CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. II

Excise Appeal No.55455 of 2014

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-30-14-15 dated 07/08/2014 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ghaziabad)

M/s Albert David Ltd., **....Appellant**

(B-12 & 13, Meerut Road,
Industrial Area, Ghaziabad-201003)

VERSUS

Commissioner of Central Excise &

Service Tax, Ghaziabad **....Respondent**

(CGO Complex-II, Kamla Nehru Nagar, Ghaziabad-201002)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO.70683/2025

DATE OF HEARING : 14 July, 2025
DATE OF PRONOUNCEMENT : 24 September, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-In-Appeal No.GZB-EXCUS-000-APP-2014-15 dated: 07.08.2014 of the Commissioner (Appeals) Customs, Central Excise and Service Tax Ghaziabad. By the impugned order order in original No R-271/13-14 dated 15.02.2014, holding as follows has been upheld:

> *"I hereby reject refund claim application dated 16.09.2013 of M/s Albert David Ltd., B-12 & 13 Meerut Road, Industrial Area, Ghaziabad"*

2.1. Appellant are engaged in the manufacture of excisable, goods including Intravenous fluids falling under the Chapter 30 of the Central Excise Tariff act, 1985.

2.2 They vide their letter dated 13.09.2013 filed a refund claim for Rs.- 5,61,33,288/- in respect of the amount of differential duty and interest thereon paid by them in respect of clearances of Intravenous Fluids (hereinafter referred as IV. fluids) cleared by them during the period from March, 2011 to July, 2012. They in their refund application stated as under,-

> *"1.3 Under Notification No. 01/11-CE dated 01.03.2011, specified goods are partially exempt from duty, provided that no credit of duty on inputs has been taken in respect of manufacture of such goods. I.V. fluids manufactured by them are a specified item at SL. No. 38 of the Table annexed to the notification. Plastic granules are used as an input during the course of manufacture waste and scrap of plastic is generated. While no cenvat was taken in respect of the inputs, when the said waste and scrap was cleared from the factory on payment of duty, they availed the credit of duty suffered on plastic contained in the said waste and scrap, with the understanding of 'waste and scrap' as final product incidentally Boards Circular has also subscribed to that fact.*
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> *1.4 This practice was objected by the Central Excise officers with their understanding that final product being I.V. fluids they were violating condition of notification No. 01/2011 with practice above and advised to pay the differential duty. On 28.09.2012 they reversed the cenvat of Rs. 53,78,003.00 on the plastic contained in the waste and scrap cleared for sale after payment of duty including the month of Feb 11.*
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> *1.5 Action at 1.4 was not accepted as compliance of the notification. No. 01/2011, and on further insistence by the department they paid the differential duty Rs. 4,89,77,534.00 though not convinced as under:*

Entry Book under Rule 9(5)	*Page No.*	*Entry No.*	*Date*	*Amount (Dr.) Rs.*
RG 23A Part II	*21*	*309*	*05.11.2012*	*4,32,85,587*
RG 23A Part II	*21*	*310*	*05.11.2012*	*4,74,568*
RG 23C Part II	*6*	*19*	*28.09.2012*	*53,78,003*
Total amount paid				*4,91,38,158*
Less: duty demand for Feb. 11				*1,60,624*
Net Differential duty paid from March 11 to July 12 under Notification No 01/2011				*4,89,77,534*

1.6 An amount of Rs. 71,55,754.00 was paid as interest on said differential duty cash as per E-challan No. 05785 dated 05.11.2011 Rs. 71,40,776.00 and E-challan No. 00302 dated 09.11.2011 Rs. 14,978.00

1.7 In terms of several judgments and decisions from the court and the Tribunal Cenvat taken on inputs but reversed before being utilized shall mean that no credit was taken. In other words, reversal of credit before utilization tantamount to non availment of credit. This being the legal position, they legitimately believe that with the reversal of the impugned credit as mentioned above on 28.09.2012, satisfied the condition of Notification. No. 01/2011-CE.

