

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

REGIONAL BENCH - COURT NO.II

Excise Appeal No.70686 of 2025

(Arising out of Order-in-Appeal No.NOI-CGST-002-APPL-48-2025-26, dated - 26/05/2025 passed by Commissioner (Appeals), CGST, Noida)

M/s Sheela Foam Ltd.

.....Appellant

(Plot No.51, Udyog Vihar, Surajpur, Kasna Road
Gautam Buddha Nagar, Uttar Pradesh 201304)

VERSUS

Commissioner, Central Excise & CGST, Noida

....Respondent

(GST Bhawan, IRCON Building, Plot No.-C-232, A/2-A/3,
Sector-48,Gautam Budh Nagar, Noida-201301)

APPEARANCE:

Shri Pravin Sharma, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70027/2026

DATE OF HEARING : 11.11.2025
DATE OF DECISION : 02.02.2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-In-Appeal No. Order-in-Appeal No. NOI-CGST-002-APPL-48-2025-26, dated - 26/05/2025 passed by Commissioner (Appeals), CGST, Noida. By the impugned order following has been held:-

"11. In view of the above discussions and findings, I find that the interest at prescribed rate under Section 11BB of the Central Excise Act, 1944 is eligible to the appellant on amount of Rs.35,60,087/- from the date of deposit to the date of actual refund. Accordingly, I am passing the following order:

ORDER

Present appeal present bearing No. 234/CE/NOIDA/APPL/GBN/2024-25 dated 16.10.2024, filed by M/s Sheela Foam Limited, 51A, Udyog Vihar Greater Noida, (U.P.) is hereby allowed in above terms with consequential relief."

2.1 The Appellant having Central Excise Registration Certificate No.AAACS0189BXM001 were engaged in manufacture of PU foam mattresses falling under Chapter Heading 39 of the Central Excise Tariff Act 1985. They were also availing the facility of CENVAT Credit on inputs & capital goods under the provisions of the CENVAT Credit Rules, 2004.

2.2 The Appellant filed a letter dated 13.12.2023 for the refund of Rs. 35,60,087/- in pursuance to the Tribunal's Final Order No. 70132/2022 dated 02.08.2022 read with Misc Order No. 70131/2023 dated 16.11.2023 passed against Order-in-Original No. 1/Commissioner/G.B.Nagar/2018-19 dated 04.08.2019 passed by the Commissioner, Central Excise & CGST, Gautam Buddh Nagar.

2.3 On 27.08.2009 a fire accident took place in the factory of the Appellant resulting in destruction of 'semi-finished goods in process' and the 'finished good' available in the factory. The Appellant informed the jurisdictional Assistant Commissioner and the Range Officer, regarding this accident vide the letter dated 27.08.2009. The Appellant vide their letter dated 26.02.2010 intimated that they had reversed the CENVAT credit of Rs.41,01,620/-.

2.4 Thereafter the Appellant filed an application in terms of Rule 21 of the Central Excise Rules, 2002 for remission of duty amounting to Rs.40,97,341/-, involved in the goods destroyed in fire. The Department issued a Show Cause Notice dated 27.08.2010 to the Appellant proposing rejection of remission on the ground that the fire accident in their factory cannot be treated as natural cause or unavoidable accident and thus Central Excise duty of Rs. 40,97,341/- was proposed to be

recovered. The Show Cause Notice further required the Appellant to pay the interest on CENVAT Credit of Rs. 41,01,620/- reversed alleging that the same was reversed belatedly.

2.5 The Show Cause Notice was adjudicated by the Commissioner, Customs & Central Excise, Noida vide Order-in-Original No.01/Commissioner/Remission/2013-14 dated 10.07.2013 against the party, confirming the demand of Central Excise Duty of Rs. 40,97,341/- along with interest & the demand of interest on the CENVAT credit of Rs. 41,01,620/-already reversed by the party. It was also held that remission of duty on 'semi-finished goods' is not covered under Rule 21 as duty is chargeable on the 'finished goods' when manufacture is complete and final products are manufactured. Regarding 'finished goods' destroyed in fire, it was held that surveyors report was not provided to substantiate the averment of the party that insurance claim filed by them did not include the element of excise duty on the goods destroyed.

