

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

REGIONAL BENCH - COURT No.II

(E-Hearing)

Excise Appeal No.83 of 2009

(Arising out of Order-in-Appeal No.363-CE/APPL/KNP/2008 dated 30/09/2008
passed by Commissioner (Appeals) Customs & Central Excise, Kanpur)

M/s Lohia Starlinger Ltd.,

....Appellant

(Chaubeypur unit, Lohia Industrial Complex,
Chaubeypur, Kanpur)

VERSUS

Commissioner of Central Goods &

Services Tax, Kanpur

....Respondent

(117/7, Sarvodaya Nagar, Kanpur)

APPEARANCE:

Shri Ankur Goel, Advocate &
Shri Saket Singh, Advocate for the Appellant
Shri Prashant Kumar, Authorised Representatives for the Respondent

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

FINAL ORDER NO.70133/2026

DATE OF HEARING : 09 April, 2026
DATE OF PRONOUNCEMENT : 08 May, 2026

SANJIV SRIVASTAVA:

This appeal is filed against the Order-in-Appeal No. 363-CE/APPL/KNP/ 2008 dated 30.09.2008 of Commissioner (Appeal) Central Excise, Kanpur. By the impugned order appeal filed by the Appellant against the Refund Memorandum No.07/ACK-II/R/08 dated 29.07.2008 of the Assistant Commissioner, Central Excise Division-II Kanpur has been dismissed..

2.1 By Order-in-Original No. 1/Addl. Commissioner/07 dated 09.01.2007 a Service Tax Demand of Rs. 25,10,324/- for period 09.07.2004 to 30.09.2005 was confirmed along with Penalty of Rs. 25,10,324/- + 1,500/-. Rs. 1 Lakhs was appropriated against the above order vide Memorandum dated 01.10.2007.

2.2 Appeal filed by the appellant against this order was dismissed vide Order-in-Appeal No. 182-ST/APPL/KNP/2007 dated 30.05.2007.

2.3 Appellant filed a refund/ rebate application dated 15-11-2007 for granting rebate of Central Excise Duty amounting to Rs.73,86,347/- paid on the goods exported to the countries other than Nepal and Bhutan under Rule 18 of the Central Excise Rules, 2002.

2.4 Appellant filed appeal before CESTAT against Order-in-Appeal dated 30.05.2007 and unconditional stay and waiver from pre-deposit was granted vide Stay Order No. ST/60/08 dated 25.01.2008.

2.5 The claim was scrutinized and sanctioned to the appellant vide Order-in-Original No.05/ACK-II/Ref/08 dated 14-02-2008, but out of the amount sanctioned, an amount of Rs.49,22,148/- was appropriated against pending confirmed dues as per the order in original dated 09.01.2007 read with order in appeal dated 30.05.2007

2.6 Appeal filed by the appellant was allowed by the Tribunal vide order dt. 25.11.2008 setting aside Order-in-Appeal dated 30.05.2007.

2.7 Aggrieved by the Order-in-Original dated 14-02-2008, the appellant filed an appeal before the Commissioner (Appeal). This appeal was allowed vide Order-in-Appeal No. 185-CE/APPL/KNP/2008 dated 30-04-2008 and the order in original was set aside.

2.8 Appellant vide letter dated 15.05.2008 requested for release of appropriated amount of Rs. 49,22,148/-.

2.9 In compliance of the aforesaid Order-in-Appeal, the adjudicating authority sanctioned the refund of Rs. 49,22,148/- to the appellant vide Order-in-Original No. 07/ACK-11/R/08 dated 29-07-2008. No interest for delayed payment of refund was granted.

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

2.11 Aggrieved appellant has filed this appeal

2.12 This appeal was allowed by the CESTAT vide Final Order No 70829/2017 dated 01.09.2017. Revenue filed for rectification of Mistakes in order in terms of Section 35 C (2) of the Central Excise Act, 1944. The application for rectification of mistake was allowed by Miscellaneous Order No 70291/2025 dated 11.12.2025 and the Final Order dated 01.09.2017 was recalled and appeal restored to original number.