1.8 The appellant was availing exemption under Notification No. 01/2011-CE dated 01.03.2011 on l.V. fluids wherein concessional Rate of Duty leviable provided no cenvat of duty paid on inputs used in the manufacture of the said goods had been taken. Whereas the appellant was availing cenvat of plastic granules contained in the plastic scrap generated during the manufacture of fluids. An investigation was undertaken by the Anti Evasion Branch of the Ghaziabad Commissioner ate wherein this practice was objected and the party was asked to deposit the differential duty on IV. fluids cleared during the said period. In compliance of the objection raised by the Department the appellant paid differential duty of Rs. 48,97,7534/- under Section 11A(1)(b)(i) of Central Excise

Act,1944 from RG -23 part-ll and Rs. 77,55,754/- as interest under Section 11AB/11AA by e-payment.

2. On receipt of refund of amount stated at 1.3 and 1.4 above, we undertake to reverse the corresponding CENVAT Credit of Rs 4,22,48,555.00

3. We claim interest on the amount at 1.3 and 1.4 above as per provisions under Sec. 11AA of the Central Excise Act, 1944."

2.3 After hearing the appellant, and upon considerations of the submissions made by the appellant in the refund claim and subsequent correspondences made, the adjudicating authority rejected the refund claim vide order in original referred in para 1 above.

2.4 Aggrieved appellant filed appeal before the Commissioner (Appeal), which has been dismissed as per the impugned order.

2.5 Hence this appeal.

3.1 We have heard Shri Atul Gupta, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits:

- The issue regarding availment of CENVAT credit attributable to duty paid LDPE Granules (Inputs) to the extent contained in the waste & scrap (cleared on payment of excise duty) has been settled in the appellants own case, as reported at [2013 (297) ELT 24 (All)] and affirmed by Hon'ble Supreme Court as reported at [2015 (317) ELT A154 (SC)]
- Demand for the month of February 2011, was set aside by the tribunal vide order reported at [2015-TIOL-1248-CESTAT-Del];
- Refund provision exists for returning the amount paid wrongly, voluntarily or under protest; and payment under protest relevant only for the purpose of limitation period.

- Payment of excise duty on IV Fluids at tariff rate, upon insistence of department, through utilization of CENVAT Credit tantamount to reversal of credit and thus eligible for concessional duty @ 1% under Notification No 1/2011. Hence refund is admissible. Reliance is palced on the following decisions:
  - Narmad Chematur Pharmaceuticals Ltd. [2005 (179) ELT 276 (SC)]
  - PSL Holdings Ltd. [2013 (156) ELT 602 (T-Mum)]
  - Crompton Greaves Ltd. [2008 (230) ELT 488 (T-Mum)]
- Impugned order wrongly observes that appellant had not reversed the CENVAT Credit, because against the amount of credit to be reversed i.e. Rs 4,22,48,555/- appellant had paid by reversal of CENVAT Credit duty of tune of Rs 4,89,77,534/-.
- Refund claim needs to be allowed along with the interest as per Section 11BB of the Central Excise Act, 1944. Reliance is placed on the following decisions:
  - Advance Steel Tubes Limited [2018 (11) GSTL 341 (All)]
- This duty paid has not been expensed of in the profit and loss acoount by the appellant and has been shown as 'asset'/recoverable in balance sheet and same has been certified by the Chartered Accountant. Principle of unjust enrichment will not apply in the present case as held in the following decisions:
  - Eveready Industries India Ltd. [2017 (357) ELT 11 (All)];
  - Ebiz. Com Pvt. Ltd. [2016 (9) TMI 1405 Allahabad High Court]
- Interest is payable on the delayed refund as has been held in the case of Ranbaxy Laboratories Ltd. [2011 (273) ELT 3 (SC)]

