CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.50681 of 2015

(Arising out of Order-In-Appeal No.220-221-ST-LKO-2014, dated 29.10.2014 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

M/s Jagdish Saran .....**Appellant**
(Biriya Ganj, Tilhar, Shahjanpur, Uttar Pradesh)

VERSUS

Commissioner, Service Tax, Lucknow ....**Respondent**
(7A, Ashok Marg, Lucknow)

AND

Service Tax Appeal No.50682 of 2015

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M/s Jagdish Saran .....**Appellant**
(Biriya Ganj, Tilhar, Shahjanpur, Uttar Pradesh)

VERSUS

Commissioner, Service Tax, Lucknow ....**Respondent**
(7A, Ashok Marg, Lucknow)

APPEARANCE:

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

CORAM: **HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.-70227-70228/2026

DATE OF HEARING : 11.03.2026
DATE OF DECISION : 10.07.2026

P. ANJANI KUMAR:

M/s Jagdish Saran, the appellant assails, vide appeals No ST/50681-50682/2015-CU[DB], the impugned order dated

22.10.2014, passed by Commissioner of Central Excise and Service Tax, Lucknow.

2. Factual matrix leading to the present appeals is that the Appellant, a manufacturer of Ready-Mix Concrete (hereinafter referred to as 'RMC'), was engaged by M/s Rosa Power Supply Company Limited (M/s RPSC) for preparing and supplying RMC and cement slurry in terms of different work orders for different periods; due to a mistaken understanding that Service Tax is payable under "Work Contract Services" as defined under Section 65(105)(zzzza), of the Finance Act the appellant obtained registration and started paid Service Tax of Rs. 1,06,31,288, for the period 05.05.2008 to 24.01.2011 along with interest of Rs. 2,33,874; the appellant has also paid VAT as applicable on part of the amount received; during the course of assessment of Sales Tax returns for the Financial Year 2007-2008, the State Commercial tax Department objected that the entire transaction between the Appellant and Rosa are of sale and accordingly, the appellant was required to pay sales tax on the total value; an Order No. J-7/2007-08/Dhara-28/21 dated 29.04.2010 was issued to this effect and the same was upheld by the Joint Commissioner of Trade Tax and further by the Hon'ble Allahabad High Court; as the service tax was not payable but paid by mistake, the appellant filed refund claims of service tax of Rs. 86,18,019 on 02.02.2012 and of interest of Rs. 2,33,874 on 29.11.2012. The appellant refunded the entire amount of service tax of Rs. 1,06,31,289, erroneously collected, to their

customer/buyer M/s RPSC, by issuing credit notes dated 01.04.2012, followed by a bank guarantee dated 13.09.2013.

2.1. A Notice dated 20.03.2012 was issued to the appellants asking them to show cause as to why the refund claim should not be rejected as the supply of RMC is very well covered within the scope of works contract services as defined in Section 65(105)(zzzza) of the Finance Act, 1994; the refund was rejected vide Order-in-Original dated 21.05.2012 holding that the service tax was payable by the Appellant; on an appeal filed by the appellants, Commissioner (Appeals), vide Order-in-Appeal dated 17.09.2012, held that the supply of RMC is a pure sale contract and does not involve any provision of service and accordingly, the Appellant was not liable to pay Service Tax and the refund thereof is admissible; However, he remanded the matter back to the original authority to verify the question of unjust enrichment; the order-in-appeal was not challenged by Revenue and as such it attained finality; In remand, the Adjudicating Authority passed the Order-in-Original, dated 31.12.2013, rejecting the refund claim on holding that once the tax is collected from the service recipient, subsequent refund of the same is of no avail and the bar of the principle of unjust enrichment is not crossed; aggrieved, the Appellant filed an appeal dated 17.02.2014 before the Commissioner (Appeals).

2.2. Meanwhile, another Show Cause Notice dated 21.03.2013 was issued proposing to reject the refund of interest on ground of limitation and unjust enrichment; refund claim of interest was rejected, vide Order-in-Original dated 03.01.2014, stating that the same is barred by limitation under Section 11B. Commissioner (Appeals) took up both the appeals and passed a common Order-in-Appeal dated 29.10.2014, upholding the rejection of Service Tax refund vide Order-in-Original dated 31.12.2013 and rejection of refund of interest vide Order-in-Original dated 03.01.2014.