3.1 I have heard Shri Ankur Goel & Shri Saket Singh, Advocate for the Appellant and Shri Prashant Kumar Authorized Representative for the revenue. The hearing was conducted virtually as requested by the appellant counsel.

3.2 Arguing for the appellant learned counsel submitted:

- Section 11 BB is crystal clear that interest is to be paid on the duty ordered to be refunded u/s 11B of CE Act and where the same is not refunded within 3 months from the date of receipt of Application. Interest on Amount of Rs. 49,22,149/- withheld should be allowed to the appellant for the period 14.02.2008 to 29.07.2008.
 - Manish Pharma Plast Pvt. Ltd. [(2021) 13 SCC 240]
 - Ranbaxy Laboratories Ltd. [(2011) 10 SCC 292]
 - U.P. Twiga Fiber Glass Ltd. [2009 SCC OnLine SC 77]
 - J.K. Cement Works [(2004) 170 ELT 4 (Raj.)]
 - Rama Vision Limited [2004 SCC OnLine CESTAT 2825]
 - Jayanta Glass Ltd. [2004 SCC OnLine CESTAT 3074]
 - Kerala Chemicals & Proteins Ltd. [2006 SCCOnLine CESTAT 49]
 - Minaxi Textiles [2008 SCC OnLine CESTAT 4338]
 - Appellant should also be allowed interest on the delayed payment of interest amount which was due to them as per Section 11BB ibid. Reliance is placed on the following decisions:
 - Sadvik Asia Ltd. [(2006) 2 SCC 508]
 - Sunder Steels Ltd. [2008 SCC OnLine CESTAT 2136]
- 3.3 Authorized representative reiterated the findings recorded in the impugned order.

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

4.2 Impugned order records the findings as follows:

"I have carefully gone through the facts of the case, the impugned refund memorandum, grounds of appeal, the case laws relied upon and the written brief and arguments put forth by the appellants at the time of hearing

.....

The appellants have filed this appeal on the ground that full consequential relief, as ordered by the appellate authority, has not been granted to them by the adjudicating authority in as much as the interest on delayed refund was not granted to team. The appellant had requested for interest on delayed refund in terms of Section 11BB of the Central Excise Act, 1944 on the ground that the amount was withheld illegally without any authority of law in support of their claim, the appellant have relied upon the decision of Hon'ble High Court Allahabad in the case of Hamdard (wakf)(supra). The appellant have also claimed interest on amount of interest accrued for delayed payment of refund and for this they have relied upon the law laid down by the Apex Court in the case of Sandvik Asia Ltd. Vs. CIT(supra) and the case of Sunder Steels Ltd. Vs CC & CE (Appeals) (supra) wherein the aforesaid decision of the Apex Court was followed.

I observe that the issues for consideration in this appeal are as to whether the appellant are entitled for interest on delayed refund in terms of Section 11BB of the Act ibid and whether the interest on amount of interest accrued for delayed payment of refund is payable to them

On careful consideration of the facts on record, I observe that the appellate authority had held in the Order-in-Appeal No. 185-CE/APPL/KNP/2008 dated 30-04-2008 that the order of appropriation of outstanding dues was not maintainable. Accordingly, the Order-in-Original

No.05/ACK-II/Ref/08 dated 14-02-2008 was set aside and appeal was allowed with consequential relief also observe that the amount was refunded to the appellant as a consequence of foresaid order of the appellate authority within the stipulated period of time and no delay was caused. In this regard, it would not be out of place to mention the provisions of Section 11BB of the Central Excise Act, 1944, especially the explanation to the said section which reads as under-

Explanation: Where any order of refund is made by the Commissioner (Appeals). Appellate Tribunal or any court against an order of the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise), under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section]

In terms of the aforesaid explanation, since the refund was granted without delay in compliance of the order of appellate authority, I find that the appellants were not eligible to get the interest.

