

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

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70064 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-560-20-21 dated 04/09/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Yadu Sugar Ltd.,
(Village Sujanpur Ranet Chauraha,
Bisauli, Badaun-243720)

.....Appellant

VERSUS

Commissioner of Central Excise &

CGST, Greater Noida

....Respondent

(Wegman's Business Part, KP-III, Greater Noida-201306)

APPEARANCE:

Shri Aalok Arora, Advocate for the Appellant

Shri Manish Raj, Authorised Representative for the Respondent

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

FINAL ORDER NO.70319/2025

DATE OF HEARING : 08 April, 2025
DATE OF PRONOUNCEMENT : 23 May, 2025

SANJIV SRIVASTAVA:

This appeal is directed against order in appeal No NOI-EXCUS-002-APP-560-20-21 dated 04.09.2020 of the Commissioner (Appeal) CGST Noida. By the impugned order, order in original No. R-18/CE Refund/Yadu Sugar/2019-20 dated 10.01.2020, partly rejecting the refund claim filed by the appellant has been upheld.

2.1 Appellant is engaged in manufacture of V P Sugars & Molasses falling under Chapter 17011490 & 17031000 of the First Schedule to the Central Excise Tariff Act, 1985. They were

also availing the CENVAT Credit facility as per CENVAT Credit Rules, 2004.

2.2 During course of audit of the records of the appellant it was observed that appellant had during period June 2010 to February 2013, availed Cenvat Credit amounting to Rs 3,33,179/- on the Welding Electrodes which was not admissible in terms of the amendments made to definition of inputs (Rule 2 (k) of CENVAT Credit Rules, 2004) by substitution as per notification No 03/2011-CE (NT). Cenvat Credit on these electrodes was also not admissible as capital goods.

2.3 A show cause notice dated 27.05.2015 was issued to the appellant proposing to deny the inadmissible CENVAT credit and to recover the same along with interest. Penalty under Rule 15 read with Section 11AC was also proposed.

2.4 The show cause notice was adjudicated vide order in original dated 05.05.2016, confirming the demand along with interest. Penalty was also imposed.

2.5 Appellant deposited 7.5% of amount confirmed (Rs 24,998/- vide debit entry no 41 in the CENVAT account) and filed appeal before the First Appellate Authority. The appeal was dismissed by order in appeal dated 28.02.2018

2.6 Appellant further deposited 2.5% of the amount confirmed (Rs 8330/- vide Challan No 00030 dated 30.06.2018 and filed the appeal before CESTAT. The appeal was allowed as per Final Order No A/70606/2019-SM [BR] dated 14.03.2019, holding as follows:

3. Tribunal's decision in the case of M/s DSM Sugar Vs Commissioner of Central Excise, Meerut-II reported as 2017 (346) ELT 407 (Tri.-Del.) took note of various decisions of Hon'ble High Courts like M/s Ambuja Cements Eastern Ltd. Vs Commissioner reported as 2010 (256) ELT 690 (Chhattisgarh), Commissioner Vs Alfred Herbert (I) Ltd. reported as 2010 (257) ELT 29 (Kar) and Hindustan Zinc Ltd. Vs Union of India reported as 2008 (228) ELT 517

(Raj.) and held that such use of welding electrodes cannot be denied the benefit of Cenvat credit. Though the period involved in the present appeal is subsequent to 01.04.2011 when the definition of inputs underwent change but I note that even after the amendment, the goods used in the manufacture of the final products are Cenvatable. Admittedly, repair and maintenance of plant and machinery is one of the activities which are related to the manufacture of final product. Inasmuch as, without the said activity, the manufacturing process cannot be continued, it has to be held that the welding electrodes used for repair and maintenance of plant and machinery are Cenvatable.