3. Shri Atul Gupta, Learned Counsel for the appellant reiterates the memorandum of appeal and submits that the Appellant has refunded Rs. 1,06,31,288/- to M/s RPSC; Appellant does not dispute that they collected Service Tax from M/s RPSC under the mistaken belief; however, it was returned by way of credit notes when the refund application was filed; reversal is evidenced by the ledger of M/s RPSC in the books of account of the Appellant; later a bank guarantee was given and now entire amount stands paid in cash to M/s RPSC; ultimately, it is the Appellant who has borne the incidence of such tax and the same has not been passed; the facts are also supported by the CA Certificate. It was held in many cases that the question of unjust enrichment does not arise where the assessee initially charged duty/tax and subsequently issued credit notes for the same. He relies on the following:

- *CCE Vs. Addison & Co. Ltd., 2016-VIL-49-SC-CE*
- *Jai Crop Ltd 2016 –VIL-834-CESTAT-MUM-CE*
- *Larsen & Tourbo Limited 2020- VIL- 133-CESTAT-AHM-ST*
- *Chowgule Brothers Pvt Ltd. Versus 2023 (3) TMI 890 (Tri. Ahmedabad)*

4. Learned Counsel for the appellant submits further that the tax was not liable to be paid under the provisions of law and thus, the same is liable to be refunded; Order-in-Appeal dated 17.09.2012, categorically held that the Appellant is not liable to pay Service Tax as the activity of supply of RMC is in the nature of sale of goods and not works contract services. Tribunal held in in GMK Concrete Mixing Private Limited 2012 (25) STR 357 (Tri-Del) (upheld in 2015-VIL-Ol-SC-ST-LB) that contract for preparation and supply of RMC was a pure sale contract and does not entail any services.

5. Learned Counsel for the appellant submits also that no time limit has been prescribed for refund of interest, under section 11b and thus rejection of the said refund on the basis of it being time barred is not permissible; there is no dispute that the Appellant is entitled to refund of the service tax paid erroneously as the tax was not liable to be paid; refund of interest on payment of tax is consequential to the refund of tax amount; Commissioner (Appeals) has failed to appreciate the fact that in the present case, the amount deposited does not acquire the character of duty as they are paid erroneously; provisions of Section 11B are only in respect of "*refund of duty and interest, if any, paid on such duty*""; it is not applicable to amount erroneously paid; as Section 11B is not applicable, question of limitation of one year does not arise.

6. Learned Authorized Representative for the revenue reiterates the findings of impugned orders.

7. Heard both sides and perused the records of the case.

8. we find that learned commissioner finds as follows:

> *The appellant in the Appeal No 31-ST/2014 pleaded that the denial of refund of amount erroneously deposited as service tax on the grounds of being hit by bar of unjust enrichment is Illegal and without authority of law as provisions of unjust enrichment are not applicable to the return of amounts not being in nature of service tax and in the instant case M/s Rosa Power Supply Company Limited has been refunded back the entire amount of service tax erroneously paid to the department, thus, the refund cannot be denied and be credited to the consumer welfare fund on the grounds of unjust enrichment. I find that the supply of ready mix concrete is not a taxable service and refund has already been allowed to the appellant and I observe that the adjudicating authority discussed the issue of unjust enrichment in length and found that the refund amount was initially realized from M/s Rosa Power Supply Company Ltd and the credit of the same has been allowed against credit note no. 1,2 63 all dated 01.04.2012 for Rs 10,52,242/-, Rs 32,54,181/- and Rs 43,11,597/-(total Rs 86,18,019/-) and held that once the burden of duty has been passed on to the buyer or ultimate consumer, subsequent reimbursement of the same by way of credit notes will not be of any advantage to the assessee. Relying on the judgements of M/s Sangam Processors Vs CCE [1994 (71)ELT 989(CEGAT), M/s S.Kumar's Ltd Vs CCE [2003(153)ELT 217] and CCE Hyderabad Vs TFLQuinn India (p) Ltd [2013 (294)ELT 421 (Tri-Banglore)], I am also in unison with the findings of the Adjudicating authority that even if the credit note is issued or duty collected is returned by cheque, doctrine of unjust enrichment still applied and refund can not be granted. I place reliance upon the decision of Hon'ble Madras High Court in Fenner India vs CESTAT (2014)305 ELT 524, wherein the court categorically held that, once the Incidence of duty is passed on, subsequent issuance of credit notes will not change the situation unless material evidence is produced to prove that the Incidence is suffered by them. The case laws cited by the appellant are not applicable as such in instant appeal as the facts and circumstances are not similar. Under the circumstances, I find no reasons to interfere in*