So far as the reliance placed by the appellants on the order passed by the Hon'ble High Court Allahabad in the case of Hamdard (Wakf) (supra) is concerned, I find that in the said case the party filed the application for getting the refund as a consequence of the order passed by the appellate authority and a delay of almost 1 year was caused in getting the refund. Therefore, the interest awarded in the said case for delayed payment of refund was as per the provisions of Section 11BB. On the contrary, in the present case, the amount of refund was released to appellants within the stipulated period of time of the order of the appellate authority, therefore the appellants were not eligible to get the interest. Due to

aforesaid reasons, the ratio of the said judgment cannot be applied in the present case. Under the circumstances, I hold that the order passed by the adjudicating authority is proper and legal.

As regards the claim for interest on amount of accrued interest, I observe that when the claim for interest is not sustainable, I do not find any reason to examine the said issue. I therefore hold that the claim of the appellant regarding interest on interest is also not maintainable and liable to be set aside."

4.3 The findings recorded in the impugned order need to be examined in light of the decision of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. [(2011) 10 SCC 292]= [2011 (273) E.L.T. 3 (S.C.)] wherein following has been held:

"8. Before evaluating the rival contentions, it would be necessary to refer to the relevant provisions of the Act. Section 11B of the Act deals with claims for refund of duty. Relevant portion thereof reads as under :

"11B. Claim for refund of 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 Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act :

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to ---

- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;*
- (b) unspent advance deposits lying in balance in the applicant's current account maintained with the Commissioner of Central Excise;*
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;*

- (d) *the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;*
- (e) *the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;*
- (f) *the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :*

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4)

.....

(5)

.....

Section 11BB, the pivotal provision, reads thus :

"11BB. Interest on delayed refunds. -

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of

application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

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]."

4.4 From the above decision of Hon'ble Supreme Court which is specifically on the subject of interpretation of Section 11BB of the Central Excise Act, 1944, it is quite evident that for the amounts of refund due in terms of Section 11B *ibid*, the interest is to be paid in respect of the amounts due and not paid to the applicant within three months from the date of application. Thus the only date for computation of interest is the date starting

from the date of completion of three months from the date of application. In the present case the appellant had filed the refund/ rebate claim on 15.11.2007. Thus interest becomes payable to them on the unpaid amount of refund from 15.02.2008. Impugned order has pegged this date to the date of order of Commissioner (Appeal) allowing the appeal of the appellant against order in original dated 14.02.2008, appropriating an amount of Rs 49,22,148/- against the confirmed demand. Such a date for computation of interest has not been provided by the section 11BB as interpreted and explained by the Hon'ble Apex Court in this decision. Thus I do not find any merits in the impugned order to this extent.

4.5 Appellant has claimed interest on the delayed payment of interest. They have relied upon the following decisions in their support:

- Sadvik Asia Ltd. [(2006) 2 SCC 508]
- Sunder Steels Ltd. [2008 SCC OnLine CESTAT 2136].

4.6 On going through the provisions of Central Excise Act, 1944, I do not find any provisions in the Act which provide for payment of such interest on the delayed payment of interest. I find that larger bench of tribunal has in case of Sun Pharmaceuticals [2005 (185) E.L.T. 253 (Tri. - LB)] has held as follows:

"The issue referred to the Larger Bench is as to whether interest on delayed payment of interest is permissible under the provisions of Central Excise Act or not. This reference has arisen on account of the Apex Court judgment in C.E., Hyderabad v. ITC Ltd. reported in 2005 (179) E.L.T. 15 and by the Tribunal in the case of Hindustan Motors v. CCE, Calcutta reported in [2003 (155) E.L.T. 306 (Tri.) = 2003 (56) RLT 192]. None has come present on behalf of the appellants before us. However, the Id. Counsel has assisted the Bench. We have heard the Id, SDR and the Counsel.