4. Apart from merits of the case, I find that the demand is also hit by the bar of limitation, inasmuch as, the same stands raised by way of issuance of show cause notice dated 27.05.2015 for the period 6/10 to February, 2013. Admittedly, the credit was being availed by the appellant by reflecting the same in their Cenvat Account, which fact was being reflected by them in their ER-1 return. In such a scenario, no malafide can be attributed to the assessee, in which case the longer period would not be available to the revenue. Accordingly, I hold the demand to be barred by limitation also."

2.7 Appellant vide letter dated 24.10.2019 received in the office of jurisdictional authority on 05.11.2019 filed a refund claim stating as follows:

Sub.: Consequential Refund Request/ Application of Rs. 3,52,728/- only, in compliance of CESTAT Final Order No. 70606/2019 – SM[BR] dated 14.03.2019, in our Appeal No. E/70938/2018-EX[SM], against impugned Order dated 28.02.2018.

Dear Sir.

In the captioned subject, we had submitted requisite documents vide our Letter No. SL/Refund/2019-20/29

dated 24.10.2019, alongwith Certified True Copy of CESTAT Final order No. 70606/2019 - SM[BR] dated 14.03.2019 and also Certificate of C.A., now we are submitting the following documents for your kind perusal please:-

1. We claim consequential refund of Rs. 3,52,728/- (Rupees Three Lacs Fifty Two Thousands Seven Hundred Twenty Eight only) , as per details mentioned below:-

(a) Pre Deposit @ 7.5% for filing First Appeal of Rs. 24,998/-, reversed vide Entry No. 041 dated 18.07.2016

(b) Pre-Deposit @ 2.5% for filing Second Appeal before CESTAT- Allahabad of Rs. 8,330/-, deposited vide CIN 00030 dated 30.06.2018

(c) Reversed Rs. 15,581/- only vide Entry No. 01 dated 01.04.2015, also got deposited Interest & Penalty Rs. 935/-, vide Challan No. 260 dated 30.04.2015, Ref IAR No. 54/HPR/CE/2015-16

(d) Reversed Rs. 11,330/- only, CENVAT involved in 5 (Five) Tax Invoices for the Month of March-2013 only.

(e) Reversed Rs. 90,861/- only, CENVAT involved in 24 (Twenty Four) Tax Invoices from the Month of April-2013 to March-2014 only.

(f) Reversed Rs.57,208/- only, CENVAT involved in 28 (Twenty Eight) Tax Invoices from the Month of April-2014 to March-2015 only.

(g) Reversed Rs. 20,668/- only, CENVAT involved in 17 (Seventeen) Tax Invoices from the Month of April- 2015 to March-2016 only.

(h) Reversed Rs. 23,695/- only, CENVAT involved in 5 (Five) Tax Invoices from the Month of April- 2016 to June-2016 only

(i) *Reversed Rs. 99,121/- only, CENVAT involved in 22 (Twenty Two) Tax Invoices from the Month of July-2016 to June-2017 only.*

2.8 After examination and verification of the refund claim, jurisdictional Assistant Commissioner vide his order in original dated 10.01.2020 held as follows:

"ORDER

I hereby sanction refund of pre-deposit amounting to Rs 33,318.00 along with interest amounting to Rs 5993.00 totalling to Rs 39,311.00 (Rs Thirty Nine Thousands Three Hundred Eleven only) to M/s Yadu Sugar Ltd. Sujanpur, Bisauli, Distt. Badaun (UP) under Section 35 FF of the Central Excise Act, 1944 and reject refund for an amount of Rs 3,19,410.00 (Three Lakhs Nineteen Thousands Four Hundred Ten only) under Section 11B of the Central Excise Act, 1944. The payment of sanctioned amount shall be made electronically through RTGS/NEFT as per account details provided by them."

2.9 Aggrieved appellants filed the appeal before Commissioner (Appeal). Which has been dismissed as per the impugned order.