2.6 Aggrieved Appellant filed the appeal before the Commissioner (Appeals) who has allowed the appeal filed by the Appellant allowing refund of Rs.35,60,087/- alongwith interest at the rate prescribed under Section 11BB of the Central Excise Act, 1944.

2.7 Aggrieved Appellant has filed the present appeal requesting interest @12% from the date of deposit till the sanction of the refund claim.

3.1 Heard Shri Pravin Sharma, Advocate for the Appellant and Shri Manish Raj, Authorized Representative for the Revenue.

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

4.2 Appellant has filed this appeal assailing the above order and have claimed the interest from the date of deposit at the rate of 12%. They have claimed the same on the basis of the order of the Tribunal in the case of:

- Indore Treasure Market City (P) Ltd. [(2024) 20 CENTAX 469 (Tri.Del.)]. Appeal filed by the revenue has been dismissed as reported at (2024) 20 CENTAX 470 (MP)], holding that no substantial question of law arises in the matter.
- R S Enterprieses [2023 (384) ELT 711 (T-Del)]
- Allied Chemicals & Pharmaceuticals Pvt. Ltd. [2022 (382) ELT 371 (T-Del)]
- Continental Engines Pvt. Ltd. [2022 (382) ELT 522 (T-Del)]
- Kesar Enterprises [2022 (380) ELT 319 (T-All)]
- Parle Agro Pvt Ltd. [2022 (380) E.L.T. 219 (Tri.-All)]
- Parle Agro Pvt Ltd. [2018 (360) E.L.T. 1005 (Tri.-All)]
- Bajaj Auto Ltd. [2007 (213) ELT 577 (T-Mum)]

4.3 The decisions referred by the Appellant follow the line set by the decision in case of Parle Agro by placing reliance on the decision of the Hon'ble Apex Court in the case of Sandvik Asia Ltd. [2007 (8) STR 193 (SC)]. In these decisions and other which follow the same argument following is observed (I am not reproducing from all the decisions because they follow the same line of argument);

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

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

29. *Section 11BB provides for interest on delayed refund. It states that if any duty ordered to be refunded under sub-section (2) of Section 11B is not refunded within three months from the date of receipt of the application, then the applicant shall be entitled to interest after the expiry of three months from the date of receipt of the application at*

such rate not below 5% and not exceeding 30% as may be notified by the Central Government in the Official Gazette.

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

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

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

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

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

Notification Under Section 11AA

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

the 1st March, 2011, except as respects things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at fifteen per cent per annum for the purpose of the said section.

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

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

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

Notification Under Section 11BB

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

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

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

Notification Under Section 11DD

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

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

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

Notification Under Section 11AB

Rate of interest on delayed payment of duty. - *In exercise of the powers conferred by section 11AB of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 66/2003-Central Excise (N.T.), dated the 12th September, 2003 [GSR (E), dated the 12th September, 2003], except as respects things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at eighteen per cent per annum for the purpose of the said section.*

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

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

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

41. *In view for the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notifications issued under Sections 11AA, 11BB, 11DD and*

11AB of the Excise Act, the grant of interest @ 12% per annum seems to be appropriate."

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

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

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

"30.

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

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

being fixed by the Central Government, by notification in the Official Gazette.

33.”

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

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

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

3.2 In the circumstances it was prayed inter alia :-

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

4. The first case arises out of Special Civil Application No. 18591 of 2018 filed by M/s. Willowood Chemicals Pvt. Ltd. submitting that said Writ Petitioner was entitled on the basis

of Section 16 of the IGST Act read with Section 54 of the CGST Act for compensation in receipt of delayed payment as detailed in Annexure D of the petition, which in turn dealt with 12 refunds with delay ranging between 94 to 290 days. The special civil application had thus prayed for appropriate compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. The instant cases have not arisen from any order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court and the cases are strictly

within the scope of the principal provision of Section 56 and not under the proviso thereof. In light of these provisions, the question which arises for consideration is whether the High Court was justified in awarding interest at the rate of 9 per cent per annum.