2. In C.E., Hyderabad v. ITC Ltd. (supra), there was delayed refund of pre-deposit and interest at the rate more

than 12% was allowed by the Tribunal. The Apex Court after referring and making the draft circular submitted by the Revenue regarding payment of interest, as part of the order, upheld the payment of interest to the assessee on delayed payment of pre-deposit, but reduced the interest to 12%. In that case, payment of interest on interest to the assessee was not in issue before the Apex Court and no observations in that regard had been made.

3. In *Hindustan Motors Ltd. (supra)*, the Tribunal had no doubt allowed the interest on interest, to the assessee, but the Revenue has gone in reference before the Calcutta High Court who had admitted the same and directed the filing of statement of facts before that Court. The Tribunal in that case while allowing interest on interest earned by the assessee but not paid to him, relied upon two judgments, one in *Chimanlal S. Patel v. CIT* - 1994 (210) ITR 419 and another in *CIR v. Narendra Doshi* - 2002 (254) ITR 606 (S.C.). But these judgment, with due respect to the members of the Bench, had been not correctly interpreted and wrongly applied to the case governed by the provisions of Central Excise Act.

4. In *Chimanlal S. Patel v. CIT (supra)* the interest on interest was allowed under Section 214(1) of Income Tax Act by the Hon'ble Gujarat High Court, - Keeping in view the language of this section which permitted the payment of interest on interest in a case of delayed refund of excess advance Tax and interest due thereon. Similarly, in *Narendra Doshi's case (supra)*, interest on interest was allowed by the Deputy CIT by relying upon the decision of Hon'ble Gujarat High Court in *D.J. Works v. Deputy CIT* - 1992 ITR 227 which was later on followed by that High Court in *Chimanlal S. Patel's case (supra.)* and on reference against that order of the Deputy CIT, the Hon'ble Madhya Pradesh High Court affirmed the order. When the matter was taken to the Apex Court in Civil Appeal No. 2053 of 2000, the Court dismissed the same by observing that since the Revenue did not challenge the correctness

two decisions of the Gujarat High Court (supra), the principle laid down therein was rightly followed and the High Court correctly answered the reference in affirmative. The Apex Court itself did not examine the merit of the issue regarding grant of interest on interest to an assessee under Section 214 of the Income Tax Act or any other Act.

5. However, the view taken up by the Gujarat High Court has not been approved of endorsed by the Hon'ble Bombay High Court in the case of Sandvik Asia Ltd. v. Commissioner of Income-tax and Other - 2004 (IT2) - GJX-0020-BOM/1 = 2004 (267) ITR-0078-BOM. In that case, the Bombay High Court has ruled that for want of any express provision in the Income Tax Act, the Court has no power to award interest on interest on delayed payment of interest by the department, in the absence of specific provision in that regard in the tax statute. The authorities can levy and collect the interest on delay in payment of tax, provided the statute provides for such obligation of the assessee under the statute and not otherwise. Similarly, the Apex Court in India Carbon Ltd. v. State of Assam - 1997 (106) STC 460 has ruled that interest can be levied and charged on delayed payment of Tax only if the statute, that levies and changes the tax makes a substantive provision in that behalf.

6. Another full Bench of the Hon'ble Bombay High Court in CIT v. Carona Sahu Co. Ltd. - 1984 (146) ITR 452 it has been also observed that though interest is compensatory in character, yet there is no right to receive interest other than by a right created by a statute. It is also well settled that construction of the statute only implies interpretation thereof and not interpretation therein.