2.10 Hence this appeal.

3.1 I have heard Shri Aalok Arora, Advocate for the appellant and Shri Manish Raj, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- Appellant had vide their letter dated 19.07.2013 written to the Range Superintendent that as per his directions – that after change of definition of input under Rule 2 (k), the Cenvat Credit on welding electrodes may not be taken, therefore they have stopped taking of Cenvat Credit on welding electrodes of cenvat credit and they would claim it back in case the matter has been decided in their favour by higher authority/ court.
- Impugned order makes a s serious allegation that claim of refund of Rs 3,10,410/- pertaining to Cenvat Credit on

welding electrodes for period march 2013 to June 2017 has been made fraudulently.

- They would rely on the following decisions in their support:
 - Alcatel Modi Network System Ltd. [[2008 (221) ELT 358 (P&H)]
 - Parle Agro Pvt Ltd [2018 (360) ELT 1005 (T-All)]
 - Niphad SSK Ltd. [2017 (358) ELT 738 (T-Mum)]

3.3 Authorized representative submits that:

- the period of dispute in the proceedings finalized by the tribunal order dated 14.03.2019 was June 2010 to February 2013. The amounts deposited by the appellant for hearing of the appeals in terms of Section 35 F of the Central Excise Act, 1944 has been duly refunded to the appellant along with the interest in terms of provisions of Section 35FF of Central Excise Act, 1944. There is no dispute in respect of consequential refund arising as result of the said order.
- Period of dispute in the present appeal is March, 2013 to June, 2017 which is not the subject matter of the tribunal order dated 14.03.2019. Hence the appellant cannot claim the refund in respect of the duty paid on welding electrodes by referring to the above order.
- Appellant have never claimed the CENVAT credit in respect of the amounts now being claimed as refund, by referring to the above order.
- No proceedings have been initiated for denial of any Cenvat Credit in respect of the welding electrodes received by the appellant during this period as they had never claimed any credit and reflected the same in their ER-1 returns. It is not even the case of the appellant that claimed the credit in ER-1 return and reversed same by debit entries made in the said return.
- Letter dated 19.07.2013 cannot be said to be a letter of protest.

- Appellant has not referred to any provision in the CENVAT Credit Rules, or Central Excise Act, 1944 as per which such a belated claim of credit and refund can be made.
- Issue is squarely covered against the appellant by the decision of the Hon'ble Jharkhand High Court in case of Rungta Mines Limited [2022 (2) TMI 934-Jharkhand High Court]

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments and in written submissions filed by both the sides.

4.2 In respect of the amounts involved in the present appeal order in original records as follows:

Regarding 2nd portion of the refund that comprise of Cenvat credit claimed and reversed on welding electrodes received during the period 01.03.2013 to June, 2017, I find that the party didn't produce any documentary evidence of availment of Cenvat Credit on welding electrodes and subsequent reversal of the said credit under protest during the period 01.03.2013 to June,2017. On enquiring by the range office, the party vide letter dated 19.12.2019, replied as under:

"We had not submitted reversal entries as the same amounts were credited in our store/account books, 'material receipt notes' prepared on receipt of material i.e. Welding electrodes, related 'duplicate copies of transporters' of invoices were kept in the account on the pretext as we had already been issued Show cause notices/ department letters etc on similar matters. So we reserve our right to re-credit once these issues are finally decided in our favour."

Thus from the party's reply dated 19.12.2019, I opine that the list of Cenvat Credit claimed and reversed' as submitted by the party along with refund claim has been prepared on the basis of records of their store, 'material receipt register'

and input invoices'. From the party's reply, I further opine that the party neither availed Cenvat credit of welding electrodes received during the period 1.03.2013 to June, 2017 nor reversed the same under protest subsequently. This is the reason they failed to furnish records of credit or debit entries in respect of welding electrodes during the said period. As the Cenvat credit amounting to Rs 3,19,400.00 in respect of Welding electrodes was neither availed nor reversed under protest, I Opine that the refund of the same is inadmissible to the party.

