

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

REGIONAL BENCH - COURT NO.II

(E-Hearing)

Service Tax Appeal No.70427 of 2022

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-29-2022-23, dated - 25/04/2022 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Amandeep Builder

.....Appellant

(I-525, Sector - Beta-II,
Greater Noida, Gautam Budh Nagar
Uttar Pradesh 201310)

VERSUS

Commissioner, CGST & Central Excise, Noida

....Respondent

(Wegmans Business Park, KP-III,
Greater Noida-201306-U.P.)

APPEARANCE:

Shri Siddarth Malhotra, Advocate for the Appellant

Mrs. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70316/2025

DATE OF HEARING : 08.05.2025
DATE OF DECISION : 22.05.2025

SANJIV SRIVASTAVA:

This Appeal is directed against the Order-In-Appeal No.NOI-EXCUS-002-APP-29-22-23 dated 25.04.2022 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida. The Commissioner (Appeals) has held as under:-

"13. In view of the aforesaid provisions of Section 35FF both prior to or after to 6.8.2014, I find that since in the present case, the said pre-deposit amount was deposited by the appellant prior to 6.8.2014, they would have been entitled

for interest on the said amount only if the said amount had not been refunded to them within three months from the date of communication of such order to the adjudicating authority. In this regard, I further observe that the refund application was filed by the appellant on 17.05.2021 and refund has been allowed to them by the adjudicating authority on 16.08.2021 Accordingly, I conclude that since the adjudicating authority had granted refund of said pre-deposit amount within 03 months, no interest is payable to the appellant in view of the said Section 35FF of the Act.

14. In view of the aforesaid discussion and findings, I hereby dispose off the present appeal by allowing the interest to the appellant on the rate specified under Section 11BB on the amount of Rs. 26,06,282/- for the period from 01.07.2008 till 31.10.2012.”

2.1 By show cause notice dated 07.06.2010, demand of Service Tax for an amount of Rs 86,22,724/- was made and appropriation of amount of Rs 26,06,282/- deposited vide TR-6 Challan No 26 dated 01.07.2008 during the course of investigation was proposed.

2.2 The show cause notice was adjudicated confirming the demand along with interest and penalties as per the provisions of Finance Act, 1994 by order in original dated 23.01.2012.

2.3 Appellant challenged the order dated 23.01.2012 before CESTAT and he was directed by Stay Order No 1197/2012 dated 31.10.2012 to deposit further sum of Rs 14,00,000/-. Appellant deposited this amount by GAR-7 Challan No 00006 dated 22.11.2012. Thus appellant made a deposit of Rs 40,06,282/- (Rs 26,06,282/- + Rs 14,00,000/-) for hearing the Appeal by CESTAT in terms of the erstwhile section 35 F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

2.4 The appeal filed by the Appellant was decided in their favour by Final Order No. ST/A/72529/2018-Cu[DB] dated 31.10.2018 and the matter was remanded back to original authority for de novo consideration.

2.5 In remand proceedings vide order in original No 02/Commissioner/ G B Nagar/2020-21 dated 03.06.2020 the demand of Service Tax made by the show cause notice dated 07.06.2010 was dropped in totality.

2.6 The Appellant filed refund claim claiming refund on the account of pre-deposit on 02.05.2017. The said refund claim has been allowed by the Order-In-Original No. 07-REF/CE/AC/CGST-GBN/D-I/2021-22 DATED 16.08.2021 holding as follows:-

ORDER

"I hereby sanction the refund of Rs.40,06,282/- (Rupees Forty Lakh Six Thousand Two Hundred Eighty Two only) to M/s Amanddeep Builders, I-525, Sector – Beta-II, Greater Noida, Gautam Buddh Nagar. The payment shall be made electronically through RTGS/NEFT as per account details provided by them in Annexure A as per Circular No.1013/1/2016- CX dated 12.01.2016 enforced through Trade Notice No 02/N-II/2016 dated 15.02.2016."

2.7 The Appellant filed the appeal before the Commissioner (Appeals) seeking interest on the refund so granted from the date of payment of initial amount till the date of refund.

2.8 By the impugned order Commissioner (Appeals) disposed of the appeal of the Appellant indicated in Para 1 above.

2.9 Aggrieved Appellant has filed this appeal.

3.1 I have heard Shri Siddarth Malhotra, Advocate for the appellant and Shri Manish Raj for the Revenue by e-hearing.

3.2 Arguing for the Appellant learned counsel submits that

- Appellant is seeking interest of the on the amount deposited by them in these proceedings as detailed below:

Deposit Date	Amount	Date of Refund Order	Number of Days
01.07.2008	26,06,282	16.08.2021	4794
22.11.2012	14,00,000		3189
	40,06,282		

- Provisions of Section 35FF are applicable only in those cases where refund is claimed against payment of pre-

deposit for filing the appeal and not against the deposit made under protest.

- It is a settled position in law that interest is compensatory in nature and should have been paid from the date of deposit. Reliance is placed upon the following decisions:-
- Parle Agro Pvt Ltd. [Final Order No 70180-70181/2021 dated 25.05.2021]
 - Emmar Mgf Construction Pvt Ltd. [Final Order No 51873/2021 dated 07.10.2021 in Service Tax Appeal No 50992/20200]
 - Parle Agro Pvt. Ltd. [Final Order No 70145/2017 dated 31.01.2017 in Central Excise Appeal No 2843/2006]
 - Alliance Francaise De Delhi [Final Order No 50075/2025 dated 22.01.2025 in Service Tax Appeal No.51865 of 2024 (SM)]
 - Pratibha Processors [1996 (88) E.L.T. 12 (S.C.)]
 - EBIZ.COM PVT. LTD. [2017 (49) S.T.R. 389 (All.)]

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

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 The impugned order for denying the claim of interest records as follows:-

"6. I have carefully gone through the OIO appealed against and the averments made by the appellant in the appeal memorandum and during the course of personal hearing. Only issue to be decided in the present case is that whether or not the appellant is entitled for the interest on the amount so refunded by the adjudicating authority vide impugned OIO dated 16.08.2021 observe that the adjudicating authority has not granted the interest on the said refund amount treating the said amount as payment

made under Section 35F and on the grounds that the refund has been passed within 03 months of filing of refund application.

7. In this regard I observe that after enactment of the Finance Act (No.2) 2014 with effect from 06.08.2014, Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 were substituted with new sections to provide for mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute. The amended provisions apply to the appeals filed before Commissioner (Appeals) or Tribunal after 6.8.2014. Sections 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 contain specific saving clause to provide that all pending appeals/stay applications filed till the enactment of the Finance Bill, 2014 shall be governed by the erstwhile provisions. Prior to 6.8.2014, the pre-deposit of percentage of duty confirmed or penalty imposed for filing appeal before Commissioner (Appeals) or CESTAT was not mandatory and decision in this regard was to be taken by Commissioner (Appeals) and CESTAT on the merit of the case. The appellate authority was competent to decide the amount of pre-deposit required to be made by the Appellant after taking into consideration the merits of the case and /or considering financial hardship to the assessee as well as to safeguard the interest of revenue

8. After going through the provisions of Section 35F, as above, I now turn my attention to the factual matrix of the case. In this regard, I observe that the amount of Rs. 26,06,282/- was deposited by the appellant on 01.07.2008 i.e. during the course of investigation therefore the said amount can not be considered to be an amount deposited by the appellant under Section 35F at the relevant time i.e. on 1.7.2008 by any stretch of imagination in as much as that the demand in question was initially confirmed only on

23.01.2012 and stay order was passed by the Hon'ble CESTAT on 31.10.2012. Therefore conclude that for the period 1.7.2008 to 31.10.2012, the said amount can not be termed as pre-deposit and the adjudicating authority has erred to consider the said amount as pre-deposit for the said period

9. However, irrespective of aforesaid, I also observe that as soon as the said stay order dated 31.10.2012 was passed by the Hon'ble CESTAT the said amount of Rs. 26,06,282/- took the colour of pre-deposit under said Section 35F along with the amount of Rs. 14,00,000/- which was additionally deposited by the appellant vide challan dated 22.11.2012 in compliance of said stay order dated 31.10.2012.

10. Having concluded so, I now turn my attention to the interest required to be paid to the appellant. In this regard I observe that during period from 21.01.2008 (i.e. the date on which the appellant had deposited amount of Rs 26,06,282/-) till 31.10.2012 (i.e. the date on which the stay order was passed by the Hon'ble CESTAT), the said amount remained the amount paid by the appellant during investigation which was ultimately refunded to the appellant vide impugned OIO, I find that the amount so refunded was retained by the department during the entire period from 01.07.2008 to 31.10.2012 without any authority of Law. Accordingly, I find that interest on such deposit is admissible to the appellant as also held in catena of judgments; some of which are appended below as under:

- (i) Hon'ble Madras High Court in the case of CCE, Chennai-II VS. Ucal Fuel Systems Ltd. Vs. CCE, Chennai-II, reported in [2014 (306) E.L.T. 26 (Mad.)] has held that - "Interest on delayed refund - Amount paid during investigation - Interest at 6% per annum payable from date of deposit till date of payment - Section 11BB of Central Excise, Act, 1944."*

- (ii) *The Hon'ble Delhi High Court, in the case of Team HR Services Pvt. Ltd. Vs. UOI, reported in [2020 (38) G.S.T.L. 457 (Del.)] has held that "Interest on delayed refund - Amount of - Rs. 2,38,00,000 deposited by petitioner of its own volition, during audit /investigation, though under protest Refund of said amount sought vide letter dated 2nd May, 2018 - Petitioner - entitled to interest @ 6% per annum from date of deposit."*
- (iii) *The Hon'ble CESTAT, Principal Bench, New Delhi in the case of BSL Ltd. CCE [Final Order No. 50699/2019 dated VS. 15/05/2019], has observed that even though there is provision for grant of interest over delayed payment of interest, no yet it is allowable because there is no prohibition in law*
- (iv) *Recently, the Hon'ble Regional Bench of CESTAT, Chandigarh, in the case of Riba Textiles Ltd. Vs. CCE & ST, Panchkula [Final Order No. 60015/2020 dated 07/01/2020], relying upon the decision of the Hon'ble Apex Court in the case of Sandvik Asia Limited vs. CIT, Pune [2007 (8) STR 193 (SC)] and the decision of Hon'ble High Court of Madras in the case of M/s Ucal Fuel held that the issue has been settled by Tribunal in the case of M/s Marshal Foundry & Engg. Pvt. Ltd. Vs. CCGST, Faridabad & Others vide Final Order No. 61058-61062/2019 read-with Corrigendum issued dated 02/12/2019 and therefore they may be allowed to claim the interest by the intervening period. It held that Appellant is entitled to interest for the period from the date of deposit (deposit made during investigation) to till date of refund.*

11. In the instant case, I find that the ratio of the above verdicts of the Hon'ble Supreme Court/High Court/Tribunal is squarely applicable to the instant case and as the

impugned amount was retained by the department for such long period without authority of law, interest is payable on entire amount of refund, at the rate prescribed in Section 11BB of the CE Act 1944 from 01.07.2008 to 31.10.2012

12. Now the next question arises, what about the interest on the said amount of Rs. 26,06,282/- as well as on the amount of Rs. Twelve Lacs deposited by the appellant on 22.11.2012 in compliance of the stay order dated 31.10.2012 of the Hon'ble Tribunal. I find that it is on records that the said amount of Rs. Twelve lacs was deposited by the appellant as pre-deposit under Section 35F. Furthermore, I have already observed supra that the said amount of Rs. 26,06,282/- had also attained identity as pre-deposit as soon as the said stay order was passed. In this regard, I observe that prior to 6.8.2014 and after 6.8.2014, Section 35FF of the Act which deals with the interest on pre-deposit reads as under:-

"Section 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F.