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

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

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

jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this principle and, therefore, hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right.”

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

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

main relief of setting aside the order imposing the tax or duty. Those cases stand on a different footing and have no application to the present case. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondents before the High Court is dismissed. No order as to costs."

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

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

(i) Normally, a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the

*State or its officers. (Vide **Burmah Construction Co. v. State of Orissa** [AIR 1962 SC 1320 : 1962 Supp (1) SCR 242]).*

*(ii) If a right has been infringed - whether a fundamental right or a statutory right - and the aggrieved party comes to the Court for enforcement of the right, it will not be giving complete relief if the Court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realised by the Government without the authority of law. (Vide **State of M.P. v. Bhailal Bhai** [AIR 1964 SC 1006]).*

*(iii) A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the civil court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of the power conferred under Article 226 for payment of money. (Vide **Suganmal v. State of M.P.** [AIR 1965 SC 1740])*

*(iv) There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment, etc. While a petition praying for mere issue of a writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition. (Vide **Salonah Tea Co. Ltd. v.***

Supdt. of Taxes [(1988) 1 SCC 401 : 1988 SCC (Tax) 99 (2)]

(v) *It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without the authority of law and there was no case of undue enrichment, there is no good reason to deny a relief of refund to the citizens. But even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case. (Vide U.P. Pollution Control Board v. Kanoria Industrial Ltd. [(2001) 2 SCC 549])*

(vi) *Where the lis has a public law character, or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy under Article 226 of the Constitution will not be denied. (Vide Sanjana M. Wig v. Hindustan Petroleum Corporation Ltd. (2005) 8 SCC 242)*

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

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

(A) *In Modi Industries Ltd. and Another v. Commissioner of Income Tax and Another [(1995) 6 SCC 396] a Bench of three Judges of this Court was called upon to consider the effect of Section 214 of the Income-tax Act, 1961, and the questions which arose were set out as under :*

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

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

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

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

"The argument, which was upheld in some of the cases now under appeal, is that it will be inequitable if the assessee does not get interest on the amount of advance tax paid,

when the amount paid in advance is refunded pursuant to an appellate order. This is not a question of equity. There is no right to get interest on refund except as provided by the statute. The interest on excess amount of advance tax under Section 214 is not paid from the date of payment of the tax. Nor is it paid till the date of refund. It is paid only upto the date of the regular assessment. No interest is at all paid on excess amount of tax collected by deduction at source. Before introduction of Section 244(1A) the assessee was not entitled to get any interest from the date of payment of tax upto the date of the order as a result of which excess realisation of tax became refundable. Interest under Section 243 or Section 244 was payable only when the refund was not made within the stipulated period upto the date of refund. But, if the assessment order was reduced in appeal, no interest was payable from the date of payment of tax pursuant to the assessment order to the date of the appellate order.

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

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

"9. There is considerable force in the submissions of Ms. Madhavi Divan, the Learned Counsel for the respondents that the decisions of the Bombay High Court in Krishnakumar [W.P. No. 83 of 1986, decided on 29-6-1991

(Bom.)] and Changdeo [W.P. No. 3805 of 2000, decided on 7-7-2000 (Bom.)] are not sound, as they completely ignore Section 26 of the Act, while awarding interest at 9% per annum on the belated payment of compensation.

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

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

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

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

11. Section 24 of the Act requires the Collector, after possession of surplus land was taken over under Section

21(4) of the Act, to cause public notice requiring persons interested to lodge their claims. Section 25 of the Act provides for determination of compensation and apportionment thereof. Section 26 deals with mode of payment of amount of compensation and the same is extracted below :

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

(2) The bonds shall be -

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

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

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

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

whether the payment is made by transferable bonds or by cash, the rate of interest can be only at 3% per annum for a period of 20 years from the date of taking possession.