4.3 Impugned order records the findings as follows:

"4. As a consequence of the Order of the Tribunal dated 14.03.2019 the appellant filed for refund of the amount pre-deposited at the time of filing the appeals as well as for refund of Rs. 3,19,410/- pertaining to Cenvat Credit on Welding Electrode for the period from March, 2013 to June, 2017

5. The Adjudicating Authority found that the refund of Rs. 33,318/- which was pre-deposited for filing the refund claim alongwith the interest of Rs. 5,993/- was admissible for refund and the claim of Rs. 3,19,410/- was not arising out of the CESTAT's Order, and therefore, found to be inadmissible to them. On this issue, I find that the order of the Hon'ble Tribunal dated 14.03.2019 at para 4 clearly stated as follows:

"....."

6. On perusal of the order as above, I find that the Show Cause Notice dated set aside by the Hon'ble Tribunal which 27.05.2015 was ultimately was pertaining to the period from June, 2010 to February, 2013 was decided on the ground of limitation and does not pertain to any subsequent period. The refund claimed by the appellant for the Cenvat Credit on Welding Electrodes for the period of March, 2013 to June, 2017 is not an issue before the Tribunal, and therefore, the Order of the Tribunal dated

14.03.2019 has got nothing to do with such a refund claim. I find that no cause of action had arisen to enable the appellant to surreptitiously include a claim for refund of Cenvat Credit for a period which does not pertain to the period covered by the decision of the Tribunal. The Adjudicating Authority has correctly held that no such refund can be entertained as it was outside the scope of the order of the Hon'ble Tribunal which was under consideration by him in the impugned order. I find that the attempt made by the appellant for claiming the refund of Rs. 3,19,410/- on account of Cenvat Credit on Welding Electrodes for the period March, 2013 to June 2017 was fraudulently made by the appellant before the Adjudicating authority. Such an act is highly inappropriate and condemnable on the part of the appellant.”

4.4. Admittedly in the present case appellant has not placed on record the copies of the CENVAT Account maintained by the appellant or the ER-1 return filed by them during the period March 2017 to June 2017, to show that they had ever claimed the CENVAT Credit in respect of the welding electrodes against the invoices on the basis of which the present refund claim has been filed. No reversal entry has been produced, to show that they had ever reversed the CENVAT Credit taken by them in respect of welding electrodes.

4.5 It is quite interesting to note that for the period June 2010 to February 2013 which was subject matter of dispute in the proceeding which got culminated in the tribunal final order date 14.03.2019, though appellant had taken the credit in respect of the welding electrodes they have not reversed the same. The amount claimed as refund in respect of the culminated proceedings was for the amount of pre-deposit made for hearing of the appeal by the appellate authorities as per section 35F of the Central Excise Act, 1944. The refund of pre-deposit has been allowed by the jurisdictional Assistant Commissioner along with the interest as per 35FF.

4.6 Self assessment has been introduced in the scheme of levy of Central Excise duty from 1997 and the assessee/ appellant is mandated to assess his duty and credits himself and file the return accordingly. Revenue authorities do not have any role in the assessment made by the appellant of duties payable and the credits availed. They will come into picture subsequent to filing of the return and in case of any short/ nonpayment of duties or availment of inadmissible credits in the returns action will be initiated as provided by Section 11A of the Central Excise Act, 1944, Rule 14 of the Cenvat Rules, 2004 etc. The scheme of Central Excise Act, 1944 do not permit any other method of making the claim to credit or for postponement of the right to credit for any reason.

4.7 The appellant has placed on record letter dated 19.07.2013 which reads as follows:

"Ref: YSL/2013-14/59

Dated: 19.07.2013

To

The Superintendent

Central Excise Range-II

Bareilly.

Sub:- Reg. Cenvat Credit on Welding electrodes.