35FF. Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to Section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or Tribunal, there shall be paid to the appellant interest at the rate specified in Section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

W.E.F. 6-8-2014, S. 35FF as substituted:

Section 35FF. Interest on delayed refund of amount deposited under Section 35F. -

Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon

the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till the date of refund of such amount:

Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act."

4.3 Tribunal has while making the Stay Order 1229/2012 dated 31.10.012 recorded as follows:

"It is fair submission of Shri Batra, learned Counsel that discrepancy in the balance sheet figure and service tax return figure gave rise to service tax demand of Rs. 86,22,724/-. The said demand shall not sustain if para 16 in page 9 of the appeal memo is thoroughly examined along with para 10 of the memo of appeal. Certain services are not liable to tax. Some of the services are subject to concession under law. Therefore, directing pre-deposit Cause shall cause undue hardship to the appellant while it has already deposited Rs. 26,06,282/- at the adjudication stage itself

2. Revenue supports the adjudication

3. Heard both sides and perused the records.

4. We have gone through the pleadings of the appellant and also observation in para 5 of the adjudication order. It appears that the adjudication order is not cryptic but reasoned and speaking. The authority was handicapped to consider the claim of the appellant without respective evidence before him. No copies of contracts were made available to him nor reconciliation of figures appearing in two statements were placed before him. Of course these are matters of record on fact which can be gone into in detail while the appeal is heard.

5. Keeping in view the above observations and quantum of deposit already made, there shall be a further deposit of Rs. 14 lakhs (Rupees Fourteen lakhs) within 8 weeks from today and compliance to be made on 10.1.2013. Subject to such deposit, pre-deposit of balance dues shall be waived during the pendency of the appeal or six months period whichever is earlier."

From the above it is evident that tribunal has in the above order considered the entire amount, to be a deposit made under Section 35F of the Central Excise Act, 1944 for hearing the appeal. Thus the finding in the impugned order to this effect in para 9 cannot be faulted with. A detailed discussion in support of this finding has been made by the tribunal in case of Alliance Francaise De Delhi referred by the appellant.

4.4 The Appellant have claimed the interest on the date of deposit on the basis of decision referred in para 3.2 above. Counsel laid special emphasis on the decision in the case of Alliance Francaise De Delhi. Relevant paragraphs of the said decision are reproduced below:-

"6. The first issue to be considered is whether the amount of Rs.16,14,167/- deposited by the appellant on 19.12.2013 has to be treated towards the service tax liability or as pre-deposit in terms of Section 35F. For considering the said issue, the direction made by the Tribunal in the Order dated 11.11.2013 is quoted below:-

"7. For the aforesaid reasons, we grant waiver of pre-deposit and stay all further proceedings pursuant to the impugned order, on condition that the petitioner remits Rs.9,66,000/- (representing the service tax on support of business or commerce service and renting of immovable property service) plus the proportionate interest thereon, within six weeks. Compliance of deposit shall be reported by 7.1.2014. In default of deposit, the appeal shall stand rejected. Counsel is present in the court, has noted this

order and this constitutes sufficient intimation to the petitioner of its obligation under this order. Stay application is accordingly disposed of.”

As can be seen, the Tribunal has granted waiver of pre-deposit and stayed the proceedings in terms of the impugned order, subject to the condition that the appellant shall remit the requisite amount along with interest within a period of 6 weeks.

The order passed is simple and clear that the appellant was required to make the pre-deposit for consideration or appeal and also to avail the benefit of the Stay Order as otherwise, they would have suffered the dismissal of appeal. The amount in the form of pre-deposit is also towards the liability of tax to avail the remedy of statutory appeal. Learned counsel for the appellant submitted that Section 35F before substitution by the Act 25 of 2014 (w.e.f. 06.08.2014) required the assessee to deposit the duty demanded or the penalty levied for challenging the impugned order and the appellant was required to make an application for dispensing with the pre-deposit of duty demanded or penalty levied. The provisions of Section 35 F as it stood prior to 6.8.2014 reads as under:- —

35F: Deposit, pending appeal of duty demanded or penalty levied. ---

Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the

Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.

Explanation.— For the purposes of this section "duty demanded" shall include ,—

- (i) amount determined under section 11D;*
- (ii) amount of erroneous CENVAT credit taken;*
- (iii) amount payable under rule 57CC of Central Excise Rules, 1944;*
- (iv) amount payable under rule 6 of CENVAT Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004;*
- (v) interest payable under the provisions of this Act or the rules made thereunder."*

The appeal under the provisions of Section 35F is a statutory appeal and it is a settled principle of law that a statutory appeal is maintainable subject to the compliance of the conditions laid down in the statute providing the remedy of appeal. Section 35F, in unequivocal terms says person desirous of appealing the order demanding the duty is required to deposit the duty/ penalty demanded, pending the appeal. in terms thereof, the Tribunal directed the appellant to deposit part of the duty amount involved and appellant paid the same in compliance thereof.

7. The issue for consideration is whether the amount deposited by the assessee during investigation or adjudication partakes the character of duty or has to be treated as revenue deposit and, therefore, the provisions of Section 11B would not apply for refund of the said amount.

The said issue is no longer res integra and has been decided in series of decisions of this Tribunal. In a recent decision in Barmer Lignite Mining Company Ltd. Vs. Commissioner, CGST, Jaipur, [2024 (12) TMI 940 – CESTAT, New Delhi] this Tribunal relied on the other latest decision in Chambal Fertilizers and Chemicals Ltd. Vs. The Commissioner, Central Goods and Services Tax, Udaipur, Rajasthan [2023 (2) TMI 10 CESTAT New Delhi] the relevant para is quoted herein below:- —

- 11. The issue whether the appellant is eligible to claim the refund and whether the same is hit by the bar of unjust enrichment in terms of section 11B is no longer res integra, having been decided in series of decisions. We would refer to the latest decision passed by this Tribunal in Chambal Fertilizers and Chemical Ltd. vs. Commissioner, Central Goods and Service Tax, Udaipur¹⁸ where the Bench had dealt with similar contentions as raised by the appellant herein referring to the earlier decisions of the Madras High Court in Commissioner of Central Excise, Coimbatore vs. Pricol Ltd which was subsequently followed by the Allahabad High Court in Ebiz.com vs. Commissioner of Central Excise, Customs and Service Tax and ors. and subsequently in Commissioner of Central Excise, Lucknow Vs. Eveready India Ltd. In all these decisions, the main principle laid down is that any amount deposited during the pendency of adjudication or investigation is in the nature of deposit and therefore, cannot be considered to be towards payment of duty and consequently the principles of unjust enrichment would not apply in the event of claiming refund of such deposit. The decision in Chambal Fertilizers being rendered by Principal Bench and being latest in point of time is binding on us and we, therefore, hold the issue on merits in favour of the appellant.”*
- 8. Learned counsel for the appellant in support of her submissions that the time limit provided under Section 11B*

is not applicable to the cases of refund of pre-deposit under Section 35F has relied on the Circulars dated 12.01.2002, 08.12.2004 and 16.09.2014. In essence, the clarification given in these Circulars is to the effect that limitation period is not applicable in cases of refund of pre-deposit as the same cannot be equated with that of duty. The latest Circular answers the query that the pre-deposit for filing the appeal is not payment of duty. The settled principle of law is that the Circulars issued by the Department are binding on them. Consequently, the appellant is entitled to the refund of the amount deposited by them pursuant to the stay order or the Tribunal.

9. Having held the issue on merits, in favour of the appellant, we will now consider the grant of interest on the amount of refund. The interest on delayed refund has been held to be payable to the assessee from the date of deposit in the case of Executive Engineer (Workshop) M. P. Power Transmission Co. Ltd., vs. Commissioner (Appeals) Central Excise Customs & CGST [Final order No. 50066 dated 17.01.2025] till the date of its refund. In similar circumstances where refund was directed to be paid to the assessee, we had also granted interest @ 12% per annum. The relevant para is quoted below:-

"19.Since we have held that the appellant is entitled to refund claim, we are also inclined to direct that the refund shall be paid along with interest. The Apex Court in Sandvik Asia Ltd. versus Commissioner of Income Tax –I, Pune [2006 (196) ELT 257 (SC)] with reference to the provisions of the Income Tax Act has observed that in view of the express provisions of the Act the assessee is entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the appellant which were wrongly withheld by the Department for an inordinate long period. The Act itself recognized in principle, the liability of the Department to pay interest where the amount deposited by the assessee is unduly

retained. The consistent practice of this Tribunal has been to grant interest at the rate of 12% in matters relating to refund of amount deposited during investigation and adjudication. The Tribunal in Parle Agro Pvt Ltd observing that there is no provision in the Excise Act, which deals with the refund of revenue deposit and so rate of interest has not been prescribed when revenue deposit is required to be refunded, considered the various notifications issued under the provisions of Section 11 AA, 11 BB and 11 DD of the Act providing the interest rate from 6% to 15% and accordingly increased the rate of interest from 6% to 12% per annum. Following the said decision, the grant of interest at 12% per annum on the refund amount is appropriate."

10. In view of the settled principles of law, the impugned order is unsustainable and is hereby set aside. The department is directed to refund the amount deposited by the appellant on 19.12.2013 alongwith interest at the rate of 12% per annum. The appeal is accordingly allowed with consequential benefit."