3.3 Authorized representative reiterated the findings recorded in the impugned order.

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

4.2 Impugned order records the findings as follows:

> *"3-1 I have carefully gone through the facts and records of the case as well as the submissions made by the appellant during the personal hearing. Issue involved in this case is that the appellant was availing exemption under Notification No. 01/2011-CE dated 01.03.2011 on I.V. fluids wherein concessional rate of 1% (up to 16.03.12)/ 2% duty is leviable, provided no credit of duty on inputs or tax on input services used in the manufacture of the said goods has been taken.*
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> *In the light of the above, it has to be decided, whether the appellant has fulfilled the conditions of the Notification No. 01/2011-CE dated 01.03.2011 or not? and whether the appellant is eligible for the refund claimed by them or not?*
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> *3-2 The appellant had filed a refund claim of Duty for Rs-4,89,77,534.00 paid as differential duty on l.V .fluids and Interest of Rs-71,55,754.00, which has been rejected by the Assistant Commissioner Central Excise division V Ghaziabad vide OIO 271/13-14 dt-15/02/2014.*
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> *3-3 The Notification No. 01/2011-CE dated 01.03.2011 reads as "In exercise of the powers confirmed by sub-section (1)of Section 5-A of the Central Excise Act 1944 the Central govt. on being satisfied that it is necessary in the public interest so to do, here by exempts the Excisable goods of the description specified in column (3) of the table below and falling under Chapter ,heading sub-heading or tariff item of The First Schedule of the Central Excise Tariff Act 1985, specified in the corresponding entry in column (2)of the said Table, from so much of the Duty of Excise leviable thereon under the said central Excise act, as is in excess of the amount calculated at the rate of 2% ad valoram.*

Provided that nothing contained in this Notification shall apply to the goods in respect of which credit of Duty on inputs or Tax on input Service has been taken under the provisions of the cenvat Rules 2004.

3-4 Intravenous fluids falls under Chapter 30 of Central Excise Tariff 1985 and Central Excise Duty is applicable @ of 6%. As per Notification 01/2011 dt 01/03/2011 concessional rate of duty @ 1% will applicable on I.V. fluids if credit of Duty on _ inputs or tax on input services has not been taken under the provisions of the cenvat Rules 2004. In the instant case the appellant has availed cenvat on input as well as service Tax used in the manufacture of their final product I.V. fluids. The appellant has pleaded that they have not availed Cenvat on inputs and input services used in the manufacture of I.V. fluids. However they have mentioned in para 2 of their refund application dated 15/09/2013 that ***"On receipt of refund of amount stated at 1.3 and 1.4 above, we undertake to reverse the corresponding cenvat of Rs-4,22,48,555.00"*** *which clearly shows that the appellant has availed credit on those goods against which they have paid differential duty and for which they have filed refund claim.*

3-5 The above fact has also been confirmed by the appellant's letter date 21/11/2013 (Annexure-4) written to the Superintendent Range-V Division -V Ghaziabad in reply to their letter dated 14/11/2013. In the reply regarding cenvat they submitted that they have taken Rs-3,63,53,578/- credit on input and Rs- 58,94,977/-on service tax. This fact was informed to the Joint Commissioner and Deputy Commissioner vide their letter no. DC/7669 dt.21/03/2013. Further they have also mentioned in their letter 21.11.2013 (Annexure-4) that "cenvat had been availed on the inputs as the differential duty payment was insisted by the Department by *assuming hat Notification no.01/2011-CE ated 01/03/2011 is not applicable. When the appellant himself has accepted that they have availed cenvat on input and Service Tax and they will reverse the credit amount after receiving of refund amounts how can it be said that the appellant has not availed Cenvat of Duty and Tax. From the above it is quite clear that the appellant has not fulfilled the condition laid down in Notification No.01/2011-CE Dt.01/03/2011.*

3-6 Intravenous fluids is specified at the serial number 38 of the Notification 01/2011 Dt 01-03-2011. As per the condition of the said Notification, concessional rate of duty will be applicable to those Manufacturers who have not availed cenvat on input or input service used in the manufacture of final goods. The appellant has availed cenvat on inputs and service tax used in manufacture of I.V. fluids. The appellant has reversed cenvat taken on quantity of LDPE only present the waste and scrap of plastic' cleared on payment on duty from Feb- 2011to July 2012 amounting to Rs-52,17379. Therefore they have made only partial reversal of credit, so they are not entitled for the concessional rare of duty. As they were not entitled for concessional rate of duty they were required to pay duty according to rate prescribed in Tariff. For the differential duty paid on those goods against which cenvat on input and service tax has been availed and the goods cleared on concessional rate of duty, refund will not be applicable o them.

