CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II
(E-Hearing)
Excise Appeal No.70799 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-APPL-002-93-2025-26 dated 25/06/2025 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Bajaj Energy Ltd., **.....Appellant**
(Barkhera Kalan, Bisalpur Road, Pilibhit)

VERSUS

Commissioner of Central Excise &

CGST, Noida **....Respondent**

(C-232A/2 to C232A/3 GST Bhawan, Sector-48, Noida-201305)

APPEARANCE:

Shri Jitendra Singh, Advocate for the Appellant
Shri Santosh Kumar Authorised Representative for the Respondent

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

FINAL ORDER NO.70016/2026

DATE OF HEARING : 18 December, 2025
DATE OF PRONOUNCEMENT : 15 January, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-APPL-002-93-2025-26 dated 25/06/2025 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"ORDER

I reject the appeal bearing No. 298/CE/NOIDA/APPL/GBN/2024-25 02.01.2025filed by M/s Bajaj Energy Ltd., Barkhera Kalan, Bisalpur Road, Pilibhit, U.P.- 262201 and uphold the impugned 0-1-0 dated 20/21.11.2024."

2.1 Appellant is a power generation utility and is having Central Excise registration No.AADCB4998CEM001.

2.2 Appellant filed a refund application on 14.08.2023 under Section 11B of the Central Excise Act, 1944 seeking a refund of Rs.3,25,275/- against payment of duty paid on clearance of 'fly ash' under protest. The refund claim was arisen consequent to dismissal of department's appeal by Hon'ble Supreme Court against the judgment of the Hon'ble Madras High Court in the matter of M/s Mettur Thermal Power Station in WA No.1518 of 2015 holding that the fly ash do not fall under the category of excisable goods so as to attract levy of central excise duty.

2.3 Appellant claimed that they had paid the duty on 'fly ash' under protest and his other units, which were falling under the jurisdiction of lucknow Commissionerate. Appellant also stated that they had paid central excise duty of Rs.2,65,297/- on clearance/dumping of fly ash and Rs.59,798/- as interest on late payment of the said duty from August 2015 till June 2017.

2.4 Show cause notice dated 25.09.2024 was issued to the appellant, asking them to show cause as to why the refund claim filed by them on the basis of department's appeal being dismissed by the Hon'ble Supreme Court on 08.03.2019, against the order of Hon'ble Madras High Court in the WP 17282 of 2014 and that the refund appears to be hit by limitation as laid down under Section 118 of Central Excise Act, 1944 as the same has been filed beyond the period of one year from the date of dismissal of writ appeal filed before Hon’ble Supreme Court.

2.5 The said show cause notice was adjudicated vide the Order-in-Original dated 20.11.2024/21.11.2024 wherein relying upon the following decisions dismissed the appeal:-

- Redington India Ltd. Vs Commissioner of Customs, Chennai [2011 (269) E.L.T 233 (Tri.-Chennai)] and
- P. K. Kutty Anuja Raja & Anr vs State of Kerala & Anr (1996 SCC (2) 4961,

2.6 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order referred in para-1 above.

2.7 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Jitendra Singh, learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorised Representative appearing for the revenue virtually.

3.2 Arguing for the appellant learned Counsel submits that his refund claim was in respect of duty paid under protest. The period of one year of limitation as per Section 11B of the Central Excise Act, 1944 would not be applicable in view of the proviso to said Section. He further relied upon the following decisions:-

- Ebiz.com (P) Ltd. Vs CCE- Manu/UP/3167/2016 (All.);
- 3E Infotech Vs CESTAT, Chennai 2018 (18) GSTL 410 (Mad.);
- Hindustan Cocoa Products Vs UOI 1994 (74) ELT 525 (Bom.);
- CCE Vs Pricol Ltd. MANU/TN/1261/2015 (Mad.)
- Coca Cola Beverages (P) Ltd. Vs UOI MANU/GJ/0126/2013 (Guj.);
- M/s Fujikawa Power & Ors. FO No.61041-61042/2019 dated 26.11.2019 (Tri.);
- M/s Marshall Foundry & Engg. (P) Ltd. Vs CGST FO.61058-61061/2019 (Tri.);