4.5 Further following decisions have been brought to my knowledge where in following has been observed:

A. Chandigarh Bench of the Tribunal in the case of Riba Textile Ltd. V/s Commissioner of CE & ST, Panchkula reported at 2020 (2) TMI 602 - CESTAT Chandigarh and M/s Marshal Foundry & Engg. Pvt. Ltd. V/s Commissioner of CGST, Faridabad 2019 (11) TMI 1269:-

"6. On going through the decision cited by learned A.R. in the case of M/s Juhu Beach Resort Ltd (supra), I find that in the said case, the decision of Hon'ble Apex Court in the case of Sandvik Asia Ltd 3 Excise Appeal No. 60446 of 2018 vs. CIT, Pune – 2007 (8) STR 193 (SC) and the decision of Hon'ble High Court of Madras in the case of CCE, Chennai-II vs. UCAL Fuel Systems Ltd – 2014 (306) ELT 26 (Mad.) have not been considered. Therefore, the said decision cannot be relied upon. As in the case of M/s

Marshall Foundry & Engg. Pvt. Ltd. (supra), this Tribunal has examined all said decisions and thereafter observed as under:

"8. The said issue has been examined by this Tribunal in the case of Tribunal in the case M/s. Fujikawa Power and other vs. CCE, Chandigarh-I vide Final Order No. 61041-61042/2019 dt.26.11.2019 wherein this Tribunal has observed as under:-

14. I have gone through the decision in the case of Sandvik Asia Limited (supra), wherein the section 243 dealt with situation of interest on delayed refund.

15. For better appreciation, section 243 of the Income Tax Act, 1961 reproduced as under:-

"243. Interest on delayed refunds-

(1) if the Income tax officer does not grant refund-

(a) In any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and

(b) In any other case, within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation: If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable."

16. Section 35FF of the Central Excise Act, 1944 deals with the situation in hand, the same is extracted below:-

"Section 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F-

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority) under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of

three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."

17. On-going through the provisions of both Income Tax Act, 1961 and Central Excise Act, 1944, the interest on delayed refund is payable after expiry of 3 months from the date of granting refund or from the date of communication of order of the appellate authority, which are parimateria. Therefore, the decision of Hon'ble Apex Court in the case of Sandvik Asia Ltd. (supra) is law of land, in terms of Article 14 of the Constitution of India which is to be followed by me, wherein the Hon'ble Apex has observed as under:-

"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

46. The word 'Compensation' has been defined in P. RamanathaAiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows: "An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; 6 Excise Appeal No. 60446 of 2018 remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

47. There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

48. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

49. By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31.03.1986, learned counsel for the appellant

fairly restricted his claim towards interest from 31.03.1986 to 27.03.1998 on which date a sum of Rs.40,84,906/- was refunded.

50. The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs.40,84,906 (rounded of to Rs.40,84,900) simple interest @ 9% p.a. from 31.03.1986 to 27.03.1998 within one month from today failing which the Department shall pay the penal interest @ 15% p.a. for the above said period."

18. As the Hon"ble Apex Court has answered the issue holding that the assessee is entitled to claim interest from the date of payment of initial amount till the date its refund. Therefore, I hold that the appellants are entitled to claim the interest on delayed refund from the date of deposit till its realization.

19. Further, the interest on the refund shall be payable @ 12% per annum as held by Hon"ble Kerala High Court in the case of Sony Pictures Networks India Pvt.Ltd.-2017 (353) ELT 179 (Ker.) wherein it has held as under:-

"14. Now, the sole question remains to be considered is what is the nature of interest that the petitioner is entitled to get. As discussed above in the judgment Commissioner of Central Excise v. ITC (supra), the Apex Court confined the interest to 12% and further held that any judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered opinion under similar circumstances. So also in Kuil Fire Works Industries v. Collector of Central of Excise [1997 (95) E.L.T. 3 (S.C.)], the pre-deposit made by the assessee was directed to be returned to him with 12% interest. I have also come across the judgment of the Calcutta High Court in Madura Coats Pvt. Ltd. v. Commissioner of C. Ex., Kolkata-IV [2012 (285) E.L.T. 188 (Cal.)], wherein the peremptory directions of the Apex Court in the judgment of ITC Ltd. (supra) was considered and ordered 12% interest, and further held that when the High Court directed the respondents to pay interest to the appellant in terms of the circular dated 8-12-2004 on the pre-deposit of the delayed refund within two months, it has to be construed that, the Court meant the rate of interest which was awarded by the Supreme Court in the case of Commissioner of Central Excise v. ITC Ltd., which was the rate quantified by the Supreme Court in the absence of any statutory provisions in the Act in question. Even though various other judgments of various High Courts and the various Tribunals was brought to my notice awarding 15% interest, in view of the directions contained in the judgment of the Apex Court in Commissioner of Central Excise v. ITC Ltd. (supra) rate of interest is to be confined to 12%. I am also bound to follow the same. Therefore the interest that is liable

to be paid by the respondents as per the directions of this Court in Ext. P12 judgment is fixed at 12% per annum.

15. Taking note of the compendious circumstances and reckoning the law, there will be a direction to the respondents to pay interest to the petitioner at 12% from the date of expiry of three months from 18-11- 2002, to the amount of refund already made, within a month from the date of receipt of a copy of this judgment, after adjusting any interest paid."

20. Further, the same view was taken in the case Ghaziabad Ship Breakers Pvt.Ltd.-2010 (260) ELT 274 (Tri.Ahmd.), wherein this Tribunal observed as under:-

"5. I have considered the submissions made by both the sides. I notice that appellants deposited amount in September, October and in November 2004, as per the directions of the department. In September 2004, the Hon"ble Gujarat High Court had dismissed the SCA filed by the appellants against the order of the Tribunal rejecting the appeal for failure to make the pre-deposit. This SCA was dismissed in September 2004 and SLP was filed in the Hon"ble Supreme Court in October 2004. In July 2005, the Hon"ble Supreme Court ordered that if the amount directed to be deposited by the Tribunal is deposited, the appeals before the Tribunal has to be restored and decided on merits. In these circumstances, the amount deposited by the appellant is to be treated as pre-deposit since the matter had not attained finality during the relevant period. Therefore, refund is to be treated as refund of pre-deposit made when the appeal was pending. There is no dispute that the amounts deposited is duty but this is not the issue which has been taken into account while precedent decisions have allowed the interest at 12% on the refunds claimed in respect of pre deposit. I find that in the decisions cited by the learned advocate, interest at 12% has been allowed. Therefore, following the judicial discipline, I consider it appropriate that interest in this case also is to be allowed @ 12%. Accordingly, original adjudicating authority is directed to workout the differential interest amount and make the payment to the appellants."

21. As the provisions of section 243 Income Tax Act, 1961 and section 35FF of Central Excise Act, 1944, are parimateria. Therefore, following the decision of Hon"ble Apex Court in the case of Sandvik Asia Ltd. (supra) and Sony Pictures Networks India Pvt.Ltd. (supra) I hold that the appellants are entitled to claim interest from the date of payment of initial amount till the date its refund @ 12% per annum."

7. As this Tribunal has examined the issue in details in the case of M/s Marshall Foundry & Engg. Pvt. Ltd. (supra), therefore, I hold that the appellant is entitled to claim the interest on delay refund from the date of deposit till its realization."

B. Parle Agro Pvt Ltd. [2022 (380) ELT 219 (T-ALL)]

"28. Section 11B of the Excise Act deals with claim for refund of duty and interest, if any, paid on such duty. It provides that any person claiming refund of any duty of excise and interest may make an application for such refund of duty and interest.

29. Section 11BB provides for interest on delayed refund. It states that if any duty ordered to be refunded under sub-section (2) of Section 11B is not refunded within three months from the date of receipt of the application, then the applicant shall be entitled to interest after the expiry of three months from the date of receipt of the application at such rate not below 5% and not exceeding 30% as may be notified by the Central Government in the Official Gazette.

30. In the present case, the provisions of Section 11B of the Excise Act would not be applicable. This is for the reason that the appellant was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been clearly recorded by the Tribunal in the order dated 31-1-2017, which order has attained finality.

33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate of interest has not been prescribed, when revenue deposit is required to be refunded.

34. To be able to have some guidance regarding the rate of interest in case revenue deposit has to be refunded, the aid of the interest provisions under Section 11AA (which deals with interest on delayed payment of duty), Section 11BB (which deals with interest on delayed refunds under Section 11B(2) and Section 11DD (which deals with interest on the amount collected in excess of the duty) can be taken.

35. The Notification issued under Section 11AA of the Excise Act provides interest at the rate of fifteen per cent per annum. The notification is reproduced below :

Notification No. 15/2016-C.E. (N.T.), dated 1-3-2016

Notification Under Section 11AA

Rate of interest on delayed payment of duty (w.e.f. 1-4-2016). - In exercise of the powers conferred by section 11AA of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 5/2011-Central Excise (N.T.), dated the 1st March, 2011 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), vide, number GSR 136(E), dated the 1st March, 2011, except as respects things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of

interest at fifteen per cent per annum for the purpose of the said section.

2. This notification shall come into force from the 1st day of April, 2016.

36. The Notification issued under Section 11BB provides interest at the rate of six per cent per annum. It is reproduced below :

Notification No. 67/2003-C.E. (N.T.), dated 12-9-2003

Notification Under Section 11BB

Interest @ 6% per annum on delayed refunds. - In exercise of the powers conferred by section 11BB of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 17/2002-Central Excise (N.T.), dated the 13th May, 2002 [GSR 353(E), dated the 13th May, 2002], except as respect things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at six per cent per annum for the purpose of the said section.

37. The Notification issued under Section 11DD provides interest @ of 15% per annum on the amount collected in excess of duty. It is reproduced below :

M.F. (D.R.) Notification No. 68/2003-C.E. (N.T.), dated 12-9-2003

Notification Under Section 11DD

Interest @ 15% per annum on amounts collected in excess of duty. - In exercise of the powers conferred by section 11DD of the Central Excise Act, 1944 (1 of 1944) the Central Government hereby fixes the rate of interest at Fifteen per cent per annum for the purpose of the said section.

38. It would also be to pertain to refer to the Notification issued under Section 11AB of the Excise Act, as it existed prior to 8-4-2011. It provides interest @ 18% per annum. The said Notification is reproduced below :

"Notification No. 6/2011-C.E. (N.T.), dated 1-3-2011

Notification Under Section 11AB

Rate of interest on delayed payment of duty. - In exercise of the powers conferred by section 11AB of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 66/2003-Central Excise (N.T.), dated the 12th September, 2003 [GSR (E), dated the 12th September, 2003],

except as respects things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at eighteen per cent per annum for the purpose of the said section.

This notification shall come into force from the 1st day of April, 2011."