7. It has not been disputed before us that Section 214 of the Income Tax Act relates to the payment of advance tax by an assessee and when the tax so paid had been found to be excess at the time of final assessment that has to be refunded by the department with interest. But no such provision regarding payment of duty in advance by the

assessee, exists in the Central Excise Act. Rather duty is payable by an assessee at the time of clearance of the goods from the factory. The Central Excise Act only speaks of provisional assessment under Rule 9B which can be claimed by the assessee or adopted by the deptt., when there is dispute regarding classification of the goods, and the correct Tariff rate of duty leviable on these goods or, where the clearance of the goods has to be made by an assessee under an agreement containing price variation clause. It is only on finalisation of that provisional assessment, the excess found duty, if any is required to be refunded to the assessee by the department and even for that refund period of three months has been allowed to the revenue under Section 11BB of the Act. However, while introducing this provision w.e.f. 28-9-96, the legislature thought it fit not to provide for any interest on interest even in case of delay in payment of interest on refund amount. To read the liability to pay interest on interest in the provisions of law contained in Section 11BB of the Act, would virtually amount to legislate upon the Act and that is not the function of the Tribunal which is creation under the said Act itself and has to exercise power conferred upon it under the Act. It may also be added that before the introduction of Section 11BB, the Tribunal had no power to award interest by exercising inherent power, on the amount of refund of duty even if paid late. In this context, reference may be made to the judgment of the Hon'ble Allahabad High Court in the case of Prestige Engineering (India) Pvt. Ltd. v. Union of India [1991 (51) E.L.T. 255 (All.)] wherein it was ruled as under :-

"When the Act (Central Excise) and the Rules made thereunder did not provide for payment of interest in case of refund of duty, - It is to be presumed that the Parliament advisedly did not provide for the same, while enacting Section 11B in 1978. The authorities under the Act have to operate within the four corners of the Act and the Rules made thereunder. Since the Act or the Rules did

not provide for grant of interest, the authorities under the Act, including the CEGAT, had no power to award interest.”

8. In the light of what has been discussed above, on the basis of the above referred two judgments of the Gujarat High Court, which are under different Tax statute, interest on delayed payment of interest, cannot be held to be permissible under the Central Excise Act and the Rules made thereunder, for want of any specific provision in the Act or the Rules. Therefore, the Tribunal has no power to award such a interest to the assessee. The law laid down in Hindustan Motors v. CCE (supra), to the contrary, being not a good law, stands overruled. The reference stands accordingly answered.”

4.7 The decision of Hon’ble Bombay High Court in case of Sandvik Asia relied in the above decision was set aside by the Hon’ble Supreme Court as reported at

"29. In our view, the Act recognizes the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee.

30. At the initial stage of any proceedings under the Act any refund will depend on whether any tax has been paid by an assessee in excess of tax actually payable to him and it is for this reason that Section 237 of the Act is phrased in terms of tax paid in excess of amounts properly chargeable. It is, however, of importance to appreciate that Section 240 of the Act, which provides for refund by the Revenue on appeal etc., deals with all subsequent stages of proceedings and therefore is phrased in terms of 'any amount' becoming due to an assessee.

31. The Delhi High Court in Goodyear India Ltd. case (supra) held that an assessee is entitled to further interest under Section 244 of the Act on interest under Section 214 of the Act which had been withheld by the Revenue. The

case of the Revenue was that interest payable to an assessee under Section 214 of the Act was not a refund as defined in Section 237 of the Act and hence no interest could be granted to the assessee under Section 244 of the Act. The Court held that for this purpose Section 240 of the Act was relevant which referred to refund of 'any amount becoming due to an assessee' and that the said phrase would include interest and hence the assessee was entitled to further interest on interest wrongfully withheld. It is also important to appreciate that the Delhi High Court also referred to the Gujarat High Court decision in *D.J. Works case (supra)* and read it as taking the same view. This supports the view of the appellant on the correct reading of the Gujarat decision.

32. As already noticed in paragraph *supra*, the Madras High Court in *Needle Industries Private Ltd. case (supra)* has also interpreted the phrase 'any amount' in the same manner when considering the provisions of Section 244(1A) of the Act, which also uses the same phrase in the context of interest payable by the Revenue. In express terms the Court held that the expression referred not only to the tax but also to interest. The Court agreed with a similar view taken by the Kerala High Court in the case of *Ambat Echukutty Menon (supra)*. Both these were cases where the Court was called upon to decide whether further interest was payable by the Revenue on interest which had to be repaid to assessee.

