must be construed according to the intention of the Legislature and the Courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature. In this connection, the following observations made by this Court in District Mining Officer v. Tata Iron and Steel Co., (2001) 7 SCC 358, may be noticed:

"... A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on

information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed..."

19. *The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

20. *In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose [Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa, 1995 (6) SCC 355]. Not only that, if the plain construction leads to anomaly and absurdity, the Court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.*

21. *In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision-*

making. Insofar as taxation statutes are concerned, Article 265 of the Constitution [265. Taxes not to be imposed save by authority of law - No tax shall be levied or collected except by authority of law.] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.

22. At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the Courts sometimes have made strict interpretation subordinate to the plain meaning rule [Mangalore Chemicals case (Infra para 37).], though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self-contradictory.

23. Next, we may consider the meaning and scope of 'strict interpretation', as evolved in Indian law and how the higher Courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) 'strict interpretation' is described as under :

Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. - Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statutes. - Also termed as close interpretation; interpretatio restrictive.

See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case." William M. Lile et al., Brief Making and the use of Law Books 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d ed. 1914).

"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict (i.e., literal) sense." John Salmond, Jurisprudence 171 n. (t) (Glanville L. Williams ed., 10th ed. 1947).

24. As contended by Ms. Pinky Anand, Learned Additional Solicitor General, the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably. This principle, however, may not be sustainable in all contexts and situations. There is certainly scope to sustain an argument that all cases of literal interpretation would involve strict rule of interpretation, but strict rule may not necessarily involve the former, especially in the area of taxation. The decision of this Court in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court Chandigarh and Ors.*, (1990) 3 SCC 682, made the said distinction, and explained the literal rule-

"The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."

That strict interpretation does not encompass strict - literalism into its fold. It may be relevant to note that simply juxtaposing 'strict interpretation' with literal rule' would result in ignoring an important aspect that is 'apparent legislative intent'. We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, 'strict interpretation' does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then 'strict interpretation' can be implied to accept some form of essential inferences which literal rule may not accept.

25. We are not suggesting that *literal rule de hors* the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

26. Justice G.P. Singh, in his treatise 'Principles of Statutory Interpretation' (14th ed. 2016 p.-879) after referring to *Re, Micklethwait*, (1885) 11 Ex 452; *Partington v. A.G.*, (1869) LR 4 HL 100; *Rajasthan Rajya Sahakari Spinning & Ginning Mills Federation Ltd. v. Deputy CIT, Jaipur*, (2014) 11 SCC 672, *State Bank of Travancore v. Commissioner of Income Tax*, (1986) 2 SCC 11 and *Cape Brandy Syndicate v. IRC*, (1921) 1 KB 64, summed up the law in the following manner

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"A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY AND LORD SIMONDS, means : 'The subject is not to be taxed without clear words for that purpose : and also that every Act of Parliament must be read according to the natural construction of its words. In a classic passage LORD CAIRNS stated the principle thus : "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words : "In a taxing Act one has to look merely at what is clearly said. This is no room for any intendment. There is no equity about a tax. There is no

presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

It was further observed :

"In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation...."

Yet again, it was observed :

"It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that, "the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him", [Russel v. Scott, (1948) 2 All ER 1]. The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [Ormond Investment Co. v. Betts, (1928) AC 143]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram, (1969) 3 All ER 215]. It has also been said that if taxing provision is "so wanting in clarity that no meaning is reasonably clear, the Courts will be unable to regard it as of any effect [IRC v. Ross and Coutler, (1948) 1 All ER 616]."

Further elaborating on this aspect, the Learned author stated as follows :

"Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [Express Mill v. Municipal Committee, Wardha, AIR 1958 SC 341]. If the Legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [CIT v. Jalgaon Electric Supply Co., AIR 1960 SC 1182]. But equitable considerations are not relevant in construing a taxing statute, [CIT, W.B. v. Central India Industries, AIR 1972 SC 397], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jha v. Expenditure Tax Officer, Hyderabad, AIR 1972 SC 2319]. It is well-settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the Legislature to determine the same [Kapil Mohan v. Commr. of Income Tax, Delhi, AIR 1999 SC 573]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax,

and the Court should not concern itself with the intention of the Legislature when the language expressing such intention is plain and unambiguous [State of Madhya Pradesh v. Rakesh Kohli & Anr., (2012) 6 SCC 312]. But just as reliance upon equity does not avail an assessee, so it does not avail the Revenue."