39. *In this connection reference can also made to the decisions of the Allahabad High Court in Pace Marketing Specialities and Ebiz.Com Private Limited, wherein after making reference to the decision of the Supreme Court in Sandvik Asia Ltd., the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.*

40. *In Riba Textiles, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.*

41. *In view for the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notifications issued under Sections 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12% per annum seems to be appropriate."*

C. Continental Engines Pvt Ltd. [2022 (382) ELT 522 (T-Del)]

"7. A perusal makes it clear that the amount of pre-deposit is to be refunded along with the interest which was not below 5% and shall not exceed 36%. No concept of any time-limit is being mentioned in the said provision. Hon'ble Apex Court also has settled this issue in the case of Sandvik Asia Ltd. reported as 2006 (196) E.L.T. 257 (S.C.) holding the assessee entitled for interest along with the refund of the amount which he was not liable to pay to the Department.

8. I also endorse the following findings of the Tribunal in the case of M/s. Parle Agro Pvt. Ltd. reported as 2021-TIOL-306-CESTAT-ALL = 2022 (380) E.L.T. 219 (Tri. - All.) as under :

"30.

31. Section 11D of the Excise Act deals with duties of excise collected from the buyer to be deposited with Central Government. It provides that every person who is liable to pay duty and has collected any amount in excess of the duty assessed from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

32. Section 11DD of the Excise Act deals with interest on the amount collected in excess of the duty. It provides that where an amount has been collected in excess of the duty from the buyer of such goods, the person who is liable to pay such amount shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent., and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette.

33.”

9. In view of the entire above discussion, I hold that the appellant was entitled for the disbursement of entire amount of Rs. 60 lakh being the amount of pre-deposit. The adjustment of Rs. 38,79,769/- was absolutely unreasonable and unjustified for being not pertaining to the impugned issue. Appellant is simultaneously entitled for the interest to be calculated at the rate of 12% from the date of payment of the said amount to be calculated in accordance with the table showing date of deposit as mentioned above.”

4.6 I find that all the above decisions are based on the decision of the Hon'ble Supreme Court in the case of Sandvik Asia. Interpreting the above decision of Hon'ble Supreme various benches of Tribunal have concluded in the favour of the grant of interest from the date of deposit and at the rate of 12% (though not provided by the statute or any Notification issued in terms of Section 11BB or Section 35FF of the Central Excise Act, 1944). The decision in case of Sandvik Asia has been considered by the Hon'ble Supreme Court in the case of Willowood Chemicals Pvt. Ltd. [2022 (60) G.S.T.L. 3 (S.C.)] and following has been observed:

"3.1 Details of 15 (Fifteen) refunds made to said writ petitioner showed that there was delay ranging from 94 to 290 days.

3.2 In the circumstances it was prayed inter alia :-

"(a) to issue writ of mandamus and/or any other appropriate writ(s) for directions is the Respondents for providing appropriate compensation as well as interest, for delay in the granting of refund;"

4. The first case arises out of Special Civil Application No. 18591 of 2018 filed by M/s. Willowood Chemicals Pvt. Ltd. submitting that said Writ Petitioner was entitled on the basis of Section 16 of the IGST Act read with Section 54 of the CGST Act for compensation in receipt of delayed payment as detailed in Annexure D of the petition, which in turn dealt with 12 refunds with delay ranging between 94 to 290 days.

The special civil application had thus prayed for appropriate compensation.

5. In both the petitions it was submitted that inaction leading to inordinate delay in granting refunds was per se arbitrary and that the inordinate delay impacted the working capacity of the Writ Petitioners thereby reducing their ability to conduct business and as such appropriate compensation ought to be awarded along with interest for delay.

The submissions were opposed by the Learned Counsel appearing for the Revenue.

6. The High Court considered the rival submissions in light of the statutory provisions and relied upon certain decisions including the decision of this Court in K.T. Plantation Pvt. Ltd. and Anr. v. State of Karnataka [(2011) 9 SCC 1], Sandvik Asia Ltd. v. Commissioner of Income Tax-I, Pune and Others [(2006) 2 SCC 508 = 2007 (8) S.T.R. 193 (S.C.) = 2006 (196) E.L.T. 257 (S.C.)] and Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals [(2014) 1 SCC 126 = 2017 (51) S.T.R. 236 (S.C.) = 2013 (296) E.L.T. 433 (S.C.)]. In its judgment dated 10-7-2019 which is under challenge in the second case, the High Court concluded :

"22. The position of law appears to be well settled. The provisions relating to an interest of delayed payment of refund have been consistently held as beneficial and non-discriminatory. It is true that in the taxing statute the principles of equity may have little role to play, but at the same time, any statute in taxation matter should also meet with the test of constitutional provision.

23. The respondents have not explained in any manner the issue of delay as raised by the writ applicants by filing any reply.

24. The chart indicating the delay referred to above speaks for itself.

25. In the overall view of the matter, we are inclined to hold the respondents liable to pay simple interest on the delayed payment at the rate of 9% per annum. The authority concerned shall look into the chart provided by the writ-applicants, which is at Page-30, Annexure-D to the writ application and calculate the aggregate amount of refund. On the aggregate amount of refund, the writ-applicants are entitled to 9% per annum interest from the date of filing of the GSTR-03. The respondents shall undertake this exercise at the earliest and calculate the requisite amount toward the interest. Let this exercise be undertaken and completed within a period of two months from the date of receipt of the writ of this order. The

requisite amount towards the interest shall be paid to the writ-applicants within a period of two months from the date of receipt of the writ of this order."

7. The first case was then disposed of on the same day with the following observations :-

"4. For the reasons assigned in the Special Civil Application No. 15925 of 2018, decided on 10-7-2019, this writ application is allowed to the extent that the writ applicants are entitled to the interest for the delayed payment at the rate of 9% per annum.

The authority concerned shall look into the chart provided by the writ applicants, which is at Page 30, Annexure D to the writ application and calculate the aggregate refund, the writ applicants are entitled to 9% per annum interest from the date of filing of the GSTR-38. The respondents shall undertake this exercise at the earliest and calculate the requisite amount towards interest. Let this exercise be undertaken and completed within a period of two months from the date of receipt of the writ of this order. The requisite amount towards the interest shall be paid to the writ applicants within a period of two months from the date of receipt of the writ of this order."

8. The appellant being aggrieved, preferred Review Petitions in both the cases. It was submitted inter alia :

"4. It is respectfully submitted that this Hon'ble Court has directed the respondent authority to pay simple interest on the delayed payment at the rate of 9% per annum from the date of filing of the GSTR-3B.

5. It is respectfully submitted that as per section 56 of the IGST Net Interest at the rate of not exceeding six percent may be given whereas by order dated 10-7-2011 this Hon'ble Court was pleased to give interest at the rate of 9%."

By separate orders dated 13-3-2020 passed in both the cases, the Review Petitions preferred by the appellant were dismissed.

9. The aforesaid judgments and orders passed by the High Court are under challenge in these appeals. The appellants do not dispute the eligibility of the respondents for receiving interest for delayed payment of claims but their submission is that in terms of the relevant statutory provision, the interest could be awarded at the rate of 6 per cent and not 9 per cent per annum. Considering the stand taken by the appellants, at the interim stage, this Court directed the appellants to make good payment of interest at

the rate of 6 per cent. Accordingly, the amounts representing interest at that rate have since then been made over.

.....

13. The instant cases have not arisen from any order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court and the cases are strictly within the scope of the principal provision of Section 56 and not under the proviso thereof. In light of these provisions, the question which arises for consideration is whether the High Court was justified in awarding interest at the rate of 9 per cent per annum.

14. Before we deal with the question, it must be stated that initially a bench of two Judges of this Court in Union of India and Others v. Orient Enterprises and Another [(1998) 3 SCC 501 = 1998 (99) E.L.T. 193 (S.C.)] had observed that a Writ Petition under Article 226 of the Constitution filed solely for relief for payment of interest on delayed refund would not be maintainable. For facility, the relevant portion from the said decision is quoted here :

"6. In Suganmal [AIR 1965 SC 1740 : 56 ITR 84 : 16 STC 398] this Court has laid down that a writ petition under Article 226 of the Constitution solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. This Court has made a distinction between a direction for refund given by way of consequential order in a case where the legality of the assessment is questioned and a case where the petition is only for the purpose of seeking refund. It has been observed:

"We do not consider it proper to extend the principle justifying the consequential order directing the refund of amount illegally realised, when the order under which the amounts had been collected has been set aside, to cases in which only orders for the refund of money are sought. The parties had the right to question the illegal assessment orders on the ground of their illegality or unconstitutionality and, therefore, could take action under Article 226 for the protection of their fundamental right, and the courts, on setting aside the assessment orders, exercised their jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this

principle and, therefore, hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right."

7. The Court has emphasised that there was no legal right in the appellant who had filed the writ petition to claim the refund under the relevant statute.

8. In the present case also till the insertion of Section 27A in the Act by Act 22 of 1995 there was no right entitling payment of interest on delayed refund under the Act. Such a right was conferred for the first time by the said provision. Act 22 of 1995 also inserted Section 28AA which provides for payment of interest on delayed payment of duty by a person who is liable to pay the duty. Thus at the relevant time there was no statutory right entitling the respondents to payment of interest on delayed refund and the writ petition filed by them was not for the enforcement of a legal right available to them under any statute. The claim for interest was in the nature of compensation for wrongful retention by the appellants of money that was collected from the respondents by way of customs duty, redemption fine and penalty. In view of the law laid down by this Court in *Suganmal* [AIR 1965 SC 1740: 56 ITR 84: 16 STC 398] a writ petition seeking the relief of payment of interest on delayed refund of the amount so collected could not, in our opinion, be maintained. The decisions on which reliance has been placed by *Shri Rawal* were cases where the legality of the orders requiring payment of tax or duty were challenged and the High Court in exercise of its jurisdiction under Article 226 of the Constitution, while setting aside the said orders, has directed the refund of the amount so collected with interest. The direction for payment of interest in these cases was by way of consequential relief along with the main relief of setting aside the order imposing the tax or duty. Those cases stand on a different footing and have no application to the present case. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondents before the High Court is dismissed. No order as to costs."