Sir,

During discussion with you regarding Cenvat Credit on welding electrodes, we have been told by your office that after change in definition of 'input' under Rule 2 (k), the Cenvat Credit on welding electrodes may not be taken. Hence, we have now stopped taking oif Cenvat Credit on welding electrodes used in fabrication, repair & maintenance of machine, machinery parts used in our Plant. We hereby reserve our right to claim the Cenvat Credit on welding electrodes if any higher court or authority allows Cenvat Credit on welding electrodes used for above purpose.

With Regards

Encl:- As Above

*Your's Faithfully
For YADU SUGAR Limited
-sd/
(Authorized Signatory)"*

4.8 From the perusal of the content of above letter I do not find any provision mentioned in terms of which this letter has been filed. This letter has been made suo motto on basis of certain discussions which happened between some officer and authorized representative of the appellant. Said letter do not find any mention of any protest being made, it is simple saying that they will not be taking the credit. It is also observed that this letter is dated 19.07.2023 (received by Inspector on 22.07.2023) much prior to the dated of show cause notice (27.05.2015) issued to the appellant for the denial of the credit for the period June 2010 to February 2013. It is settled position in law that when a statute provides for the doing an Act in particular manner then that action must be done in that way only and all other manners are necessary barred. Reference can be made to the decision of Hon'ble Supreme Court in following cases:

- H.H. Maharajadhiraj Madhav Rao Jiwaji Rao Sindia Bahadur Vs. Union of India, AIR 1971 SC 530 (Eleven-Judge Bench)
- Ram Chandra Keshav Adke Vs. Govind Toti Chavare, AIR 1975 SC 915 (Three-Judge Bench)
- Manohar Lal Sharma Vs. Principal Secretary & Others, (2014) 9 SCC 516 (Three-Judge Bench)

4.9 Further the contents of the above letter are not admissible for any purpose claimed by the appellant and are contrary to the observations as follows made by the Hon'ble Supreme in case of Mafatlal Industries Ltd. [1997 (89) ELT 247 (SC)]:

"70. *Re: (II):We may now consider a situation where a manufacturer pays a duty unquestioningly - or he questions the levy but fails before the original authority and keeps quiet. It may also be a case where he files an appeal, the appeal goes against him and he keeps quiet. It may also be a case where he files a second appeal/revision, fails and then keeps quite. The orders in any of the situations have become final against him. Then what happens is that after*

an year, five years, ten years, twenty years or even much later, a decision is rendered by a High Court or the Supreme Court in the case of another person holding that duty was not payable or was payable at a lesser rate in such a case. (We must reiterate and emphasise that while dealing with this situation we are keeping out the situation where the provision under which the duty is levied is declared unconstitutional by a court; that is a separate category and the discussion in this paragraph does not include that situation. In other words, we are dealing with a case where the duty was paid on account of mis-construction, mis-application or wrong interpretation of a provision of law, rule, notification or regulation, as the case may be.) Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the case may be, in the case of another person has made him aware of the mistake of law and, therefore, he is entitled to refund of the duty paid by him? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17(1)(c) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? Kanhaiyalal is understood as saying that such a course is permissible. Later decisions commencing from Bhailal Bhai have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well-accepted concepts of law. One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. Where a duty has been collected under a particular order which has become final,

the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law.

So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained. But what is happening now is that the duty which has been paid under a proceeding which has become final long ago - may be an year back, ten years back or even twenty or more years back - is sought to be recovered on the ground of alleged discovery of mistake of law on the basis of a decision of a High Court or the Supreme Court. It is necessary to point out in this behalf that for filing an appeal or for adopting a remedy provided by the Act, the limitation generally prescribed is about three months (little more or less does not matter). But according to the present practice, writs and suits are being filed after lapse of a long number of years and the rule of limitation applicable in that behalf is said to be three years from the date of discovery of mistake of law : The incongruity of the situation needs no emphasis. And all this because another manufacturer or assessee has obtained a decision favourable to him. What has indeed been happening all these years is that just because one or a few of the assessees succeed in having their interpretation or contention accepted by a High Court or the Supreme Court, all the manufacturers/Assessees all over the country are filing refund claims within three years of such decision, irrespective of the fact that they may have paid the duty, say thirty years back, under similar provisions - and their claims are being allowed by courts. All this is said to be flowing from Article 265 which basis, as we have explained hereinbefore, is totally unsustainable for the reason that the Central Excise Act and the Rules made thereunder including Section 11B/Rule 11 too constitute "law" within the meaning of Article 265 and that in the face of the said provisions - which are exclusive in their nature - no claim for refund is