33. In our opinion, the appellant is entitled to interest under Section 244 and/or Section 244A of the Act in accordance with the terms and provisions of the said sections. The interest previously granted to it has been computed up to 27-3-1981 and 31-3-1986 (under different sections of the Act) and its present claim is for compensation for periods of delay after these dates.

34. In the impugned order, the Bombay High Court has rejected the appellant's contention mainly on the ground that the word refund must mean an amount previously

paid by an assessee and does not relate to an amount payable by the revenue by way of interest on such sums. The High Court's conclusion is based mainly on the wording of the proviso to Section 240 of the Act. As already discussed by us in paragraph supra the proviso can have no relevance whatsoever as it was not part of the Act during the relevant period. The said proviso was inserted with effect from 1-4-1989.

35. The High Court in its judgment has referred to the provisions of Section 244(1A) and the decision of this Court in Modi Industries Ltd. (supra) extracted two paragraphs from this Court's judgment holding that there can be no question of paying interest under both Section 214(1A) and 244(1A) of the Act simultaneously, and further that there is no right to receive interest except as provided by the statute. The decision in Modi Industries case (supra) has no bearing whatsoever on the issue in hand as the issue in that case was the correct meaning of the phrase "regular assessment" and as a consequence under which provision an assessee was entitled to interest for the period up to the date of regular assessment and thereafter. The matter of what was due to it in terms of the decision in Modi Industries case is over, concluded, no longer in dispute and was agreed/accepted on 27-3-1998 when the 2nd respondent gave effect to the previous order of this Court dated 30-4-1997. The working of the respondents itself conclusively shows, further the interest received is admittedly in accordance with the Act. The decision in Modi Industries case (supra), in our view, has no bearing whatsoever on the matter in hand. The main issue now is whether an assessee is entitled to be compensated by the Revenue for the delay in paying to the assessee's amounts admittedly due to it?

36. The High Court has dissented from the decision of the Delhi High Court in Goodyear's case (supra) on the utterly and ex facie erroneous ground that it proceeded on an assumption as to the meaning of the phrase "any amount".

A plain reading of the Delhi High Court judgment will show that this reasoning is utterly erroneous, false and unsustainable.

37. The High Court has not followed the decision of this Court in Narendra Doshi's case (supra) on the ground that this Court did not decide that further interest was payable by interpretation of the Act. What was urged before the High Court was that this Court decided the matter by upholding the Gujarat High Court view which proceeded on the basis that the provisions of the Act did not provide for such further interest.

38. The High Court has merely noted the decision of the Madras High Court in Needle Industries case (supra) without dealing with the same in any manner.

39. The High Court similarly noted and failed to deal with the Kerala High Court's decision in Ambat Echukutty Menon's case (supra) and a previous decision of the Bombay High Court itself in the case of Suresh B. Jain's case (supra).

40. In the present appeal, the respondents have argued that the compensation claimed by the appellant is for delay by the revenue in paying of interest, and this does fall within the meaning of refund as set out in Section 237 of the Act. The relevant provision is Section 240 of the Act which clearly lays down that what is relevant is whether any amount has become due to an assessee, and further the phrase any amount will also encompass interest. This view has been accepted by various High Courts such as the Delhi, Madras, Kerala High Court etc."

4.8 Taking note of the above decision of Hon'ble Supreme Court, Tribunal has in case of Sunder Steels Ltd. [2008 (225) E.L.T. 472 (Tri. - Bang.)]

3. Shri Laxminarayan Goyal, learned Consultant appeared on behalf of the appellants. He urged the following points.

The Commissioner (Appeals) has followed the Larger Bench decision in the case of Sun Pharmaceuticals

Industries Ltd. v. CCE, Chennai - 2005 (185) E.L.T. 253 (Tri. - LB). But the Apex Court judgment will prevail over the Larger Bench judgment.