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

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

4.2 Impugned order records as follows:-

"4.2 4.2 The question of excisability of fly ash has been put to rest by the Judgement dated 21.12.2016 of the Hon'ble Madras High Court in the matter of M/s Mettur Thermal Power Station in WA No. 1518 of 2015, which has been upheld by the Hon'ble Supreme Court. In the light of the said judgement, it is clear that Central Excise duty was not chargeable on fly ash. Accordingly, the appellant would be entitled to a refund of the Central Excise duty so paid under protest. However, the adjudicating authority rejected the refund claim on the grounds of limitation, observing that the appellant filed their refund application

on 14.08.2023, whereas the Hon'ble Supreme Court decided the matter on 08.03.2019. It was observed that the claim should have been filed within the limitation period as prescribed under Section 11B, from the date of Hon'ble Supreme Court decision on 08.03.2019, since the 'protest' ceased to exist with the final decision on that date.

4.3 I observe that the citations made by the appellant to indicate that the duty paid by them qualifies as being paid under protest are not material since this issue has not been disputed by the department. The citations made by them on the issue of limitation are also not relevant since they deal with the cases where provisions related to unjust enrichment have been invoked or where refunds have been rejected considering the due date to be the date of payment of duty even where the matter was subjudice.

4.4 In my opinion, referring to Section 11B is essential to fully appreciate the issue in the appellant's case. The relevant provisions, that can be applicable in the case read as under:

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

(1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and Interest, if any, paid on such duty) in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such

[duty and interest, if any, paid on such duty] had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act:

Provided further that the limitation of one year shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest.

(2) ……..

(3) ……

(4) ……

(5) …….

Explanation. For the purposes of this section,

(A) .....

(B) "relevant date" means, -

(a)

(b)

(c)

(d)

(e)

(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;

(f) in any other case, the date of payment of duty.

4.4.1.A harmonized interpretation of the above provisions shows that even when duty is paid under protest, the protest cannot remain indefinitely. There must come a point when it concludes upon final resolution of the issue. Such finality occurs, for example, when a favourable judgment is rendered. In Central Excise matters, in situations of disputes on account of issues such as uncertainty in valuation, classification etc., the duty can either be paid provisionally or under protest. Both the said mechanisms of payment are resorted to, to keep the final payment of duty in abeyance.

4.4.2. When the duty is paid on a provisional basis, the one-year limitation period begins from the date specified in clause (eb) of Explanation B to Section 118(1), l.e., when the duty is finally adjusted after the provisional assessment. However, in the present case, the duty was paid under protest, and that protest came to an end only with the Supreme Court's judgment on 08.03.2019. Therefore, clause (ec) of Explanation B applies, l.e., the "relevant date" is the date of that judgment. The legislative intent is clearly defined under Section 11B to differentiate between normal and contested payments. The payments made in the ordinary course of business trigger the limitation from the usual "relevant date", whereas payments made under provisional assessment or under protest, which are inherently disputed, have different "relevant dates" linked to the resolution of those disputes. Under clause (eb), provisional payments become final only upon adjustment of the duty, whereas under clause (ec), protest-based payments crystallize upon the date of a judgment, appellate order, or departmental clarification, i.e., when the dispute is finally settled, which is the relevant date. The legislative scheme thus ensures that taxpayers are not unfairly penalised for unresolved disputes and the countdown for claiming a refund starts only once the matter is decisively settled.

4.5. In the appellant's case, the impugned Order has been issued strictly on the basis of a specific act, i.e., the Central Excise Act, 1944 and the contention of the appellant that the adjudicating authority resorted to the Limitation Act, 1963 is not tenable on the ground that the reference to the Limitation Act, 1963 is only with reference to the judgement of the Hon'ble Supreme Court in the matter of P. K. Kutty Anuja Raja & Anr vs State of Kerala & Anr [1996 SCC (2) 496]. A similar view has been taken by the Hon'ble Supreme Court in its judgement dated 16.08.1988 in the matter of Collector of Central Excise, Chandigarh Vs. Doaba Cooperative Sugar Mills, it has been held that "where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the act will prevail." The Hon'ble Court, thus, held that Central Excise refunds must comply with the timeline prescribed under Section 11B of the Act.