> *the judicious order passed by the adjudicating authority.*
> *Further, in the Appeal No. 33-ST/2014, the appellant pleaded that when the principal amount whose refund has been allowed and was not rejected on grounds of limitation of time, denial of refund of erroneously paid interest on the same alleging it to be hit by limitation of time is unjustifiable, it being paid almost over the same period and refund claim in respect of the interest paid on amount erroneously deposited as service tax is not time barred as the provisions of Section 11 B are not applicable to the refund of amount paid under mistake of law and not being in the nature of service tax or its interest. I find that there is no other provision for refund in Central Excise or in Service Tax except Section 11 B of the Central Excise Act, 1944 and therefore Section 11 B would be applicable in the instant case. As per Section 11 B of the Act ibid made applicable to Service Tax matters in terms of Section 83 of the Finance Act, 1994, the relevant date of filing such refunds is 'one year' from the date of payment of duty /interest'. Since, the service tax and the interest has been paid by the appellant of its own, I, am in unison with the findings of the adjudicator and find no reason to intervene in the order passed by him.*

9. We find that Hon'ble Supreme Court in the case of CCE Vs Addison & Co. Ltd., 2016-VIL-49-SC-CE (Civil Appeal No. 8488 of 2009) held as follows:

> *35. The Respondent-Assessee is a 100 per cent Export Oriented Unit (EOU) manufacturing cotton yarn. The respondent filed an application for refund of an amount of Rs. 2,00,827/- on 14-8-2002 on the ground that it had paid excess excise duty at the rate of 18.11 per cent instead of 9.20 per cent. The Assessee initially passed on the duty incidence to its customers. Later the Assessee returned the excess duty amount to its buyers which was evidenced by a certificate issued by the Chartered Accountant on 2-8-2002. The refund claim was rejected by the Deputy Commissioner of Central Excise, Kolhapur Division vide an order dated 24-9-2002 on the ground that the Assessee did not submit either the credit notes or the Chartered Accountant's certificate at the time*

of filing the refund application. Not satisfied with the genuineness of the documents the Deputy Commissioner rejected the refund claim. The Commissioner (Appeals), Central Excise, Pune allowed the appeal filed by the Assessee by taking note of the certificate issued by the Chartered Accountant and the credit notes dated 29-7-2002. The Appellate Authority accepted the Assessee's contentions and held that there was no reason to doubt the genuineness of the documents produced. The Appellate Authority allowed the appeal of the Assessee and the said order was confirmed by the Customs, Excise and Service Tax Appellate Tribunal vide judgment and order dated 6-10-2005. The said order of Central Excise and Service Tax Appellate Tribunal was further confirmed by the High Court of Judicature at Bombay in Customs Excise Appeal No. 100 of 2008 filed by the Revenue. The Revenue has filed the above Civil Appeal challenging the validity of the judgment of the High Court in Central Excise Appeal No. 100 of 2008.

36. Except for a factual dispute about the genuineness of the certificate issued by the Chartered Accountant and the credit notes raised by the Assessee regarding the return of the excess duty paid by the Assessee, there is no dispute in this case of the duty being passed on to any other person by the buyer. As it is clear that the Assessee has borne the burden of duty, it cannot be said that it is not entitled for the refund of the excess duty paid. In view of the facts of this case being different from Civil Appeal No. 7906 of 2002, the appeal preferred by the Revenue is dismissed."

10. In view of the above, we find that when the appellants have returned, the duty recovered from the customers, back to the customers by way of credit notes, it is presumed that the incidence of duty has been borne by the assessee/appellant and such incidence has not been passed and therefore, the presumption under Section 11D of the Central Excise Act is rebutted. In the impugned case before us, the duty was refunded by the appellants by way of credit notes immediately after filing the refund claim, the presumption is rebutted. Moreover, as on date, the appellants

transferred, the amount of Rs. 86,18,019, by way of RTGS on 10.03.2026, from their account to M/s Rosa Power Supply Company Ltd. The appellants have submitted a copy of Certificate, dated 10.03.2026, from M/s Rosa Power Supply Company Ltd stating that the said amount was received by them. The appellants have also submitted a Certificate, dated 10.03.2026 from the Chartered Accountant certifying that amount has already been paid. We find that in all fairness, the appellants, though, they have collected an amount of Rs. 1,06,31,289, representing as duty, have only sought refund of Rs. 86,18,019 was from the department, the balance being debited from Cenvat account. In view of the above, we find that the appellants have rebutted the presumption of unjust enrichment have rendered themselves eligible for refund.