maintainable except under and in accordance therewith. The second basic concept of law which is violated by permitting the above situation is the sanctity of the provisions of the Central Excises and Salt Act itself. The Act provides for levy, assessment, recovery, refund, appeals and all incidental/ancillary matters. Rule 11 and Section 11B, in particular, provide for refund of taxes which have been collected contrary to law, i.e., on account of a mis-interpretation or mis-construction of a provision of law, rule, notification or regulation. The Act provides for both the situations represented by Sections 11A and 11B. As held by a seven - Judge Bench in Kamala Mills, following the principles enunciated in Firm & Illuri Subbaiya Chetty, the words "any assessment made under this Act" are wide enough to cover all assessments made by the appropriate authorities under the Act whether the assessments are correct or not and that the words "an assessment made" cannot mean an assessment properly and correctly made. It was also pointed out in the said decision that the provisions of the Bombay Sales Tax Act clearly indicate that all questions pertaining to the liability of the dealer to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct and whether a transaction is exigible to tax or not are all matters to be determined by the authorities under the Act. The argument that the finding of the authority that a particular transaction is taxable under the Act is a finding on a collateral fact and, therefore, resort to civil court is open, was expressly rejected and it was affirmed that the whole activity of assessment beginning with the filing of the return and ending with the order of assessment falls within the jurisdiction of the authorities under the Act and no part of it can be said to constitute a collateral activity not specifically or expressly included in the jurisdiction of the authorities under the Act. It was clarified

that even if the authority under the Act holds erroneously, while exercising its jurisdiction and powers under the Act that a transaction is taxable, it cannot be said that the decision of the authority is without jurisdiction. We respectfully agree with the above propositions and hold that the said principles apply with equal force in the case of both the Central Excises and Salt Act and the Customs Act. Once this is so, it is un-understandable how an assessment/adjudication made under the Act levying or affirming the duty can be ignored because some years later another view of law is taken by another court in another person's case. Nor is there any provision in the Act for re-opening the concluded proceedings on the aforesaid basis. We must reiterate that the provisions of the Central Excise Act also constitute "law" within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under "the authority of law" within the meaning of the said article.

In short, no claim for refund is permissible except under and in accordance with Rule 11 and Section 11B. An order or decree of a court does not become ineffective or unenforceable simply because at a later point of time, a different view of law is taken. If this theory is applied universally, it will lead to unimaginable chaos. It is, however, suggested that this result follows only in tax matters because of Article 265. The explanation offered is untenable as demonstrated hereinbefore. As a matter of fact, the situation today is chaotic because of the principles supposedly emerging from Kanhaiyalal and other decisions following it. Every decision of this Court and of the High Courts on a question of law in favour of the assessee is giving rise to a wave of refund claims all over the country in respect of matters which have become final and are closed long number of years ago. We are not shown that such a thing is happening anywhere else in the world. Article 265

surely could not have been meant to provide for this. We are, therefore, of the clear and considered opinion that the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, filed only under and in accordance with Rule 11/Section 11B and under no other provision and in no other forum. An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee. (See the pertinent observations of Hidayatullah, CJ. in Tilokchand Motichand extracted in Para 37). The decisions of this Court saying to the contrary must be held to have been decided wrongly and are accordingly overruled herewith."