4.6. It is incorrect to interpret the second proviso to Section 11B(1) as granting a perpetual exemption from limitation simply because duty was paid under protest. The statute provides that the one-year limitation does not apply to such protest-based payments. In ordinary cases, where duty is paid in the normal course, the limitation period begins from the relevant date, which is typically the payment date. However, when duty is paid under protest, that payment date cannot be used to trigger the limitation

period. Instead, as per clause (ec) of Explanation B, the limitation begins from the issuance of a judgment, order, or directive which determines that the duty is refundable. The limitation begins once the taxpayer has a legally enforceable cause of action, usually the "relevant date," such as the date of payment or judgment that created entitlement. The second proviso only effectively halts the running of time until resolution of the case or creation of that entitlement.

4.7 I find that in the grounds of appeal the appellant has contended that they applied and received the refunds in respect of all Units of appellant in Lucknow Commissionerate from Sitapur and Barabanki divisions. They annexed a copy of the show cause notice, adjudication order and refund orders. From the perusal of the same, I find that the facts are different therein. A show cause notice was issued in those places which was adjudicated by a common order after the dismissal of department's appeal by the Hon'ble Apex Court against the judgement of the Hon'ble Madras High Court in the matter of M/s Mettur Thermal Power Station in WA No. 1518 of 2015, ruling that the fly ash does not fall under the purview of excisable goods, therefore does not attract levy of central excise duty. The common adjudication order was passed on 31.07.24 dropping the demand and consequential refunds were applied and granted by Sitapur division and Barabanki division by October' 2024 i.e. less than three months, which are well within the time limit of one year as prescribed by Section 11B of the Central Excise Act l.e. the relevant date would be "(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;".

4.8 I also observe that a limitation period of two years has been wrongly mentioned in the impugned order and also in

the cross objections furnished by the department, referring to the impugned order, since the limitation period under Section 11B was one year from the relevant date during the material time."

4.3 Undisputedly, appellant was paying duty under protest. Appellant had as per the letter reproduced below specifically lauged protest with the jurisdictional officers giving the reasons of protest:-

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Superintendent, Customs, Central Excise & Service Tax, Pilibhit Range

bajaj energy private limited

Ref: BEPL/Fly Ash/15-16 Date: 31.08.15

The Superintendent,
Central Excise & Service Tax
Range Pilibhit
Division : Bareilly

Sub: Excisability of "Fly Ash" under Central Excise Tariff Act, and or Central Excise Rules, 2002.

Dear Sir,

Please refer the excise duty being paid by us on the clearance / removal of Fly Ash from our Power Plant in terms of Notification No. 1/2011 Central Excise dated 1.3.2011 which prescribes rate of duty @ 1% later amended to 2% vide Notification No. 16/2012-C.E. dated 17.03.2012 for Fly Ash of chapter 26 or any other chapter with a condition that no CENVAT Credit is availed on input and input services.

In this regard we wish to submit as under:

1. We have set up Thermal Power Plant for generation of electricity. For generation of electricity in our Power Plant, the coal is burned and while burning the Coal, the fly ash [Fly Ash from ESP's (Electro-Static Precipitators)] arises.

2. Fly ash has been held to be a non-excisable item by the Hon'ble Supreme Court of India in the case of Union of India vs. Ahmedabad Electricity Co. Limited reported in (1998) 1 S.C.C. 479 : (1998) 1 S.T.J. 1 : (1998) 1 L.L.T. 3 (S.C.) in as much as it is not a manufactured product. In para 26 of the judgment the following has been held:-

प्राप्त किया

"26. Can burning of coal be called manufacturing? The locomotive steam engines used to run on coal. Coal was being constantly burnt in the boiler of the engine. The constant burning of coal produced cinder. Could it be

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said that the engine driver was manufacturing cinder? Is any manufacturing activity involved? Burning of coal for purposes of producing steam cannot be said to be a manufacturing activity. Therefore, neither ash nor cinder can be said to be products of a manufacturing process. From burning coal when you get either cinder or ash, it cannot be said that a new product had emerged. . ."

3. It is submitted that by merely, issuing an exemption Notification No.01/2011–CE dated 01.03.2011 where under the effective rate of fly ash, falling under Chapter 26 or any other chapter, has been prescribed at 1% ad valorem, later increased to 2%, (refer item No.27of the table to the Notification) if CENVAT Credit of input / input service is not taken, fly ash will not attain the status of a manufactured product, which is a condition precedent, for imposition of central excise duty under Section 3 of the Central Excise Act, 1944.