15. However, subsequently another Bench of two Judges of this Court in *Godavari Sugar Mills Ltd.* in more or less identical circumstances settled the issue and found the Writ Petition to be maintainable. The observations of this Court were :

"7. The High Court relying upon the decision of this Court in *Suganmal v. State of M.P.* [AIR 1965 SC 1740] has held that the prayer in the writ petition being one for payment of interest, it should be considered to be a writ petition filed to enforce a money claim and therefore, not maintainable. The observations in *Suganmal* [AIR 1965 SC 1740] related to a claim for refund of tax and have to be understood with reference to the nature of the claim made therein. The decision in *Suganmal* [AIR 1965 SC 1740] has been explained and distinguished in several subsequent cases, including in *U.P. Pollution Control Board v. Kanoria Industrial Ltd.* [(2001) 2 SCC 549] and *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* [(2004) 3 SCC 553] The legal position becomes clear when the decision in *Suganmal* [AIR 1965 SC 1740] is read with the other decisions of this Court on the issue, referred to below :

- (i) Normally, a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers. (Vide *Burmah Construction Co. v. State of Orissa* [AIR 1962 SC 1320 : 1962 Supp (1) SCR 242]).
- (ii) If a right has been infringed - whether a fundamental right or a statutory right - and the aggrieved party comes to the Court for enforcement of the right, it will not be giving complete relief if the Court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realised by the Government without the authority of law. (Vide *State of M.P. v. Bhailal Bhai* [AIR 1964 SC 1006]).
- (iii) A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the civil court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of the power conferred under Article 226 for payment of money. (Vide *Suganmal v. State of M.P.* [AIR 1965 SC 1740])
- (iv) There is a distinction between cases where a claimant approaches the High Court seeking the

relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment, etc. While a petition praying for mere issue of a writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition. (Vide Salonah Tea Co. Ltd. v. Supdt. of Taxes [(1988) 1 SCC 401 : 1988 SCC (Tax) 99 (2)]

- (v) *It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without the authority of law and there was no case of undue enrichment, there is no good reason to deny a relief of refund to the citizens. But even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case. (Vide U.P. Pollution Control Board v. Kanoria Industrial Ltd. [(2001) 2 SCC 549])*
- (vi) *Where the lis has a public law character, or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy under Article 226 of the Constitution will not be denied. (Vide Sanjana M. Wig v. Hindustan Petroleum Corporation Ltd. (2005) 8 SCC 242)*

We are therefore of the view that reliance upon Suganmal was misplaced to hold that the writ petition filed by the appellant was not maintainable.”

16. We, therefore, proceed to consider the merits. Turning to the basic question it must be noted that in the following cases, this Court dealt with the question as to payment of interest on the amount due by way of refund :

- (A) *In Modi Industries Ltd. and Another v. Commissioner of Income Tax and Another [(1995) 6 SCC 396] a Bench of three Judges of this Court was called upon to consider the*

effect of Section 214 of the Income-tax Act, 1961, and the questions which arose were set out as under :

"We shall now indicate how the controversy relating to the meaning of the expression "regular assessment" arises: an assessee pays advance tax according to his estimate of his income during the financial year relevant to the particular assessment year. He then files a return and an assessment is made under Section 143. It is found that he has paid more amount by way of advance tax than the amount of tax assessed. He will be refunded the extra amount with interest calculated from the first day of April of that assessment year to the date of assessment. No difficulty arises in such a case. The difficulty arises in the following situation: indeed it is one of the many situations - not satisfied with the order of assessment, the assessee files an appeal. The appeal is allowed as a consequence of which, the assessment order is revised. As a result of such revised assessment made pursuant to the appellate order, the tax refundable to the assessee becomes larger - say whereas, according to the original assessment he was entitled to refund of Rs. 10,000/-, he becomes entitled to a total refund of Rs. 15,000/- as a result of revised assessment made pursuant to the appellate order. The question is - on what amount and upto which date is the interest payable? On being elaborated, the question yields the following sub-questions :

- (a) is the interest payable only on Rs. 10,000/- and if so, whether the interest is payable till the date of first/original assessment or till the date of the revised assessment?*
- (b) is the interest payable on Rs. 15,000/- and if payable, is it payable only till the date of first/original assessment or till the date of the revised assessment?*

After considering various decisions on the point, the conclusion drawn by the Court was :

"The argument, which was upheld in some of the cases now under appeal, is that it will be inequitable if the assessee does not get interest on the amount of advance tax paid, when the amount paid in advance is refunded pursuant to an appellate order. This is not a question of equity. There is no right to get interest on refund except as provided by the statute. The interest on excess amount of advance tax under Section 214 is not paid from the date of payment of the tax. Nor is it paid till the date of refund. It is paid only upto the date of the regular assessment. No interest is at all paid on excess amount of tax collected by deduction at source. Before introduction of Section 244(1A) the assessee

was not entitled to get any interest from the date of payment of tax upto the date of the order as a result of which excess realisation of tax became refundable. Interest under Section 243 or Section 244 was payable only when the refund was not made within the stipulated period upto the date of refund. But, if the assessment order was reduced in appeal, no interest was payable from the date of payment of tax pursuant to the assessment order to the date of the appellate order.

Therefore, interpretation of Section 214 or any other section of the Act should not be made on the assumption that interest has to be paid whenever an amount which has been retained by the tax authority in exercise of statutory power becomes refundable as a result of any subsequent proceeding.

(Emphasis supplied)

(B) In Godavari Sugar Mills Ltd., a Bench of two Judges of this Court considered the question whether interest on the compensation amount at the rate of 9 per cent per annum could be awarded when the terms of Section 6 of the Maharashtra Agriculture Lands (Ceiling of Holdings) Act, 1961 prescribed payment of interest only at the rate of 3 per cent per annum. The discussion on the point was :

"9. There is considerable force in the submissions of Ms. Madhavi Divan, the Learned Counsel for the respondents that the decisions of the Bombay High Court in Krishnakumar [W.P. No. 83 of 1986, decided on 29-6-1991 (Bom.)] and Changdeo [W.P. No. 3805 of 2000, decided on 7-7-2000 (Bom.)] are not sound, as they completely ignore Section 26 of the Act, while awarding interest at 9% per annum on the belated payment of compensation.

10. The question as to when and in what circumstances, interest could be awarded on belated payment of compensation, was considered by this Court in Union of India v. Parmal Singh [(2009) 1 SCC 618]. This Court first referred to the general principle and then the exceptions thereto, as under : (SCC pp. 624-25, paras 12-13)

"12. When a property is acquired, and law provides for payment of compensation to be determined in the manner specified, ordinarily compensation shall have to be paid at the time of taking possession in pursuance of acquisition. By applying equitable principles, the courts have always awarded interest on the delayed payment of compensation in regard to acquisition of any property. ...

13. ... The said general principle will not apply in two circumstances. One is where a statute specifies or regulates the interest. In that event, interest will be payable in terms of the provisions of the statute. The second is where a statute or contract dealing with the acquisition specifically bars or prohibits payment of interest on the compensation amount. In that event, interest will not be awarded. Where the statute is silent about interest, and there is no express bar about payment of interest, any delay in paying the compensation or enhanced compensation for acquisition would require award of interest at a reasonable rate on equitable grounds."

This Court, dealing with an acquisition under the Defence of India Act, 1962 (which did not contain any provision either requiring or prohibiting payment of interest), upheld the award of interest at 6% per annum.

11. Section 24 of the Act requires the Collector, after possession of surplus land was taken over under Section 21(4) of the Act, to cause public notice requiring persons interested to lodge their claims. Section 25 of the Act provides for determination of compensation and apportionment thereof. Section 26 deals with mode of payment of amount of compensation and the same is extracted below :

"26. Mode of payment of amount of compensation. -

(1) The amount of compensation may, subject to the provisions of sub-section (3), be payable in transferable bonds carrying interest at three per cent per annum.

(2) The bonds shall be -

(a) of the following denominations, namely - Rs. 50; Rs. 100; Rs. 200; Rs. 500; Rs. 1000; Rs. 5000 and Rs. 10,000; and

(b) of two classes - one being repayable during a period of twenty years from the date of issue by equated annual instalment of principal and interest, and the other being redeemable at par at the end of a period of twenty years from the date of issue. It shall be at the option of the person receiving compensation to choose payment in one or other class of bonds, or partly in one class and partly in another.

(3) Where the amount of compensation or any part thereof, cannot be paid in the aforesaid denomination, it may be paid in cash." (Emphasis supplied)

The said section contemplates the payment of compensation with interest at 3% per annum in annual instalments spread over a period of 20 years or at the end of 20 years. It also contemplates payment being made either by transferable bonds or in cash. Sub-section (3) of Section 26 enabling payment of compensation by cash, in cases where it could not be paid by such bonds, does not disturb the rate of interest, which is 3% per annum for 20 years, provided in sub-section (1) thereof. We are therefore of the view that whether the payment is made by transferable bonds or by cash, the rate of interest can be only at 3% per annum for a period of 20 years from the date of taking possession.

12. The next question that requires consideration is about the rate of interest if the payment is not made even after 20 years, and whether it should be only at the rate of 3% per annum, even after 20 years. Section 26 is silent about the rate of interest payable, if the compensation is not paid within 20 years. We are therefore of the view that Section 26 contemplates payment of the compensation within 20 years from the date of taking possession with interest at 3% per annum; and for the period beyond 20 years, the said provision regarding interest will cease to apply and the general equitable principles relating to interest will apply; and interest can be awarded at any reasonable rate, in the discretion of the court. Interest at the rate of 6% per annum, beyond 20 years would be appropriate and payable on equitable principles."

(C) In Sandvik Asia Ltd., a Bench of two Judges of this Court was called upon to consider whether the inordinate delay of about 12 to 17 years in making a refund would entitle grant of interest. In the facts of that case, interest at the rate of 9 per cent per annum from 31-3-1986 to 27-3-1998 was granted. Even while doing so this Court observed :

"48. There cannot be any doubt that the award of interest on the refunded amount is as per the statutory provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation."

(D) In Gujarat Fluoro Chemicals, the correctness of the decision in Sandvik Asia Ltd. came up for consideration before a Bench of three Judges of this Court, and the matter was considered thus :

"3. In order to answer the aforesaid issue before us, we have carefully gone through the judgment of this Court in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508] and the order of reference. We have also considered the submissions made by the parties to the lis.

4. We would first throw light on the reasoning and the decision of this Court on the core issue in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508]. The only issue formulated by this Court for its consideration and decision was whether an assessee is entitled to be compensated by the Income Tax Department for the delay in paying interest on the refunded amount admittedly due to the assessee. This Court in the facts of the said case had noticed that there was delay of various periods, ranging from 12 to 17 years, in such payment by the Revenue. This Court had further referred to the several decisions which were brought to its notice and also referred to the relevant provisions of the Act which provide for refunds to be made by the Revenue when a superior forum directs refund of certain amounts to an assessee while disposing of an appeal, revision, etc. Since there was an inordinate delay on the part of the Revenue in refunding the amount due to the assessee this Court had thought it fit that the assessee should be properly and adequately compensated and therefore in para 51 of the judgment, the Court while compensating the assessee had directed the Revenue to pay a compensation by way of interest for two periods, namely, for Assessment Years 1977-1978, 1978-1979, 1981-1982, 1982-1983 in a sum of Rs. 40,84,906 and interest @ 9% from 31-3-1986 to 27-3-1998 and in default, to pay the penal interest @ 15% per annum for the aforesaid period.

5. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assessees and also by the Revenue. They are of the view that in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508] this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

6. As we have already noticed, in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508] this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that

there was an inordinate delay on the part of the Revenue in refunding a certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same, not an interest on interest."

17. Since reliance was placed by the High Court on the decision of the Constitution Bench of this Court in *K.T. Plantation Pvt. Ltd. and Anr.*, we must note that what arose for consideration in that case, was the constitutional validity of the *Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996*, and Section 110 of the *Karnataka Lands Reforms Act, 1996* and certain notifications issued by the State Government. The questions which arose for consideration were set out in paragraph 25 of the decision as under :-

"Whether the relevant provisions violated the basic structure of the Constitution in so far as they conferred power on the executive government for withdrawal of exception without hearing and without reasons and whether the provisions of the Acquisition Act were protected by Article 31(A) of the Constitution and whether they were violative of Article 300(A) of the Constitution?"

After dealing with these questions, the reference was answered thus :

We, therefore, answer the reference as follows :

(a) Section 110 of the *Land Reforms Act* and the Notification dated 8-3-1994 are valid, and there is no excessive delegation of legislative power on the State Government.

(b) Non-laying of the Notification dated 8-3-1994 under Section 140 of the *Land Reforms Act* before the State Legislature is a curable defect and it will not affect the validity of the notification or action taken thereunder.

(c) The *Acquisition Act* is protected by Article 31A of the Constitution after having obtained the assent of the President and hence immune from challenge under Article 14 or 19 of the Constitution.

(d) There is no repugnancy between the provisions of the *Land Acquisition Act, 1894* and the *Rocrich and Devika Rani Rocrich Estate (Acquisition & Transfer) Act, 1996* (in short "the *Acquisition Act*"), and hence no assent of the President is warranted under Article 254(2) of the Constitution.

(e) Public purpose is a precondition for deprivation of a person from his property under Article 300A and the right

to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

(f) Statute, depriving a person of his property is, therefore, amenable to judicial review on grounds hereinbefore discussed."

The aforestated answers and especially one at serial (e) show the context in which the issue of compensation was considered by this Court, which is completely distinct and different from the issue with which we are presently concerned.

*18. Coming back to the present cases, the relevant provision has prescribed rate of interest at 6 per cent where the case for refund is governed by the principal provision of Section 56 of the CGST Act. As has been clarified by this Court in Modi Industries Ltd. and Godavari Sugar Mills Ltd. wherever a statute specifies or regulates the interest, the interest will be payable in terms of the provisions of the statute. Wherever a statute, on the other hand, is silent about the rate of interest and there is no express bar for payment of interest, any delay in paying the compensation or the amounts due, would attract award of interest at a reasonable rate on equitable grounds. It is precisely for this reason that paragraph 9 of the decision in Godavari Sugar Mills Ltd. accepted the submission made by the Learned Counsel for the respondents and confined the rate of interest to the prescription made in the statute. The award of interest at a rate in excess of what was prescribed by the statute was only for a period beyond 20 years where the matter was not strictly covered by the statute and as such it would be in the realm of discretion of the Court. It must also be noted here that the inordinate delay of up to 17 years in making refunds was a special circumstance when this Court was persuaded to accept grant of interest at the rate of 9 per cent per annum in Sandvik Asia Ltd. **Even while doing so, the observations made by this Court in Paragraph 48 of the decision are quite clear that "the award of interest in refund and amount must be as per the statutory provisions of law and whenever a specific provision has been made under the statute such provision has to govern the field."** The subsequent decision of the Bench of three Judges in Gujarat Fluoro Chemicals noticed that the grant of interest at the rate of 9 per cent was in the facts of the case in Sandvik Asia Ltd.*

19. Since the delay in the instant case was in the region of 94 to 290 days and not so inordinate as was the case in

Sandvik Asia Ltd., the matter has to be seen purely in the light of the concerned statutory provisions. In terms of the principal part of Section 56 of the CGST Act, the interest would be awarded at the rate of 6 per cent. The award of interest at 9 per cent would be attracted only if the matter was covered by the proviso to the said Section 56. The High Court was in error in awarding interest at the rate exceeding 6 per cent in the instant matters."

4.7 From the above decision of the Hon'ble Supreme court it is evident that when the statute is silent about the interest to be paid on deposits made in particular situation then the courts have leverage to decide upon the interest, but in cases where the statute provides for the payment of interest then in that case the courts should follow grant interest only in terms of the statute. Undisputedly in the present case the statute provided for the interest to be paid on the deposits made in terms of Section 35F at the time when the deposit was made. We find that the issue involved in the present case is no longer *res-integra* and is squarely covered by the decisions of Tata Iron and Steel Company [2013 (295) E.L.T. 526 (Jhar.)] Hon'ble Jharkhand High Court observed as follows:

"12. Interest can be awarded on the money withheld by a party on the basis of either statutory provision of law or by virtue of contractual liability of payment of interest. In other case, the Court may award interest as damages to the aggrieved party on account of illegal retention of money by the party withholding the money. So far as rate of interest is concerned, it is governed by the statutory provision in civil suits when interest claimed is neither as per statutory provision for interest, nor is a contractual interest. In the third category, i.e. when interest is awarded as damages for illegal retention of money, rate of interest is fixed by the courts. When one party is directed to pay the amount to other party by the order of the court, which may or may not contain conditions of payment of interest. If the order contains condition of payment of interest, then irrespective of whether there is statutory provision for payment of interest or any statutory restriction of rate of interest,

interest beyond that can be awarded in terms of the order, because of which one party has deposited the amount with the other. This has been laid down by Hon'ble Supreme Court in the case of Tata Refractories Ltd. &Ano. (supra).

13. Here in this case, the petitioner approached this Court and in the petitioner's own writ petition, this Court passed an order that no further steps in pursuance of Annexure-8 creating liability and demand against the petitioner shall be taken during the pendency of the writ petition, if the petitioner deposits a sum of Rs. one crore within four months from the date of the order. The petitioner not satisfied with the order dated 30th April, 1986 passed in CWJC No. 219/1986R approached Hon'ble Supreme Court by filing Civil Appeal No. 2796/1986, wherein Hon'ble Supreme Court modified the order and permitted the petitioner to deposit Rs. 50 lacs in two instalments on or before given dates and permitted the petitioner to furnish bank guarantee of Rs. 50 lacs. In the above orders of the High Court and of Hon'ble Supreme Court, there is no condition of payment of interest over Rs. 50 lacs which was deposited by the writ petitioner. Therefore, in case in hand the Department did not recover the amount of Rs. 50 lacs from the petitioner but it was deposited by the petitioner in terms of the order passed by the Court and the Department accepted the said amount because of the order passed by this Court and Supreme Court. Thereafter the writ petition of the petitioner was allowed, vide judgment dated 19th August, 1988. Union of India, Revenue, challenged the judgment of the learned Single Judge dated 19th August, 1988, in L.P.A. No. 71/1988R, wherein interim order dated 7th February, 1989, was passed, which we have already referred above and the Division Bench stayed the judgment of the learned Single Judge dated 19th August, 1988, with the condition that the Department will refund the deposited amount to the petitioner with interest @ 15% per annum, if the Department fails in L.P.A. So the condition of award of

interest for the first time came into operation by the order dated 7th February, 1989. Ultimately L.P.A. No. 71/1988R was allowed by the Division Bench of this Court and therefore, Revenue was not supposed to repay the deposited amount and the interest over it in terms of the interim order and was entitled to recover more amount as the amount of Rs. 1 crore was not the total liability of the writ petitioner as has been admitted by the learned counsel for the petitioner that the amount of Rs. 1 crore was not the total liability. Hon'ble Supreme Court allowed Civil Appeal No. 1460/1990 preferred by the writ petitioner on 22-1-1997. Therefore, after 22-1-1997 there is no justification for the respondents to retain the money which they got by virtue of the order passed by this Court in the writ petition on 30th April, 1986.

14. The facts have been referred in detail because of the peculiar reason, which shows that the respondent-Revenue either did not or could not recover the demanded amount from the petitioner and the petitioner approached this Court by filing writ petition, being CWJC No. 219/1986R. The petitioner, to get the benefit of the interim order dated 30th April, 1986 passed in the petitioner's writ petition, CWJC No. 219/1986R, was supposed to deposit Rs. 1 crore, but since the order of this Court dated 30th April, 1986 was modified by Hon'ble Supreme Court, vide order dated 12th August, 1986, the petitioner deposited Rs. 50 lacs in two instalments. Therefore, the amount, which was deposited by the writ petitioner, was not illegally recovered by the Department in any manner but it was the petitioner, who deposited the amount obviously to take the benefit of the interim order, may it be under the threat of recovery of the amount by the respondents. In the present facts, the petitioner deposited Rs. 50 lacs to take the benefit of the interim order and it is not the case of illegal recovery of the amount by the respondents.

15. *The petitioner's writ petition, CWJC No. 219/1986R, was allowed by this Court but on 7th February, 1989, operation of the judgment dated 19th August, 1988 passed in CWJC No. 219/1986R was stayed by the Division Bench of this Court. Therefore, the respondents were not liable to refund the amount in view of the interim order. However, the interim order dated 7th February, 1989 has put a condition upon the Department that in case appellant, Union of India/Department, fails in appeal, then they will refund the amount with 15% interest. However, the Department succeeded in L.P.A. No. 71/1988R and the writ petition of the petitioner was dismissed. Therefore, after dismissal of the writ petition of the petitioner by the judgment passed in L.P.A. No. 71/1988R, the Department was not supposed to refund the amount as well as was not liable to pay interest over that amount.*

16. *Hon'ble Supreme Court, in writ petitioner's Civil Appeal No. 1460/1990, set aside the judgment of the Division Bench of this Court dated 15-4-1989, vide judgment dated 22nd January, 1997. Therefore, after 22-1-1997, the respondents were under legal obligation to repay the deposited amount forthwith, which the respondents did not do and therefore, retained the money illegally from 22-1-1997. So far as interest from 22-1-1997 is concerned, the petitioner is certainly entitled to interest over the deposited amount.*

17. *However, in the above facts of the case, when the petitioner deposited the amount in compliance of the order of this Court and to take benefit of the interim order, it cannot be said that the respondents recovered the amount illegally. This situation is peculiar in the facts of this case and may not be applied in all cases, where there may be absolutely illegal demand raised by the Department without any authority of law, which is found to be absolutely illegal by the court of law when challenged in the court of law.*

Here in this case, the petitioner succeeded in the first round of litigation before the learned Single Judge, but lost the battle in the second round before the Division Bench and ultimately succeeded in third round before the Supreme Court. Therefore, it cannot be said that the respondents had no legal right to raise the demand at the time when the position of law was not very clear because of the reason that ultimately the view taken by the respondent-Department was found to be erroneous. Not only this, the Department succeeded before the Division Bench of this Court. Therefore, there was some merit in the Department's contention at the time of taking decision of raising demand, which was though ultimately found not legal, but cannot be said to be a forceful recovery from the writ petitioner in the peculiar facts of this case.