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

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

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

(D) In Gujarat Fluoro Chemicals, the correctness of the decision in Sandvik Asia Ltd. came up for

consideration before a Bench of three Judges of this Court, and the matter was considered thus :

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

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

5. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assessees and

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

6. As we have already noticed, in Sandvik case [Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508] this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding a certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same, not an interest on interest."

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

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

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

We, therefore, answer the reference as follows :

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

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

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

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

(e) Public purpose is a precondition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

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

The aforestated answers and especially one at serial (e) show the context in which the issue of compensation was considered by this Court, which is completely distinct and

different from the issue with which we are presently concerned.

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

19. Since the delay in the instant case was in the region of 94 to 290 days and not so inordinate as was the case in Sandvik Asia Ltd., the matter has to be seen purely in the light of the concerned statutory provisions. In terms of the principal part of Section 56 of the CGST Act, the interest would be awarded at the rate of 6 per cent. The award of interest at 9 per cent would be attracted only if the matter was covered by the proviso to the said Section 56. The High Court was in error in awarding interest at the rate exceeding 6 per cent in the instant matters.”

4.5 In the present case the Appellant has vide letter dated 26.02.2010 informed the fact about reversal of CENVAT Credit of Rs 41,01,620/- as the amount of CENVAT Credit involved on the goods (semi finished goods and finished goods) destroyed in fire that took place in their factory on 27.08.2009. From the facts as above it is evident that Appellant had reversed the CENVAT Credit which was availed by them in respect of the inputs contained in the finished and semi finished goods which were destroyed in fire. In terms of CENVAT Credit scheme the Appellant has taken the CENVAT Credit of the duty paid on the inputs received by them for use in or in relation to manufacture of the finished goods on payment of duty. Thus by reversing the said credit, they have reversed the credit of central excise duty taken against such inputs which for the reason of fire were not used in or in relation to manufacture of finished goods cleared on payment of duty. Thus I have no hesitation in holding the amount so reversed by the appellant and intimated vide letter dated 26.02.2010 was nothing but Central Excise duty associated with these goods. Thereafter Appellant made an application for remission of duty in respect of the goods destroyed in fire in terms of Rule 21. The said application was allowed by the Final Order No 70132/2022 dated 02.08.2022 and Misc Order No 70131/2023 dated 16.11.2023 holding that appellant was entitled to the CENVAT Credit of Rs 35,50,087/-. Thus I have no hesitation in concluding that the amount claimed as refund in pursuance of the order of the Tribunal is nothing but

Central Excise Duty, and the refund of the same will be governed by the provisions of Section 11B and Section 11BB of the Central Excise Act, 1944. The decisions relied upon by the Appellant which were in respect of the amounts deposited by the Appellant during course of investigation are thus clearly distinguishable and cannot be relied upon for granting them interest @ 12% as claimed by them.

4.6 In case of Mafatlal Industries [1997 (89) ELT 247 (SC)], Hon'ble Supreme Court has observed as follows:

"68. *Re. : (I) : Hereinbefore, we have referred to the provisions relating to refund obtaining from time to time under the Central Excises and Salt Act. Whether it is Rule 11 (as it stood from time to time) or Section 11B (as it obtained before 1991 or subsequent thereto), they invariably purported to be exhaustive on the question of refund. Rule 11, as in force prior to August 6, 1977, stated that "no duties and charges which have been paid or have been adjusted....shall be refunded unless the claimant makes an application for such refund under his signature and lodges it to the proper officers within three months from the date of such payment or adjustment, as the case may be". Rule 11, as in force between August 6, 1977 and November 17, 1980 contained sub-rule (4) which expressly declared: "(4) Save as otherwise provided by or under this rule, no claim of refund of any duty shall be entertained". Section 11B, as in force prior to April, 1991 contained sub-section (4) in identical words. It said : "(4) Save as otherwise provided by or under this Act, no claim for refund of any duty of excise shall be entertained". Sub-section (5) was more specific and emphatic. It said : "Notwithstanding anything contained in any other law, the provisions of this section shall also apply to a claim for refund of any amount collected as duty of excise made on the ground that the goods in respect of which such amount was collected were not excisable or were entitled to exemption from duty and no court shall have any jurisdiction in respect of such claim." It started with a non-*

obstante clause; it took in every kind of refund and every claim for refund and it expressly barred the jurisdiction of courts in respect of such claim. Sub-section (3) of Section 11B, as it now stands, is to the same effect - indeed, more comprehensive and all-encompassing. It says, "(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder or in any law for the time being in force, no refund shall be made except as provided in sub-section".