4. Similar view has been taken by the Hon'ble Gujarat High Court in the case of Ahmadabad Electricity Company Ltd. vs. Union of India reported as 2001 (131) E.L.T. 535 (Guj.) against which the SLP, filed by the department, was dismissed by the Hon'ble Supreme Court of India vide its order reported as 2003 (155) E.L.T. A231 (S.C.).

5. In the similar matter, the Hon'ble Madras High Court, while deciding the Writ Petition No. W.P.No.17282 of 2014 & M.P.Nos.1 & 2 of 2014 filed against the show cause notice demanding duty on Fly Ash, has hold the Fly Ash is not a manufactured excisable product and cannot be subjected to excise duty. Relevant findings in para 9 and 10 of the judgment are re-produced as under;

"that to be subjected to levy of excise duty "excisable goods" must be produced or manufactured in India. For being produced and manufactured in India, the raw material should have gone through the process of transformation into a new product by skillful manipulation. Excise duty is an incidence of manufacture and, therefore, it is essential that the product sought to be subjected to excise duty should have gone through the process of manufacture.

"fly ash" and "fly ash bricks" are included in the items in the entries to the First Schedule of the Act and thereby, they are subjected to levy of excise duty in view of Section 3 of the Act. It is to be noted that simply because goods find mention in one of the entries of the First

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Schedule does not mean that they become liable for payment of excise duty. It is essential that the goods have to satisfy the test of being produced or manufactured in India. Excise duty is a duty leviable only on the manufactured goods."

6. Therefore, in our view and as per the legal position settled by the Hon'ble Supreme Court before the issues of present notification and recently by the Hon'ble Madras High Court, Fly Ash would not be subject to central excise duty, therefore, we are not liable to pay the duty on its removal. Further, whatever duty has been paid by us on Fly Ash, same is liable to be refunded to us.

7. In case the department entertains some different view on this issue, we may be informed accordingly so that the matter can be adjudicated by taking the proper legal recourse.

8. However, till the matter is finally accepted by the department in favour of the Trade / assesseses, we shall continue to pay the duty under protest on the removal / clearance of such Fly Ash.

Thanking You

Yours faithfully,

For Bajaj Energy Pvt. Ltd.
Unit: Barkhera

Authorized Signatory

Copy to AC / DC , C.Ex, Div. Bareilly

Bajaj Energy Ltd.
Bisalpur Road
Vill-Barkhera Kalan
Pilibhit (U.P.)

4.4 From perusal of the above letter, it is evident that appellant was asked to pay central excise duty even after the decision of Hon'ble Gujarat High Court in the case of M/s Ahmadabad Electricity Company Ltd. Vs UOI reported as 2001 (131) ELT 535 (Guj.) against which the SLP, filed by the department, was dismissed by the Hon'ble Supreme Court vide its order reported as 2003 (155) ELT A231 (SC) and also the decision of Hon'ble Madras High Court in writ Petition No.W.P.No.17282 of 2014 & M.P. Nos.1 & 2 of 2014 filed against show cause notice demanding duty on fly ash. The above letter

clearly shows that taking note of the above judgment, appellant was paying duty under protest.

4.5 No action was taken by the revenue's authorities on the letter of protest filed by the appellant to either accept or reject the same. In the meantime Hon'ble Supreme Court has dismissed writ appeal filed by the revenue against the order of Hon'ble Madras High Court referred above. Subsequently, appellant claimed refund of the duty paid by them under protest, which is the bone contention in the present proceedings.

4.6 I find that the protest made by the appellant was never decided. Dismissal of the appeal/ SLP filed by the revenue against the order of Gujarat High Court in case of some other person would not amount to disposal of the protest made by the appellant. Hon'ble Supreme Court has in the case of M/s 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.