4. Further the Larger Bench has not dealt with or distinguished with the Hon'ble Apex Court judgment, thus the Apex Court judgment will rule the field and not the Larger Bench of the Tribunal. Thus the impugned order is erroneous and appellant is entitled for relief of Interest on Interest in terms of Hon'ble Apex Court decision. The learned Departmental Representative pointed out that the Larger Bench in Para 5 of the decision has stated that Bombay High Court in the case of Sandvik Asia Ltd. v. Commissioner of Income Tax and Other - 2004 (IT2) - GJX-0020-BOM/1=2004 (267) ITR-0078-BOM. has ruled that for want of any express provision in the Income tax Act, the Court has no power to award interest on interest on delayed payment of interest. There is also reference to the Apex Court decision in the case of India Carbon Ltd. v. State of Assam - 1997 (106) STC 460. Further, the learned Consultant pointed out that Bombay High Court decision in the Sandvik Asia Ltd. case has been over-ruled by the Apex Court in the case of Sandvik Asia Ltd. v. Commissioner of Income Tax on Pune - 2006 (196) E.L.T. 257 (S.C.) = 2007 (8) S.T.R. 193 (S.C.) wherein interest on interest has been awarded irrespective of business of any statutory provisions in the Income tax Act.

5. On a very careful consideration of the issue, I find that the Commissioner (Appeals) has ignored the Supreme Court ruling and followed the Larger Bench decision. The Larger Bench decision relies on the decision of the Bombay High Court, which has been over-ruled by the Apex Court. Moreover, This Tribunal in its decision - 2007 (211) E.L.T. 279 (Tri. - Bang.) relied on the Apex Court decision. I agree with the learned Consultant that the decision of the Apex Court will prevail over the decision of the Larger Bench.

4.9 Clarifying its decision in case of Sandvik Asia, Hon'ble Supreme Court has in case of Gujarat Fluoro Chemicals [2017 (51) STR 236 (SC)] observed as follows:

"3. In order to answer the aforesaid issue before us, we have carefully gone through the judgment of this Court in Sandvik case (supra) 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 (supra). 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.

5. 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 paragraph 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 the Assessment Years 1977-78, 1978-79, 1981-82, 1982-83 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.

6. 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 (supra) 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.

7. As we have already noticed, in Sandvik case (supra) 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 certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest."

4.10 I find that the view expressed by the Hon'ble Supreme Court in case of Gujarat Fluoro Carbons is in perfect alignment with the view expressed by larger bench of tribunal in the case of Sun Pharmaceuticals Ltd. Thus the observation made by the tribunal in case of Sunder Steels Ltd, cannot be said to be correct preposition in law. I further observe that Hon'ble Supreme Court has further in case of Willowood Chemicals Pvt. Ltd. [2022 (60) G.S.T.L. 3 (S.C.)] observed as follows:

"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.

20. We, therefore, allow these appeals and direct that the original writ petitioners would be entitled to interest at the rate of 6 per cent per annum on amounts that they were entitled by way of refund of tax. Since the concerned

amounts along with interest at the rate of 6 per cent per annum have already been made over to them, nothing further need be done in both the cases.”

4.11 Thus in view of discussions as above and the ratio decidend of the above decision I do not find that this Tribunal which is a creation of statute could award any interest which has been not been provided by the statute. In absence of any provision for grant of interest on the delayed payment of interest in the Central Excise Act, 1944, I do not find any merits in the claim made by the appellant to that effect. The view entertained by me aligns with the view expressed by the Hon’ble Supreme Court clarifying its decision in case of Sandvik Asia.

4.12 Summarizing the findings as recorded above:

- Appellant shall be entitled to interest in terms of Section 11BB at prescribed rate (6%) for the period starting from 15.02.2008 and ending on 29.07.2008 on the amount of Rs 49,22,148/-.
- No interest on delayed payment of interest shall be admissible to the appellant.

4.13 Appeal is partly allowed as indicated in para 4.12.

(Order pronounced in open court on-08 May, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)