3-7 The appellant has relied on the judgment of Hon'ble Apex Court in the case of CCE V/S M/S Bombay Dyeing & mfg.co. Ltd [2007(215) ELT 3 (S.C.) the Apex Court held that... 'The requirement was that exemption on gray fabrics was admissible subject to the assessee paying duty on yarn before claiming exemption and subject to the assessee not claiming cenvat before claiming exemption. On payment of duty on the input the Assessee got the *credit which was never utilized. The entry has been reversed which amounts to not taking credit. Both the conditions are satisfied. In the instant case the above judgment is not applicable because the condition of Notification no.01/11-CE Dt.01/03/2011 has not been fulfilled. The appellant has availed cenvat on inputs as well as input services but has not reversed the same. They have given an under taking in their refund application that "On receipt of refund of amount stated at 1.3 and 1.4 above we undertake to reverse the corresponding cenvat of Rs- 4,22,48,555.00"*

3-8 Further they have relied on judgment of Hon'ble Allahabad High Court in the case of M/S Hellow Mineral Water (P). Ltd VS-UOI [2004(174) ELT 422 (ALL)] manufacturer can be treated as not having taken credit on the inouts used in the product. even though it was originally taken but manufacture of final subsequently reversed has been decided by the five member Bench of the Tribunal of Franco Italian Company pvt. s in the case CCE,2000(120)ELT792.As the appellant has not reversed the Cenvat and credit on input services therefore the above judgment is not applicable in this case..

3-9 Further they have also quoted CBEC circular no.858/16/2007-CX dt.8/11/2007. As per circular 'The reversal of Cenvat before utilization shall be, as if no Cenvat taken'. This circular is also not applicable in this case because the credit has not been reversed by the appellant. They also mentioned CESTAT'S judgment in the case of Commissioner of C.Ex. Allahabad vs Balrampur Chini Mills Ltd Final Order No. A/56899-56904/2013-SM(BR) dt.0/7/2013 where the CESTAT ruled that "Cenvat was availed but not utilized. Interest not chargeable as the Cenvat not utilized, penalty not imposed since there is no malafide intention" The facts of the instant case are *different from that of the case discussed above, and therefore the same principal can't be applied in this case."*

4.3 The undisputed fact of the case is that the appellant was clearing I.V. Fluids, on payment of the duty, during the period for which they filed this refund claim and were taking the CENVAT credit of the inputs and input services. As they had availed the CENVAT Credit on the inputs and input and input services, they were not entitled to lower rate of duty (@ 1%) as per notification No 1/2011 dated 01.03.2011 (S No 38) in terms of the proviso to the notification. Appellant had paid differential duty of Rs 4,89,77,534/- and have correspondingly availed CENVAT credit of Rs 4,22,48,555/-. They had also paid interest of Rs *77,55,754/-.*

4.4 The decision of the Hon'ble Allahabad High Court in the appellant own case as reported at [2013 (297) ELT 24 (All)] is not on the issue in dispute. The issue under consideration in the said decision was with regards to the erstwhile Modvat Credit Scheme as per the Central Excise Rules, 1994 as they existed then. Hon'ble High Court has itself observed against the applicability of the provisions of CENVAT Credit Rules, 2004, while determining the admissibility of credit in respect of the inputs, by treating waste and scrap of plastic granules as dutiable product. Relevant para of the order of the Hon'ble High Court is reproduced below:

"15. *The learned counsel for the appellant submitted that scrap and waste is final product and excisable item. The duty is payable at the rate of 16 per cent. This being so, the submission is that in view of the aforestated Rules, the appellant is entitled to take credit of Cenvat paid on the inputs.* ***At this stage, the learned counsel for the department referred the Rules 3 and 6 of the Cenvat Credit Rules, 2004.***

16. At the very outset, it may be stated that these Rules were not in force and are not applicable to the facts of the present case as the dispute relates to

> ***the period prior to the year 2004. The show cause notice dated 1st of June, 2001 asking the appellant to justify the Cenvat credit availed by it on plastic granules equivalent to the quantity cleared by them as waste and scrap. We find sufficient force in the argument of the learned counsel for the appellant that Cenvat Credit Rules, 2004 will not be applicable to the controversy on hand.***
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> ***17.*** *There cannot be any doubt that waste and scrap is not final product within the meaning of Central Excise Rules, 1994. For the simple reason that it is chargeable to duty. The said item is not "exempted goods" within the meaning of Rule 57AA(2) referred to above.*
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> ***18.*** *The above proposition was not found disputed by the learned standing counsel for the department.*
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> ***19.*** *The majority view of the Tribunal proceeds on the footing that the appellant is not entitled to the Cenvat credit in case the final product is exempt from the payment of duty. There appears to be no quarrel to this proposition. But here is a case where one of the final products of the appellant is exempt from the payment of duty. At the same time, the department is charging the duty on the plastic scrap generated in the manufacturing of product which is exempt from the payment of duty. It could not be disputed by the learned counsel for the department that the waste of plastic is liable to duty at 16 per cent under Tariff Entry No. 39.15 of the First Schedule of the Central Excise Tariff Act. The appellant submitted that on clearance of waste and scrap of plastic, duty @ 16 per cent has been paid under the aforesaid Tariff Heading No. 39.15."*

4.5 The appeal filed by the revenue against this order of High Court has been dismissed by the Hon'ble Supreme Court as reported at [2015 (317) ELT A154 (SC)]. As the present dispute is for the period during which the CENVAT Credit Rules, 2004 were in force and the appellant was operating in terms of the said rules, this decision would not be a binding precedent. Further the decision of tribunal in the appellant own case, reported at [2015-TIOL-1248-CESTAT-Del], also do not considers the issue in situation where the both I V Fluids and the waste and scrap attracted duty. I V fluid attracted duty at @ 1 % in case where the input and input service credit has not be taken. In this case also the demand of the CENVAT credit, on the waste and scrap of plastic granules has ben set aside following the earlier decision of the tribunal. Relevant paragraphs of the said decision is reproduced below:

> *"3. The period of dispute in this case is February' 2011. I find that the issue arising out of the present dispute is no more res integra in view of the Final Order No. 51539/2015 dated 23.04.2015 passed by this Tribunal in the case of the appellant itself in appeal No. E/2287/2011-EX (DB). The relevant paragraph in the said order is extracted herein below:-*
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> > *"3. Both sides agree that the issue involved in this case stands decided by the judgment of Hon'ble Allahabad High Court in the appellants own case reported in 2013 TIOL 621 – All. Cx, and this judgment of Hon'ble Allahabad High Court has been affirmed by the Hon'ble Apex Court reported in 2014 – TIOL – 36 – SC – CX. Both sides also agree that relying upon Hon'ble Allahabad High Court judgment the Tribunal in the appellant's own case for the previous period has vide final order No.54949/2014 dated 18.12.2014 has set aside the cenvat credit demand in respect of the LDPE granules which had gone waste in the course of manufacture of plastic bottles for packing of I.V. Fluids by the appellant. In view of this, the impugned order is set aside. The appeal is allowed."*

This decision also do not considers the admissibility of lower rate of duty @ 1% in terms of the Notification No 1/2011-CE dated 01.3.2011. Hence we do not find that this decision will support the case of the appellant for claim of this refund.