The language could not have been more specific and emphatic. The exclusivity of the provision relating to refund is not only express and unambiguous but is in addition to the general bar arising from the fact that the Act creates new rights and liabilities and also provides forums and procedures for ascertaining and adjudicating those rights and liabilities and all other incidental and ancillary matters, as will be pointed out presently. This is a bar upon a bar - an aspect emphasised in Para 14, and has to be respected so long as it stands. The validity of these provisions has never been seriously doubted. Even though in certain writ petitions now before us, validity of the 1991 (Amendment) Act including the amended Section 11B is questioned, no specific reasons have been assigned why a provision of the nature of sub-section (3) of Section 11B (amended) is unconstitutional. Applying the propositions enunciated by a seven-Judge Bench of this Court in Kamala Mills, it must be held that Section 11B [both before and after amendment] is valid and constitutional. In Kamala Mills, this Court upheld the constitutional validity of Section 20 of the Bombay Sales Tax Act (set out hereinbefore) on the ground that the Bombay Act contained adequate provisions for refund, for appeal, revision, rectification of mistake and for condonation of delay in filing appeal/revision. The Court pointed out that had the Bombay Act not provided these remedies and yet barred the resort to civil court, the constitutionality of Section 20 may

have been in serious doubt, but since it does provide such remedies, its validity was beyond challenge. To repeat - and it is necessary to do so - so long as Section 11B is constitutionally valid, it has to be followed and given effect to. We can see no reason on which the constitutionality of the said provision - or a similar provision - can be doubted. It must also be remembered that Central Excises and Salt Act is a special enactment creating new and special obligations and rights, which at the same time prescribes the procedure for levy, assessment, collection, refund and all other incidental and ancillary provisions. As pointed out in the Statement of Objects and Reasons appended to the Bill which became the Act, the Act along with the Rules was intended to "form a complete central excise code". The idea was "to consolidate in a single enactment all the laws relating to central duties of excise". The Act is a self-contained enactment. It contains provisions for collecting the taxes which are due according to law but have not been collected and also for refunding the taxes which have been collected contrary to law, viz., Sections 11A and 11B and its allied provisions. Both provisions contain a uniform rule of limitation, viz., six months, with an exception in each case. Sections 11 and 11B are complimentary to each other.

NATURE AND CHARACTER OF REFUND CLAIMS UNDER THE CENTRAL EXCISES AND SALT ACT AND THE CUSTOMS ACT :

96. *It would be evident from the above discussion that the claims for refund under the said two enactments constitute an independent regimen. Every decision favourable to an assessee/manufacturer, whether on the question of classification, valuation or any other issue, does not automatically entail refund. Section 11B of the Central Excises and Salt Act and Section 27 of the Contract Act, whether before or after 1991 amendment - as interpreted by us herein - make every refund claim subject to proof of not passing-on the burden of duty to others. Even if a suit is filed, the very same condition operates. Similarly, the High*

Court while examining its jurisdiction under Article 226 - and this Court while acting under Article 32 - would insist upon the said condition being satisfied before ordering refund. Unless the claimant for refund establishes that he has not passed on the burden of duty to another, he would not be entitled to refund, whatever be the proceedings and whichever be the forum. Section 11B/Section 27 are constitutionally valid, as explained by us hereinbefore. They have to be applied and followed implicitly wherever they are applicable.