18. The judgments, which have been relied upon by the parties, especially the judgment rendered in the case of Tata Refractories Ltd. & Ano. (supra), have already answered one issue that award of interest cannot be confined to the statutory limit of interest and it can be the interest at the rate as ordered by the Court, which may be in excess of the statutory limit and for this, there is no dispute, which can be raised by the Department. However, in the judgments of O.N.G.C Ltd., Redihot Electricals and Jyoti Limited, Baroda (supra), it has been held that when Department recovers the amount for no justifiable reason or illegally or without authority of law, then in that situation, the Court can award interest. For this legal position also, there is no dispute but the condition precedent is that there must be totally unjustifiable recovery of the amount or it should be illegal recovery including recovery of the amount from the citizen in colourable exercise of power, interest can be awarded by the Court. This interest is awarded following the general principle of law that one, who deprives other from his property (money), is liable to refund the property/money with reasonable compensation. When it is a

matter of illegal recovery and consequent retention of money, which is not governed by the statutory award of interest and is not be governed by contractual obligation of interest, then in that situation the Court determines the rate of interest, which can be just and equitable compensation for the person who has been deprived of his property/money and in that situation, it is called damages for illegal retention of money. Such legal damages on account of illegal retention of money is normally quantified by adopting the reasonable rate of levy of interest, which ordinarily one would have got, had he retained the money and invested the same for his own use. Such type of award of damages equal to the interest is well recognized as an award of compensation to the aggrieved. However, we are of the considered opinion that such general principles blankedly cannot be applied to the cases where Government or Revenue authority without any mala fide or oblique motive raises demand and recovers money from the citizens, which is not found to be by colourable exercise of power. In that situation, it is difficult to apply the above referred principle of law because of the presumption that the lawful authority acted fairly and legally and for the reason that the Revenue have no discretion in the matter of using the money recovered by it, which is available with any private persons/firm, company or any legal entity. The amount recovered by the Revenue and the Government authorities, etc., may not be utilized by them because of the restriction imposed by the statutory provisions as well as in view of limited power vested in those authorities, such amount are utilized for various welfare purposes also in the best public interest. The Government and such other authorities even, and normally cannot earn interest from the recovered amount. In that situation, the Court may look into the facts of each case for award of interest. At this juncture, we may make it clear that such compensation is quantified upon finding that the Department is liable to pay

interest and the date from which the Department is liable to pay interest is also required to be determined first and thereafter interest can be awarded according to the best judgment of the Court, after hearing the parties. Here in this case, the petitioner has made out a case for award of interest from 22-1-1997 and not prior to that because of the reason which we have already mentioned, which we may recapitulate that the respondents themselves have not recovered the amount and the petitioner deposited the amount to take benefit of the interim order. Initially, in the order dated 30th April, 1986, the Court did not put any condition of payment of interest and Hon'ble Supreme Court, in the order dated 12th August, 1986 modifying the order dated 30th April, 1986, did not put any condition for payment of interest over the deposited amount and the condition of payment of interest was put in the order dated 7th February, 1989 in L.P.A. filed by the Union of India against the judgment of learned Single Judge dated 19th August, 1988, quantifying the rate of interest @ 15% and thus, the benefit of that order is not available to the writ petitioner because of the reason that L.P.A. was allowed and the condition of payment of interest @ 15% was subject to failure of the appellant, Union of India, in succeeding L.P.A. and Union of India/Department not failed but succeeded in L.P.A. In Civil Appeal No. 1460/1990 before the Hon'ble Supreme Court, no prayer was made by the petitioner for award of interest over the deposited amount and therefore, no such relief was granted by Hon'ble Supreme Court in the petitioner's Civil Appeal No. 1460/1990. Therefore, claim of the writ petitioner for interest over the amount deposited by it from the date of its deposit cannot be justified in the facts of this case referred above, nor the petitioner can claim the benefit of the condition imposed by the Division Bench of this Court in L.P.A. because that order has merged in the final order passed by the Division Bench and the respondent- Union of India did not fail in the appeal.

Therefore, it was for the writ petitioner to seek relief of award of interest from the Supreme Court in Civil Appeal from the date of deposit or from the date of judgment of Single Bench, i.e. prior to decision by Supreme Court, and that has not been prayed by the writ petitioner, which may be for obvious reason that the deposits were made to take benefit of the interim order by the petitioner.

19. In view of the above reasons, we are of the considered opinion that the writ petitioner is entitled to interest from the date of the judgment of Hon'ble Supreme Court dated 22-1-1997 till the refund of the amount of Rs. 50 lacs on 12-1-1999. So far as quantification is concerned, we are of the considered view that some help we may take from the interim order, wherein 15% interest has been allowed by the Division Bench of this Court over the deposited amount and therefore, for quantification it is ordered that the petitioner is entitled to interest @ 15% over Rs. 50 lacs from 22-1-1997 to 12-1-1999."

4.8 In the case of Dr. Poornima Advani & ANR. V/s Government of NCT & ANR. in Civil Appeal No.7643 of 2025, Hon'ble Supreme Court has held as follows:-

"25. If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term "restitution" is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.

26. In Hari Chand v. State of U.P., 2012 (1) AWC 316, the Allahabad High Court dealing with similar controversy in a stamp matter held that the payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. The High Court directed the State to pay interest @ 8% for the period, the money was so retained i.e. from the date of deposit till the date of actual repayment/refund.

27. In the case of *O.N.G.C. Ltd. v. Commissioner of Customs Mumbai*, JT 2007 (10) SC 76, (para 6), the facts were that the assessment orders passed in the Customs Act creating huge demands were ultimately set aside by this Court. However, during pendency of appeals, a sum of Rs. 54,72,87,536/- was realized by way of custom duties and interest thereon. In such circumstances, an application was filed before this Court to direct the respondent to pay interest on the aforesaid amount w.e.f. the date of recovery till the date of payment. The appellants relied upon the judgment in the case of *South Eastern Coal Field Ltd. v. State of M.P.*, (2003) 8 SCC 648. This Court explained the principles of restitution in the case of *O.N.G.C. Ltd.* (supra) as under:-

"Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to *Pure Helium Indian (P) Ltd. v. Oil & Natural Gas Commission*, JT 2003 (Suppl. 2) SC 596 and *Mcdermott International Inc. v. Burn Standard Co. Ltd.* JT 2006 (11) SC 376." (Emphasis supplied)

COMPENSATION:

28. The word 'Compensation' has been defined in *P. Ramanatha Aiyar's Advanced Law Lexicon*, 3rd Edition 2005, page 918 as follows:-

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased some thing given or obtained as an equivalent the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value a recompense given for a thing received recompense for the whole injury suffered remuneration or satisfaction for injury or damage of every description remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly, and proximately caused by at breach of contract or

duty; remuneration or wages given to an employee or officer."

29. In the case of Union of India through Director of Income Tax v. Tata Chemicals Ltd., (2014) 6 SCC 335, this Court held that when the collection is illegal, the Revenue is obliged to refund such amount with interest as money so deposited was retained and enjoyed by it. No discrimination can be shown between the assessee and Revenue in paying interest on the refund of tax. Money received and retained without right, carries with it the right to interest. There being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, the Government cannot shrug off its apparent obligation to reimburse the deductors lawful monies with accrued interest for the period of undue retention of such monies. Obligation to refund money received and retained without right implies and carries with in the right to interest.

4.9 The said decision of the Hon'ble Supreme Court has been rendered in a situation where there was no provision for refund of the amount deposited or payment of any interest on the amount deposited in absence of any provision the Hon'ble Supreme Court has gone by the theory of interest to calculate that it is on account of holding of the capital of someone. However, the present case is not of the same type. In the present case the interest alongwith the rate of interest has been prescribed by the statute. The Hon'ble Supreme Court in the case of M/s Isolux Corsan India Engineering & Construction Pvt. Ltd. V/s Commissioner of Customs (Pre.), Lucknow in Customs Appeal No.70540 of 2024 having Final Order No.70092 of 2025 dated 27.02.2025. The relevant paras are reproduced below:-

"35. It was, therefore, not correct on the part of the appellants to contend that there was no provision for payment of interest on delayed refund of duty drawback. That apart, it is wholly untenable for the appellants to contend that refund of duty drawback was granted to the respondent as a concession, not to be treated as a precedent. As we have seen, respondent is entitled to refund of duty drawback as a deemed export under the Duty Drawback Scheme. The applications for refund were made in 1996. Decision to grant refund of duty drawback was taken belatedly on 07.10.2002 whereafter the payments were made by way of cheques on 31.03.2003 and 20.05.2003.

Admittedly, there was considerable delay in refund of duty drawback.

36. As we have already examined, under sub-section (1) of Section 75A of the Customs Act, where duty drawback is not paid within a period of three months from the date of filing of claim, the claimant would be entitled to interest in addition to the amount of drawback. This section provides that the interest would be at the rate fixed under Section 27A from the date after expiry of the said period of three months till the payment of such drawback. If we look at Section 27A, the interest rate prescribed thereunder at the relevant point of time was not below ten percent and not exceeding thirty percent per annum.

37. The Central Board of Excise and Customs vide its notification bearing No.32/1995 (NT) – Customs dated 26.5.1995 had fixed the rate of interest at fifteen percent for the purpose of Section 27A of the Customs Act. The High Court while awarding interest at the rate of fifteen percent per annum, however, did not refer to such notification; rather, there was no discussion at all as to why the rate of interest on the delayed refund should be fifteen percent. Therefore, at the first glance, the rate of interest awarded by the High Court appeared to be on the higher side and without any reason.

38. Be that as it may, having regard to our discussions made above, we have no hesitation in holding that the respondent was entitled to refund of duty drawback. Appellants had belatedly accepted the said claim and made the refund. Since there was belated refund of the duty drawback to the respondent, it was entitled to interest at the rate which was fixed by the Central Government at the relevant point of time being fifteen percent.”

4.10 Thus in terms of the above decisions undisputedly appellant is entitled to interest on the amounts refunded to him after the dispute was finally determined in their favour by the order of the adjudicating authority in remand proceedings. However the interest as per these orders would necessary be governed by the provisions of section 11BB and should be paid after expiry of three months from the date of receipt of the application for refund and not from the date of deposit as has been held by the original authority in the orders dated

09.07.2019 and 18.07.2019. Even if it is held that appellant was entitled to refund of interest as per section 35 FF then also the interest could not have been paid from the date of deposit, in view of the Proviso to section 35FF, which provided that in respect of the amounts deposited prior commencement of Finance (No. 2) Act, 2014 the provisions as contained in erstwhile section 35FF shall apply. Section 35FF prior to amendment made by Finance Act, 2014 read as follows:

"35FF Interest on delayed refund of amount deposited under the proviso to section 35F.--

Where an amount deposited by the appellant in Pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."