The passages extracted above, were quoted with approval by this Court in at least two decisions being Commissioner of Income Tax v. Kasturi Sons Ltd., (1999) 3 SCC 346 and State of West Bengal v. Kesoram Industries Limited, (2004) 10 SCC 201 [hereinafter referred as 'Kesoram Industries case' for brevity]. In the later decision, a Bench of seven-Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute :

"(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed : it cannot imply anything which is not expressed : it cannot import provisions in the statute so as to supply any deficiency : (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of Legislature's failure to express itself clearly".

4.12 In case of Triveni Engineering & Industries [2018 (363) ELLT 331 (T-All)] following has been held:

"5. *The Learned Counsel also states that under such facts and circumstances, the revenue should have suo-motu refunded the amount paid by them on clearance of Bagasse under the provisions of Rule 6(3) of CCR, 2004. Further, there is no question of any limitation being attracted. The Learned Counsel said that the courts below have erred in holding that limitation starts from the date of judgment in their appeal for earlier period, before the Tribunal being judgment dated 8-6-2012.*

6. *Heard the Learned AR for revenue, who have relied on the impugned order.*

7. *Having considered the rival contentions, I hold that under the fact and circumstances that Bagasse is not a dutiable item and not a manufacture item, as held by the*

Hon'ble Supreme Court, there was no question of any reversal of duty under the provision of Rule 6(3) of CCR, 2004. Under such facts and circumstances, I hold that the amount reversed by the appellant under Rule 6(3) of CCR was in the nature of revenue deposit. Further, it is an admitted fact that such amount was reversibly deposited under protest."

4.13 In case of **Ajudhia Sugar Mills Ltd. [2018 (364) ELT 437 (T-All)]** following was held:

"6. The appellant's contention is that the debit was made by them under protest in which case the limitation would not apply. They have contested the finding of the appellate authority that the amount was not paid under protest, as factually incorrect. Inasmuch as the debits were made by them under the directions of the Audit Officer, the same was not voluntary payment and has to be treated as having been reversed under protest.

7. I find that the provisions of Section 11B provide a period of one year, for claiming refund, from the relevant date. The relevant date also stands prescribed in the said Section. However, if the duties have been paid under protest, the period of one year is not applicable. The appellant's contention is that the demand was paid under protest and as such limitation would not be applicable."

4.14 I do not find any merits in the submissions made to the fact that the provisions of Section 27 could not apply to the case of refund of penalty and fines. Hon'ble Supreme Court has in the case of **Mafatlal Industries [1997 (89) E.L.T. 247 (SC)]** held as follows:-

"99. The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.

(i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff - whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter - by mis-interpreting or mis-applying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs

Tariff Act or by mis-interpreting or mis-applying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactment before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 - and of this Court under Article 32 - cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.

The said enactments including Section 11B of Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are self-contained enactments providing for levy, assessment, recovery and refund of duties, imposed thereunder. Section 11B of the Central Excises and Salt Act and Section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a claim of refund and cannot form a basis for maintaining a suit or a writ petition. All refund claims except those mentioned under Proposition (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be. It is necessary to emphasise in this behalf that Act provides a complete mechanism for correcting any errors whether of fact or law and that not only an appeal is provided to a Tribunal - which is not a departmental organ - but to this Court, which is a civil court."

4.13 The period of limitation shall not apply in the present case and refunds claim have to be adjudicated accordingly, treating that these amounts of redemption fine and penalties were paid under protest as per the direction of the department, for effecting the clearance of the goods though the order imposing the fine and penalty was challenged in appeal. Thus though I

hold that the refund claim has to be processed under the provisions of Section 27 of the Customs Act, 1962, as this is a case of consequential refund of penalty and redemption fine, the same cannot be held to be barred by the limitation as provided in the said section.

4.14 Thus I do not find any merits in the impugned order.

5.1 The appeal is allowed.

(Operative part of the order is pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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