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

(i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff - whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter - by mis-interpreting or mis-applying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by mis-interpreting or mis-applying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactment before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 - and of this Court under Article 32 - cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and

disposed of in the light of and in accordance with the provisions of Section 11B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.

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

4.7 Thus all the refunds which are filed under the Central Excise Act, 1944 in terms of the decision of Hon'ble Supreme Court in case of Mafatalal Industries and the above provisions whether of the duty, interest or any deposit made are governed by the provision of Section 11B of the Act. The interest thus gets governed by the provisions of Section 11BB as has been held by

Hon'ble Supreme Court in case of Ranbaxy Laboratories Ltd. [2011 (273) E.L.T. 3 (S.C.)]. Hon'ble Supreme Court observed as follows:

9. *It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.*

10. *It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. [See: Cape Brandy Syndicate v. Inland Revenue Commissioners, [1921] 1 K.B. 64 and Ajmera Housing Corporation & Anr. v. Commissioner of Income Tax, (2010) 8 SCC 739].*

11. *At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months. The Circular reads thus :*

"Circular No. 670/61/2002-CX, dated 1-10-2002

F. No. 268/51/2002-CX.8

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding

I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period

of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

2. In this connection. Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No. 398/31/98-CX., dated 2-6-98 [1998 (100) E.L.T. T16] wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed.”

(Emphasis supplied)

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

from the date of receipt of the application under Section 11B(1) of the Act.

13. *We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under :*

"Heard both the parties.

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

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

The special leave petition is dismissed. No costs."

14. *At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.*

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

4.8 There has been exception carved out only for determination of relevant date for determining the period for which interest is to be paid in respect of deposit made as per Section 35F for filing the appeal before an appellate authority. Section 35FF provides that interest would be paid from the date of deposit made under Section 35F.

4.9 Hon'ble Delhi High Court has in case of **Goldy Engineering Works [Order dated 14.07.2023 in WP (C) 4332/2022]** observed as follows:

"3. For the sake of brevity, the Court deems it apposite to notice the facts as they obtain in the writ petition filed by M/s Goldy Engineering Works vs. Commissioner of Central Excise & Anr.³ On 27 July 2006, a Show Cause Notice⁴ is stated to have been issued to the petitioner, its proprietor, one M/S

Aay Kay Engineering Works and its proprietor, in respect of certain goods which had been seized. The aforesaid SCN was followed by another SCN dated 29 January 2007 in terms of which the Department raised a demand for additional duty as well as proposing penal action again against the noticees for having violated the provisions of an exemption notification. The petitioner asserts that during the pendency of those proceedings, it was also forced to deposit an amount of Rs. 20,00,000. The SCNs were ultimately finalized in terms of the order in original dated 08 February 2008.

4. In terms of the aforesaid order, the Additional Commissioner confirmed the duty demand of Rs. 45,31,574 /- under Section 11A of the 1944 Act and held the petitioners liable to pay the same along with interest thereon in accordance with Section 11AB of the 1944 Act. Further directions were framed for confiscation of cash amounting to Rs. 44,96,000/- and the imposition of monetary penalties amounting to Rs. 45,31,574/-. The amount of Rs. 20,00,000/- which had been deposited by the petitioners during the pendency of the SCN proceedings was also appropriated against the demands which stood crystallized.

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

6. The petitioner thereafter and more particularly on 14 November 2016 filed a formal application for refund which had accrued in terms of the order passed by the Appellate Authority on 31 December 2008 and consequent to the

challenge thereto being negated by the CESTAT in terms of its judgment of 27 September 2016.

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

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

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

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

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

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

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

(iii) against the decision or order referred to in clause (b) of subsection (1) of Section 35-B, unless the appellant has

deposited ten per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Provided that the amount required to be deposited under this section shall not exceed Rupees Ten crores:

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

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

(i) amount determined under Section 11-D;

(ii) amount of erroneous CENVAT credit taken;

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

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

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

23. The Court, at the outset notes, that Section 11B(1) in clear and unambiguous terms contemplates the making of an application for refund being made by any person claiming

refund of any duty of excise and interest paid on such duty. The claim of refund insofar as the petitioner is concerned arose in the backdrop of the order in original coming to be set aside in appeal. The petitioner appears to have made an application for refund ultimately and only after the departmental appeal before the CESTAT came to be dismissed.