11. Coming to the issue of refund of interest, we find that the Hon'ble Allahabad High Court in the case of EBIZ. Com Pvt. Ltd. – 2016 (9) TMI 1405 has held as follows:

> *26. We are also informed that following the judgment in Suvidhe Ltd. (supra), Central Board of Excise and Customs (hereinafter referred to as 'C.B.E. & C.') issued Circular No. 275/37/2000-CX.8A, dated 2-1-2002 providing as under :-*
> *"2. It would be pertinent to mention that the Revenue had recently filed a Special Leave Petition against Mumbai High Court's order in the matter of NELCO LTD., challenging the grant of interest on delayed refund of pre-deposit as to whether :*
> *(i) the High Court is right in granting interest to the depositor since the law contained in Section 35F of the Act does in no way provide for any type of compensation in the event of an appellant finally succeeding in the appeal, and*
> *(ii) the refunds so claimed are covered under the provisions of Section 11B of the Act and are governed by the parameters applicable to the claim of refund*

of duty as the amount is deposited under Section 35F of the Central Excise Act, 1944.

The Hon'ble Supreme Court vide its order dated 26-11-2001 dismissed the appeal. Even though the Apex Court did not spell out the reasons for dismissal, it can well be constructed in the light of its earlier judgment in the case of Suvidhe Ltd. and Mahavir Aluminium that the law relating to refund of pre-deposit has become final.

3. In order to attain uniformity and to regulate such refunds it is clarified that refund applications under Section 11B(1) of the Central Excise Act, 1944 or under Section 27(1) of the Customs Act, 1962 need not be insisted upon. A simple letter from the person who has made such deposit, requesting the return of the amount, along with an attested Xerox copy of the order-in-appeal or CEGAT order consequent to which the deposit made becomes returnable and an attested Xerox copy of the Challan in Form TR6 evidencing the payment of the amount of such deposit, addressed to the concerned Assistant/Deputy Commissioner of Central Excise or Customs, as the case may be, will suffice for the purpose. All pending refund applications already made under the relevant provisions of the Indirect Tax enactments for return of such deposits and which are pending with the authorities will also be treated as simple letters asking for return of the deposits, and will be processed as such. Similarly, bank guarantees executed in lieu of cash deposits shall also be returned."

27. Circular dated 2-1-2002 has been modified by subsequent Circular dated 20-6-2003 to the following effect :-

"It has been brought to the notice of the Board that the wordings in para 4 of the Circular, namely, "any deviation and resultant liability to interest on delayed refunds shall be viewed strictly" convey the impression that interest is liable to be granted for refund of pre-deposits even when there is no corresponding provision in the Central Excise Act, 1944. The mater has been examined and the sentence is re-worded as under :-

"Any deviation from the procedure explained hereinabove shall be viewed strictly."

28. There is one more Circular No. 802/35/2004-CX, dated 8-12-2004 which provides that against an order whereunder refund is admissible to an assessee with regard to the pre-deposit, if an appeal is pending, that shall not be taken as justification for denying refund.

29. The question of interest on delayed deposit or refund pre-deposit came to be considered by Supreme Court in Commissioner of Central Excise, Hyderabad v. I.T.C. Ltd. - 2005 (179) E.L.T. 15 (S.C.). A statement was made on behalf of the Central Board of Excise and Customs by the Solicitor General of India that Board proposes to issue a circular in connection with the payment on all such pre-deposits. A draft copy of the circular was also handed over to the Supreme Court. In view thereof, Supreme Court decided the appeal holding as under :-

"Having regard to the contents of the draft circular we direct compliance with the final order impugned before us and payment of interest in terms of the draft circular. The draft circular shall be appended to and the contents form part of this order. The appeal is disposed of. In view of this order any judgment of any High Court holding to the contrary will no longer be good law."

30. Supreme Court in the aforesaid order allowed interest at the rate of 12% per annum.

31. Then we come on the question of interest on refund. In this regard, we find that a Division Bench of Delhi High Court in Surinder Singh v. Union of India - 2006 (204) E.L.T. 534 (Del.) relying on Supreme Court's judgment in Prince Khadi Woollen Handloom Producers Co-operative Indl. Society v. CCE - 1996 (88) E.L.T. 637 (S.C.), said that State, if has wrongly collected a tax from a person, and, even if there is no specific provision, still is liable to refund tax along with interest. Similar view was taken in Kuil Fireworks v. CCE - 1997 (95) E.L.T. 3 (S.C.) and CCE, Hyderabad v. ITC - 2005 (179) E.L.T. 15 (S.C.).

32. Recently also in Union of India v. Tata SSL Ltd. - 2007 (218) E.L.T. 493 (S.C.), Court held that pre-deposit is refundable along with interest and for that purpose, relied on its decision in Commissioner of Central Excise, Hyderabad v. I.T.C. Ltd. (supra) and Central Board of Excise and Customs' Circular dated 8-12-2004.