4.6 Thus we do not find any binding precedent, in respect of the case of refund under consideration. We find that appellant has paid the duty (including differential duty) in respect of the clearance of the I V Fluids, by availing the CENVAT credit on the inputs and input services. Impugned order records specific finding in this regard. The appellant has sought the refund of the duty paid by them, voluntarily or as instructed by the departmental officers, and have not challenged the levy of the duty so assessed by way of any appeal before the appellate authority and have not produced any appellate decision setting aside the liability so assessed and paid. Hon'ble Supreme Court has in the case of Mafatlal Industries Ltd. [1997 (89) ELT 247 (SC)] observed as follows:

> *"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 quiet. 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 ease 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."*

4.7 Again in the case of ITC Ltd. [2019 (368) ELT 216 (SC)] Hon'ble Supreme Court observed as follows:

"36. Section 27 of the Customs Act as amended by Finance Act, 2011 provides that any person claiming refund of any duty or interest paid or borne by him, may make an application in such form and manner as may be prescribed for such refund to the Assistant or Deputy Commissioner of Customs before the expiry of one year from the date of payment of such duty or interest. If an application for refund has been made before Finance Bill received the assent of the President, it is deemed to be filed under the provision of Section 27(1) as existed and to be dealt with under Section 27(2). The period of limitation of one year provided by the provisions of Section 27 has to be computed in the case of goods which are exempt from payment of duty by a special order issued under Section 25(2) from the date of issue of such an order as provided in Section 27(1B)(a). Where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any Court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction. It is provided in Section 27(1B)(c) that where any duty is

paid provisionally under Section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in the case of re-assessment, from the date of such re-assessment. The second proviso to Section 27 makes it clear that limitation of 1 year shall not apply where any duty or interest has been paid under protest.

37. Under Section 27(2)(a) it is incumbent upon the applicant to satisfy that the amount of duty or interest of which refund has been claimed, had not been passed by him to any other person, the provision aims at preventing unjust enrichment.

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 negatived 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).*

47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."

4.8 In respect of the applicability of the above decisions of the Hon'ble Supreme Court, Counsel for the appellant submitted a note stating as follows:

- Decision in the case of ITC Limited has no application to refund arising in the Central Excise Case, as has been held by the larger bench in the acse of Shree balaji Warehouse [2023-VIL-981-CESTAT-CHD-ST]
- Depatment cannot make out a new case at the stage of Tribunal, as the reasoning of the ITC decision has not been made the basis for rejection of the refund claim. Reliance is placed on the decision in the following cases:
  - Mohinder Singh Gill & Anr. [1977 (12) TMI 138 Supreme Court];
  - Ingram Micro Indian Pvt Ltd [2020 (12) TMI 870 CESTAT Delhi];
  - Texmaco Ltd. [1992 (61) ELT 477 (T)];
  - Precision Rubber Industries 9P) Ltd. [2016 (334) ELT 577 (SC)];
  - Hindustn Polymers Co Ltd. [1999 (106) ELT 12 (SC)];
  - Warner Hindustan Ltd. [1999 (113) ELT 24 (SC)];
- If new ground is allowed to be taken by the department which do not find place anywhere in the show cause notice/ adjudicating order then same would be beyond the show cause notice/ adjudication order which is condemned as per the following orders:
  - Toyo Engineering India Ltd. [2006 (201) ELT 513 (SC)];
  - Reckitt & Coleman of India Ltd. [1996 (88) ELT 641 (SC)];
  - INOX Leisure Ltd. [2022 (60) GSTL 326 (T-Hyd)] affirmed at [2022 (61) GSTL 342 (SC)]
  - DelhiDuty Free Service Pvt. Ltd. [2019 (8) TMI 1489 CESTAT New Delhi.

4.9 On the submissions as above made by the appellant counsel we observe that, by referring to the decisions of the Hon'ble Supreme Court as above no new ground has been made out. In terms of Article 141 of the Constitution reproduced below, the decisions of the Hon'ble Supreme Court are binding on all the courts/ tribunals.