24. We deem it apposite to observe that the mere pendency of an appeal or an order of stay that may operate thereon would not detract from the obligation of any person claiming a refund making an application as contemplated under Section 11B(1) within the period prescribed and computed with reference to the "relevant date". We do so observe in light of the indubitable principle that an order of stay that may operate in an appeal does not efface the demand or the obligation of refund that may have sprung into existence. It merely places the enforcement of the order appealed against in abeyance. The order of stay would, in any case, be deemed to have never existed once the appeal comes to be dismissed.

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

26. We also find merit in the contention canvassed by Ms. Narain who had submitted that a refund of duty and interest paid thereon is liable to be viewed as distinct from a pre-deposit that may be made in compliance with Section 35F of the 1944 Act. The Circular of the Board too strikes an identical position when it is stated that a deposit which is

made in compliance with a statutory pre-condition for the preferment of an appeal cannot be viewed as "duty". It is the aforesaid aspect which appears to have weighed with the Board in proceeding to formulate its directive for refunds being effected immediately upon an appeal coming to be decided in favour of the assessee and not being made dependent upon any application being made in respect thereof.

27. The aforesaid position stands further fortified when one reads Section 35FF of the 1944 Act. As would be evident from a reading of that provision, Section 35FF as distinct from Section 11B does not require the making of a formal application by the assessee. In fact and contrary to Section 11B, the said provision uses the expression "...there shall be paid to the appellant interest.....". Thus, the language of Section 35FF is an embodiment of the manifest obligation of the respondents to refund the pre-deposit consequent to an order passed by the Appellate Authority notwithstanding an application having not been made by the depositor.

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

29. Regard must also be had to the fact that in the case of refund of duty, it is also incumbent upon the assessee to declare and establish that the burden of tax has not been passed on. Absent that declaration, any refund that may be made would itself amount to the assessee being unjustly

enriched. The making of an application and a declaration to the aforesaid effect is thus not merely an empty formality. This too appears to reinforce the imperatives of an application being formally made before a claim for refund is considered.

30. That only leaves the Court to consider the decisions which were cited by Mr. Mishra for our consideration. However, before proceeding to do so, we deem it pertinent to enter the following prefatory observations. A levy of interest on refund must undoubtedly follow where it is found that the amount has been unjustifiably retained or remitted with undue delay. The respondents cannot be permitted to retain moneys which are otherwise not due or are otherwise liable to be returned. The solitary question which stands raised in these matters is the date from which that interest would flow. In Shri Jagdamba Polymers, the High Court on facts had found that the refund was inordinately delayed even though a claim for the same had been promptly lodged. This is clearly evident from Para 7 of the report. The said decision is thus clearly not an authority for the proposition that a refund must automatically follow de hors the requirements of Sections 11B and 11BB.

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

deposit made as a condition of filing an appeal is in any case not considered to be "duty" even by the respondents.

32. The decision of this Court in Team HR Services, had frowned upon the distinction sought to be advocated by the respondents there between a deposit made under protest and a pre-deposit made in connection with an appeal. As would be further evident from a reading of Paras 14 and 15 the counsel appearing for the respondents had also failed to draw the attention of the Court to any statutory provision which governed the issue of refund. The aforesaid decision is thus clearly distinguishable especially when undisputedly, in the present matters the issue of refund is governed by the provisions of Sections 11B and 11BB."

4.10 The impugned order exactly holds and allows the interest @ 6% as prescribed by the Notification issued under the provisions of Section 11BB and hence cannot be faulted with. Any claim of interest @ 12% will be contrary to extant provisions of Section 11BB and cannot be allowed.

4.11 In view of discussions as above I do not find any merits in the appeal.

5.1 Appeal is rejected.

(Pronounced in open court on 02.02.2026)

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

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