4.11 Hon'ble Supreme Court has in case of **Ranbaxy laboratories Ltd. [2011 (273) E.L.T. 3 (S.C.)]** held as under:-

"12. Thus, ever since Section 11BB was inserted in the Act with effect from 26th May 1995, the department has maintained a consistent stand about its interpretation. Explaining the intent, import and the manner in which it is to be implemented, the Circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11B(1) of the Act.

13. We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra). In the said case, while dismissing the special leave

petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under :

"Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in 2004 (170) E.L.T. 4 vide Para 33 :

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under subsection (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

The special leave petition is dismissed. No costs."

14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said

Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.

4.12 In case of Goldy Engineering Works [2023 (10) CENTAX 189 (Del)] Hon'ble Delhi High Court has observed as follows in respect of the decisions granting the interest in any manner other than as prescribed by the statute:

"3. For the sake of brevity, the Court deems it apposite to notice the facts as they obtain in the writ petition filed by M/s Goldy Engineering Works vs. Commissioner of Central Excise & Anr.³ On 27 July 2006, a Show Cause Notice⁴ is stated to have been issued to the petitioner, its proprietor, one M/S Aay Kay Engineering Works and its proprietor, in respect of certain goods which had been seized. The aforesaid SCN was followed by another SCN dated 29 January 2007 in terms of which the Department raised a demand for additional duty as well as proposing penal action again against the noticees for having violated the provisions of an exemption notification. The petitioner asserts that during the pendency of those proceedings, it was also forced to deposit an amount of Rs. 20,00,000. The SCNs were ultimately finalized in terms of the order in original dated 08 February 2008.

4. In terms of the aforesaid order, the Additional Commissioner confirmed the duty demand of Rs. 45,31,574 /- under Section 11A of the 1944 Act and held the petitioners liable to pay the same along with interest thereon in accordance with Section 11AB of the 1944 Act. Further directions were framed for confiscation of cash

amounting to Rs. 44,96,000/- and the imposition of monetary penalties amounting to Rs. 45,31,574/-. The amount of Rs. 20,00,000/- which had been deposited by the petitioners during the pendency of the SCN proceedings was also appropriated against the demands which stood crystallized.

5. Aggrieved by the aforesaid order, the petitioner preferred an appeal. That appeal came to be allowed in toto by the Appellate Authority in terms of its judgment dated 31 December 2008. The Department is stated to have preferred an appeal against that decision before the Customs, Excise and Service Tax Appellate Tribunal⁵ which ultimately came to be dismissed on 27 September 2016. Admittedly, while an interim order operated on that appeal, the same came to be discharged once the appeal was dismissed by the CESTAT.

6. The petitioner thereafter and more particularly on 14 November 2016 filed a formal application for refund which had accrued in terms of the order passed by the Appellate Authority on 31 December 2008 and consequent to the challenge thereto being negated by the CESTAT in terms of its judgment of 27 September 2016.

21. For the purposes of evaluating the submissions aforesaid, it would be apposite to notice the statutory provisions which apply. The issue of refund and the interest payable in case of delay is governed by Sections 11B and 11BB. The said provisions are reproduced hereinbelow: -

"Section 11-B. Claim for refund of [duty and interest, if any, paid on such duty].—

Section 11-BB. Interest on delayed refunds.— ...

22. It would also be pertinent to notice Sections 35F and 35FF in order to highlight the distinction between the statutory scheme underlying refund of duty and the return of a pre-deposit made in connection with an appeal that

may be preferred. Those two provisions are extracted hereinbelow: -

"Section 35-F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.—The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal—

(i) under sub-section (1) of Section 35, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the [Principal Commissioner of Central Excise or Commissioner of Central Excise];

(ii) against the decision or order referred to in clause (a) of subsection (1) of Section 35-B, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of subsection (1) of Section 35-B, unless the appellant has deposited ten per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Provided that the amount required to be deposited under this section shall not exceed Rupees Ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.

Explanation.—For the purposes of this section "duty demanded" shall include,—

(i) amount determined under Section 11-D;

(ii) amount of erroneous CENVAT credit taken;

(iii) amount payable under Rule 6 of the CENVAT Credit Rules, 2001 or the CENVAT Credit Rules, 2002 or the CENVAT Credit Rules, 2004.]”

“Section 35-FF. Interest on delayed refund of amount deposited under Section 35-F.—Where an amount deposited by the appellant under Section 35-F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount:

Provided that the amount deposited under Section 35-F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 35-FF as it stood before the commencement of the said Act.”

23. The Court, at the outset notes, that Section 11B(1) in clear and unambiguous terms contemplates the making of an application for refund being made by any person claiming refund of any duty of excise and interest paid on such duty. The claim of refund insofar as the petitioner is concerned arose in the backdrop of the order in original coming to be set aside in appeal. The petitioner appears to have made an application for refund ultimately and only after the departmental appeal before the CESTAT came to be dismissed.

24. We deem it apposite to observe that the mere pendency of an appeal or an order of stay that may operate thereon would not detract from the obligation of any person claiming a refund making an application as contemplated under Section 11B(1) within the period prescribed and computed with reference to the “relevant date”. We do so observe in

light of the indubitable principle that an order of stay that may operate in an appeal does not efface the demand or the obligation of refund that may have sprung into existence. It merely places the enforcement of the order appealed against in abeyance. The order of stay would, in any case, be deemed to have never existed once the appeal comes to be dismissed.

25. We further note that the subject of interest on delayed refund which is governed by Section 11BB itself prescribes the starting point for payment of interest on delayed refunds to be the date when an application under Section 11B(1) is received. On a conjoint reading of Sections 11B and 11BB of the 1944 Act, therefore, we come to the irresistible conclusion that interest on delayed refund is clearly dependent upon the making of a formal application as stipulated by Section 11B of the 1944 Act.

26. We also find merit in the contention canvassed by Ms. Narain who had submitted that a refund of duty and interest paid thereon is liable to be viewed as distinct from a pre-deposit that may be made in compliance with Section 35F of the 1944 Act. The Circular of the Board too strikes an identical position when it is stated that a deposit which is made in compliance with a statutory pre-condition for the preferment of an appeal cannot be viewed as "duty". It is the aforesaid aspect which appears to have weighed with the Board in proceeding to formulate its directive for refunds being effected immediately upon an appeal coming to be decided in favour of the assessee and not being made dependent upon any application being made in respect thereof.

27. The aforesaid position stands further fortified when one reads Section 35FF of the 1944 Act. As would be evident from a reading of that provision, Section 35FF as distinct from Section 11B does not require the making of a formal application by the assessee. In fact and contrary to Section

11B, the said provision uses the expression "...there shall be paid to the appellant interest....". Thus, the language of Section 35FF is an embodiment of the manifest obligation of the respondents to refund the pre-deposit consequent to an order passed by the Appellate Authority notwithstanding an application having not been made by the depositor.

28. The distinction between Sections 11B and 35FF is also evident when one bears in mind the language employed in the latter and which stipulates that interest would commence from the date when the amount deposited by the appellant under Section 35F is required to be refunded consequent to an order passed by the Appellate Authority. Section 35FF thus indicates that interest would commence from the date of the order of the Appellate Authority as distinct from the making of an application which is prescribed to be the starting point insofar as Section 11BB of the 1944 Act is concerned.

29. Regard must also be had to the fact that in the case of refund of duty, it is also incumbent upon the assessee to declare and establish that the burden of tax has not been passed on. Absent that declaration, any refund that may be made would itself amount to the assessee being unjustly enriched. The making of an application and a declaration to the aforesaid effect is thus not merely an empty formality. This too appears to reinforce the imperatives of an application being formally made before a claim for refund is considered.

30. That only leaves the Court to consider the decisions which were cited by Mr. Mishra for our consideration. However, before proceeding to do so, we deem it pertinent to enter the following prefatory observations. A levy of interest on refund must undoubtedly follow where it is found that the amount has been unjustifiably retained or remitted with undue delay. The respondents cannot be permitted to retain moneys which are otherwise not due or are otherwise

liable to be returned. The solitary question which stands raised in these matters is the date from which that interest would flow. In Shri Jagdamba Polymers, the High Court on facts had found that the refund was inordinately delayed even though a claim for the same had been promptly lodged. This is clearly evident from Para 7 of the report. The said decision is thus clearly not an authority for the proposition that a refund must automatically follow de hors the requirements of Sections 11B and 11BB.

31. In eBIZ, the Allahabad High Court was not dealing with a claim for refund of "duty" but an amount deposited in the course of investigation. The High Court further went on to hold that even in the absence of a statutory provision if it be found that tax or duty had been wrongly collected, it would be liable to be refunded. There cannot be a dispute with regard to the aforementioned general proposition. What we seek to emphasize here is that in the present case, the issue of refund is duly regulated by two statutory provisions whose prescriptions would necessarily have to be adhered to. However, for reasons aforementioned we find ourselves unable to endorse the observation appearing in Para 34 of the report where a deposit of duty and a pre deposit were considered to be identical concepts. As was noted hereinbefore, a pre-deposit made as a condition of filing an appeal is in any case not considered to be "duty" even by the respondents.

32. The decision of this Court in Team HR Services, had frowned upon the distinction sought to be advocated by the respondents there between a deposit made under protest and a pre-deposit made in connection with an appeal. As would be further evident from a reading of Paras 14 and 15 the counsel appearing for the respondents had also failed to draw the attention of the Court to any statutory provision which governed the issue of refund. The aforesaid decision is thus clearly distinguishable especially when undisputedly,

in the present matters the issue of refund is governed by the provisions of Sections 11B and 11BB.”

4.13 Similar view has been expressed by the division bench in case of HCL Infosystems Ltd [Final Order No 70233/2025 dated 01.05.2025 in Excise Appeal No.70619 of 2021]

4.14 In view of the above discussions I do not find any merits in this appeal.

4.15 Commissioner (Appeals) following certain decisions has held that interest will be payable to appellant for the period at the rate as per Section 11BB on the amount deposited by the appellant on 01.07.2008 for the period from the date of deposit to 31.10.2012. Revenue has not filed any appeal against this portion of the order. Counsel for appellant submitted during the course of argument that jurisdictional authorities have not implemented this part of order even upto now. I find merit in this submission, jurisdictional authorities if not challenging any part of the order which is in the favour of the appellant are duty bound to implement the same.

5.1 Appeal is dismissed.

(Pronounced in open court on 22.05.2025)

**Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

Nihal