83.*It is then pointed out by the learned Counsel for the petitioners-appellants that if the above interpretation is placed upon amended Section 11B, a curious consequence will follow. It is submitted that a claim for refund has to be filed within six months from the relevant date according to Section 11B and the expression "relevant date" has been defined n Clause (B) of the Explanation appended to sub-section (1) of Section 11B to mean the date of payment of duty in cases other than those falling under Clauses (a), (b), (c), (d) and (e) of the said Explanation. It is submitted that Clauses (a) to (e) deal with certain specific situations whereas the one applicable in most cases is the date of payment. It is submitted that the appellate/revision proceedings, or for that matter proceedings in High Court/Supreme Court, take a number of years and by the time the claimant succeeds and asks for refund, his claim will be barred; it will be thrown out on the ground that it has not been filed within six months from the date of payment of duty. We think that the entire edifice of this argument is erected upon an incomplete reading of Section 11B. The second proviso to Section 11B (as amended in 1991) expressly provides that "the limitation of six months shall not apply where any*

duty has been paid under protest". Now, where a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest. It is difficult to imagine that a manufacturer would pay the duty without protest even when he contests the levy of duty, its rate, classification or any other aspect. If one reads the second proviso to sub-section (1) of Section 11B along with the definition of "relevant date", there is no room for any apprehension of the kind expressed by the learned Counsel.

84.*It was then submitted that Rule 233B which prescribes the procedure to be followed in cases where duty is paid under protest requires the assessee to state the grounds for payment of duty under protest and that it may well happen that the authority to whom the letter of protest is submitted may refuse to record it, if he is not satisfied with the grounds of protest. In our opinion, the said apprehension is not well-founded. Sub-rules (1), (2) and (3) of Rule 233B read as follows :*

> *"**RULE 233B. Procedure to be followed in cases where duty is paid under protest.** - Where an assessee desires to pay (1) duty under protest he shall deliver to the proper officer a letter to this effect and give grounds for payment of the duty under protest.*
>
> *On receipt (2) of the said letter, the proper officer shall give an acknowledgement to it.*
>
> *The (3) acknowledgement so given shall, subject to the provisions of the sub-rule (4), be the proof that the assessee has paid the duty under protest from the day on which the letter of protest was delivered to the proper officer."*

85.*The rule no doubt requires the assessee to mention the "grounds for payment of the duty under protest" but it does not empower the proper officer, to whom the letter of protest is given, to sit in judgment over the grounds. The assessee need not particularise the grounds of protest. It is open to him to say that according to him, the duty is not exigible according to law. All that the proper officer is empowered to do is to acknowledge the letter of protest when delivered to him - and that acknowledgement shall be the proof that the duty has been paid under protest. A reading of the rule shows that the procedure prescribed therein is evolved only with a view to keep a record of the payment of duty under protest. It is meant to obviate any dispute whether the payment is made under protest or not. Any person paying the duty under protest has to follow the procedure prescribed by the Rule and once he does so, it shall be taken that he has paid the duty under protest. The period of limitation of six months will then have no application to him.*

86.*We may clarify at this stage that when the duty is paid under the orders of Court (whether by way of an order granting stay, suspension, injunction or otherwise) pending an appeal/reference/writ petition, it will certainly be a payment under protest; in such a case, it is obvious, it would not be necessary to lodge the protest as provided by Rule 233B."*

4.7 In terms of the above, it is necessary for the officer to whom the protest was filed to dispose of the same in the case of the appellant, which has not been done. Revenue cannot rely to said that because Hon'ble Supreme Court has in the case of some other person decided the matter, the protest gets immediately disposed of.

4.8 The crux of the above referred para of Hon'ble Supreme Court is that each person in respect of the proceedings of demand or refund filed, it is individual battle and the protest are to be initiated and complied in respect of the said person. In the present case, I find that the protest made was not disposed of by the order of Hon'ble Supreme Court dismissing the Civil Appeal filed by the revenue in the case of some other person for the simple reason that appellant was not even party to that matter.

4.9 As I find that the duty was paid under protest, the refund claim could not have been hit by the period of limitation.

4.10 Appellant in his submission before me has relied upon the various decision which are totally irrelevant to the facts of the present case. Impugned order also relies upon certain decisions which too are distinguishable in the facts of the present case. I also observe that appellant had claimed interest in respect of the amount of refund claim made in the refund application will need to be examine as per the provisions of Section 11BB read with decision of Hon'ble Supreme Court in the case of M/s Ranbaxy laboratories Ltd. [2011 (273) E.L.T. 3 (S.C.)].

4.11 It is also brought to my knowledge that in the case of same appellant for his unit located in the jurisdiction of Lucknow Commissionerate refund claims have been allowed by the authorities.

4.12 In view of the above discussions, I do not find any merits in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Order pronounced in open court on-15 January, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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