> *"141. The law declared by the Supreme Court shall be binding on all courts within the territory of India."*

4.10 We would further observe that the decision of the Hon'ble Supreme Court in the case of ITC Ltd., has been rendered in case of Central Excise itself. We refer to para 7 to 11 of the said decision wherein the afcts of the case are recorded:

> ***"7.*** *The facts of the case of ITC Limited are that the appellants manufacture paper from both conventional and unconventional raw materials. In the course of the manufacturing activity, waste paper/broke arises which are recycled in the manufacturing process by making pulp. Sometimes, after entry in the RG 1 register, the paper is found to be defective and incapable of being sold and as such is required to be reprocessed and if that is not possible, then it is rejected and has to be re-pulped and recycled.*
>
> ***8.*** *The appellant had been paying duty on paper cleared from its factory. The rate of duty of paper manufactured from conventional and unconventional raw material differed. The appellants availed exemption under Notification No. 67/95-C.E., dated March 16, 1995 as to the duty in respect of waste paper/fresh broke. By Notification No. 6/2000-C.E., dated March 1, 2000 complete exemption was granted in respect of paper up to the specified quantitative limit manufactured from unconventional raw materials. Upon receipt of a letter dated March 30, 2001 from the Superintendent of Central Excise, the Appellant examined the matter and realized the mistake committed by it in availing the exemption under*

Notification No. 67/95-C.E. in respect of waste paper/broke utilized in the manufacture of paper cleared at 'nil' rate of duty under Notification No. 6/2000-C.E. From May 2001 onwards, the appellant stopped availing the exemption and started payment of duty on waste paper/broke.

9. *The relevant period involved in the appeal i.e. July 2001 to March 2002. The Appellant's assessments for this period were provisional and these entries were finalized on 30-1-2003. The provisional assessment order was passed on 1-3-2002. The appellant has claimed that at the time of the said final assessment order dated 30-1-2003, it was not aware of the Notification No. 10/96-C.E. or the said Circular dated 1-3-2001 and as such, no claim thereunder was made by it till that time nor was any such claim so considered or decided in the said final assessment order.*

10. *On July 18, 2003, the appellant filed a refund claim for an amount of Rs. 28,73,120/- in respect of the duty paid on the said waste paper/broke during the period from July 2001 to March 2002. The said refund claim was filed under Section 11(b) of the Central Excise Act, 1944 (for short, referred to as "the 1944 Act") and within the statutory period of limitation.*

11. *A show cause notice was issued as to why the said claim be not rejected to which a reply was filed. The assessment committee rejected the said claim. The Commissioner of Appeals dismissed the appeal. Thereafter, successive appeal was preferred before the Tribunal. The Tribunal has rejected the refund claim of the appellant. Hence, the appeal has been preferred under Section 35(b) of the 1944 Act."*

When the decision of the Hon'ble Supreme Court, itself records the facts of Central Excise Case, while making the order can it be said that the law declared by the Hon'ble Supreme Court in that case is not applicable to the refund claim made in terms of

Section 11B of Central Excise Act, 1944. The dispute in case of Shree Balaji Warehouse, decided by the larger bench of tribunal, and referred by the Counsel was in respect of the applicability of the said decision to the service tax matters. Although the larger bench decided against the applicability of the said decision to the refunds under Chapter V of Finance Act, 1994 (Service Tax refunds), Hon'ble Delhi High Court has subsequently taken a contrary view in case of BT India Pvt. Ltd. [2023 SCC OnLine Del 7143]. Thus we do not find an merits in the submissions made on this account.

4.11 None of the decisions referred by the appellant in their written note has observed that the decision of the Hon'ble Supreme Court which is squarely applicable to the facts of the case in hand should not be applied. As we find that the law as declared by the Hon'ble Apex Court is binding on all the courts as per Article 141 of the Constitution of India, we do not find any merits in this appeal filed by the appellant.

5.1 Appeal is dismissed.

(Order pronounced in open court on-24 September, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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