4.10 In case of Rajiv Bansal [Order dated October 03, 2024 in Civil Appeal No 8629 of 2024 (Three Judges Bench)]

"34. Taxing statutes are interpreted by following the principles of strict interpretation. [G P Singh, Principles of Statutory Interpretation (15th edn, 2023) 616.] While interpreting a taxing statute, there is no room for any intendment. [Cape Brandy Syndicate v. Inland Revenue Commissioners, (1921) KB 64, 71] A taxing statute must be construed by having regard to the strict letter of the law. [A V Fernandes v. State of Kerala, 1957 SCC OnLine SC 23] In a taxing statute, it is not possible to assume any intention or governing purpose more than what is stated in the plain language. A taxing statute can successfully impose liability on persons or property only if it frames appropriate provisions to that end. The courts cannot plug in a loophole in a taxing statute "by a strained construction in reference to the supposed intention of the Legislature." [Muralilal

Mahabir Prasad v. B R Vad, (1975) 2 SCC 736 [28]] Further, the considerations of equity or justice are not relevant in interpreting a taxing statute. [ITO v. T S Devinatha Nadar, 1967 SCC OnLine SC 52 [30]]

37. *A statute is designed to be workable. A statutory provision must be construed in a manner to make it workable to achieve the purpose of the legislation.[K P Mohammed Salim v. CIT, (2008) 11 SCC 573 [14]] A construction that fails to achieve the manifest purpose of legislation or reduces the statutory provisions to futility should be avoided. [Mohan Kumar Singhania v. Union of India, 1992 Supp (1) SCC 594 [52]; CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57 [17]] The machinery provisions must be construed to effectuate the object and purpose of a statute and not defeat them. In J K Synthetics Ltd. v. CTO, [(1994) 4 SCC 276] a Constitution Bench of this Court observed:*

"16. It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same." (emphasis supplied)

38. *The provisions in a taxing statute dealing with machinery for assessment have to be construed in*

accordance with the intention of the legislature to make the charge levied effective. [Gursahai Saigal v. CIT, (1963) 48 ITR (SC) 1 [9]] While interpreting provisions that set up the machinery of assessment, the rule is that construction should be preferred which makes the machinery workable [CIT v. Mahaliram Ramjidas, AIR 1940 PC 124] and furthers the intention of the legislature. [Gursahai Saigal v. CIT (1963) 48 ITR (SC) 1 [13]] In CIT v. Sun Engineering Works (P) Ltd., [(1992) 4 SCC 363 [40]] a two-Judge Bench of this Court observed that the provision dealing with reassessment contained in Section 147 of the Income Tax Act was for the benefit of the Revenue:

"40. Although, Section 147 is part of a taxing statute, it imposes no charge on the subject but deals merely with the machinery of assessment and in interpreting a provision of that kind, the rule is that construction should be preferred which makes the machinery workable. Since the proceedings under Section 147 of the Act are for the benefit of the Revenue and not an assessee and are aimed at gathering the 'escaped income' of an assessee, the same cannot be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the assessee, thereby making the machinery unworkable."

4.11 The claim of the appellant that this refund claim is covered by the decision of the tribunal dated 14.03.2019 is also not acceptable as that decision was rendered in case where the appellant had claimed the credit and the same was sought to be denied by initiating the proceedings as provided by the statute even if the discussion referred in the letter dated 19.07.2023 is accepted as an assessment order disallowing the credit. The said decision cannot be made applicable to allow this refund claim in favour of the appellant. In case of ITC Ltd. [2019 (368) E.L.T. 216 (S.C.)] a three judges bench of Hon'ble Supreme Court held as follows:

"38. No doubt about it that the expression which was earlier used in Section 27(1)(i) that "in pursuance of an order of assessment" has been deleted from the amended provision of Section 27 due to introduction of provision as to self-assessment. However, as self-assessment is nonetheless an order of assessment, no difference is made by deletion of aforesaid expression as no separate reasoned assessment order is required to be passed in the case of self-assessment as observed by this Court in *Escorts Ltd. v. Union of India & Ors.* (supra).