33. In a recent judgment of Gujarat High Court in Hindustan Coca-Cola Beverages Pvt. Ltd. v. UOI - 2015 (324) E.L.T. 299 (Guj.), an argument was raised, if there is no provision for payment of interest, the same shall not be payable. Court in Paras 5.4 and 6 said as under :-

"5.4 The contention to the effect that no interest is payable because there is no provision of interest under the scheme of the Act is also thoroughly misconceived and misplaced. When the Department acts illegally and not as per the scheme of the Act,

the interest on such refund can never be provided for under the Scheme of the Act. If the authorities act as per the law, the question of granting interest on refund can be appreciated and considered as per the scheme of the Act.

6. Learned Senior Advocate for the petitioner cited various judgments in support of his contention that even in absence of any statutory provision, interest on refund is automatic and has to be granted on commercial principles. The Court finds force in the contentions of the learned Senior Advocate for the petitioner. The learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of Sandvik Asia Ltd. v. Commissioner of Income-tax, Pune (supra), wherein the Hon'ble Apex Court even while finding that there was no statutory provision to pay interest on delayed payment of interest, held the assessee entitled to the same on general principles and found that the assessee would be entitled to be compensated by way of interest on interest. It was further pointed out by the learned Senior Advocate for the petitioner that the decision of the Hon'ble Supreme Court in the Sandvik Asia Ltd. v. Commissioner of Income-tax, Pune (supra), has been referred to a Larger Bench in the case of Commissioner of Income-tax, Gujarat v. Gujarat Flouro Chemicals, (2012) ITR 319 (SC). The said decision is neither stayed nor suspended and therefore, continues to hold the field. Moreover, the said decision is doubted with respect to the issue whether interest is payable by the Revenue to the assessee if the aggregate of instalments of Advance tax/TDS paid exceeds the assessed tax. Therefore, a doubt is cast only in respect of the finding which is in context with Section 214 and Section 244 of the Income-tax Act, 1961 and not with regard to grant of interest as compensation to the party who has been wrongfully deprived of the use of its money by an illegal retention of the same by the authority. Therefore, the said decision will continue to hold good in respect of refund cases, on equitable considerations, where any amount is wrongfully withheld from an assessee without authority of law."

34. We may also refer here on a Division Bench's judgment of Karnataka High Court in Commissioner of Central Excise v. KVR Construction - 2012 (50) VST 469 = 2012 (26) S.T.R. 195 (Kar.), wherein construing Section 11B, Court said that it refers to claim for refund of duty of excise only and does not refer to any other amount collected without authority of law. That was a case of 'Service Tax' and Court said as under :-

"Though under Finance Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was exemption to pay such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority lacked authority to leavey and collect such service tax. In case, the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. If we look at the converse, we find mere payment of amount, would not authorize the department to regularize such payment. When once the department had no authority to demand service tax from the respondent because of its circular dated 17-9-2004, the payment made by the respondent company would not partake the character of "service tax" liable to be paid by them. Therefore, mere payment made by the respondent will neither validate the nature of payment nor the nature of transaction. In other words, mere payment of amount would not make it a "service tax" payable by them. When once there is lack of authority to demand "service tax" from the respondent company, the department lacks authority to levey and collect such amount. Therefore, it would go beyond their purview to collect such amount. When once there is lack of authority to collect such service tax by the appellant, it would not give them the authority to retain the amount paid by the petitioner, which was initially not payable by them. Therefore, mere nomenclature will not be an embargo on the right of the petitioner to demand refund of payment made by them under mistaken notion."

35. The consensus of the authorities of various High Courts as well as Supreme Court is that any amount received by Revenue, as deposit or pre-deposit i.e. unauthorizedly or under mistaken notion, etc., cannot be retained by Revenue since it has no authority in law to retain such amount and it must be refunded with interest.

12. It has been held in a number of cases as above that any amount paid under the mistaken notion of law, shall not take the colour of duty, but remains only a deposit, and consequentially, the principle of unjust enrichment does not apply. The interest

being a corollary to such payment, the interest is also required to be treated as a deposit. Revenue cannot keep such deposit in an unlawful manner and the same has to be refunded. As it is not to be treated as duty, the provisions of Section 11B are not attracted. In fact, CBEC Circulars state that the deposit made under Section 35F can be refunded on a simple application. Payment of interest also is like a deposit. It appears from circulars that the Department recognizes refunds which are not governed by Section 11B. Therefore, we are of the considered opinion that the provisions of Section 11B are not attracted as far as the refund of interest paid is concerned. Therefore, the limitation is also not applicable. Therefore, we find that the appellants are eligible for refund of interest as requested.

13. In view of the above, both the appeals are allowed.

(Pronounced in open court on 10.07.2026)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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