39. In *Collector of Central Excise, Kanpur v. Flock (India) Pvt. Ltd.* - 2000 (120) E.L.T. 285 (S.C.) = (2000) 6 SCC 650, the question which came up for consideration before this Court was non-challenge of an appealable order where the adjudicating authority had passed an order which is appealable under the statute, and the party aggrieved did not choose to file an appeal. This Court held that it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing the order. The provisions of the Central Excise Act, 1944 came up for consideration. The Court has observed :

"10. Coming to the question that is raised, there is little scope for doubt that in a case where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal, it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing its order. If this position is accepted then the provisions for adjudication in the Act and the Rules, the provision for appeal in the Act and the Rules will lose their relevance

and the entire exercise will be rendered redundant. This position, in our view, will run counter to the scheme of the Act and will introduce an element of uncertainty in the entire process of levy and collection of excise duty. Such a position cannot be countenanced. The view was taken by us also gains support from the provision in sub-rule (3) of Rule 11 wherein it is laid down that whereas a result of any order passed in appeal or revision under the Act, refund of any duty becomes due to any person, the proper officer may refund the amount to such person without his having to make any claim in that behalf. The provision indicates the importance attached to an order of the appellate or revisional authority under the Act. Therefore, if an order which is appealable under the Act is not challenged then the order is not liable to be questioned and the matter is not to be reopened in a proceeding for the refund which, if we may term it so, is in the nature of execution of a decree/order. In the case at hand, it was specifically mentioned in the order of the Assistant Collector that the assessee may file an appeal against the order before the Collector (Appeals) if so advised.” (emphasis supplied)

40. In *Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive)* - 2004 (172) E.L.T. 145 (S.C.) = (2005) 10 SCC 433, the Court considered unamended provision of Section 27 of the Customs Act and a similar submission was raised which was rejected by this Court observing that so long as the order of assessment stands, the duty would be payable as per that order of assessment. This Court has observed thus :

"6. We are unable to accept this submission. Just such a contention has been negated by this Court in *Flock (India)* case (2000) 6 SCC 650. Once an order of assessment is passed the duty would be payable as per

that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an appeal, that order stands. So long as the order of assessment stands the duty would be payable as per that order of assessment. A refund claim is not an appeal proceeding. The officer considering a refund claim cannot sit in appeal over an assessment made by a competent officer. The officer considering the refund claim cannot also review an assessment order.

7. We also see no substance in the contention that provision for a period of limitation indicates that a refund claim could be filed without filing an appeal. Even under Section 11 under the Excise Act, the claim for refund had to be filed within a period of six months. It was still held, in Flock (India)'s case (supra), that in the absence of an appeal having been filed no refund claim could be made.

8. The words "in pursuance of an order of assessment" only indicate the party/person who can make a claim for refund. In other words, they enable a person who has paid duty in pursuance of an order of assessment to claim the refund. These words do not lead to the conclusion that without the order of assessment having been modified in appeal or reviewed a claim for refund can be maintained."

(emphasis supplied)

41. It is apparent from provisions of refund that it is more or less in the nature of execution proceedings. It is not open to the authority which processes the refund to make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise.

42. It was contended that no appeal lies against the order of self-assessment. The provisions of Section 128 deal with appeals to the Commissioner (Appeals). Any person

aggrieved by any decision or order may appeal to the Commissioner (Appeals) within 60 days. There is a provision for condonation of delay for another 30 days. The provisions of Section 128 are extracted hereunder :

"128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order :

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

[(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."

43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128

make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually

amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India - 2009 (240) E.L.T. 490 (Bom.) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra)."

4.12 I find that the decisions relied upon by the appellant cannot be pressed to support the case of appellant. Those decisions have been rendered in the facts of those case and they were passed prior to the decisions of Hon'ble Supreme Court referred by me above. In view of the authoritative pronouncement of law in the above referred decisions of Hon'ble Supreme Court, I do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on-23 May, 2025)

**(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

akp