CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70713 of 2019

(Arising out of Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/83/2019-20 dated 28.06.2019 passed by Commissioner (Appeals) CGST, Meerut)

Commissioner of Central Goods & Services Tax, Ghaziabad .....**Appellant**
(CGO Complex-II, Ghaziabad)

VERSUS

M/s Preet Machines Ltd., ...**Respondent**
(D-14-15, Sector-A-3, Tronica City Loni,
U.P., Ghaziabad-201102)

WITH

Excise Appeal No.70404 of 2020

(Arising out of Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/46/2020-21 dated 10.06.2020 passed by Commissioner (Appeals) CGST, Meerut)

Commissioner of Central Goods & Services Tax, Ghaziabad .....**Appellant**
(CGO Complex-II, Ghaziabad)

VERSUS

M/s Preet Machines Ltd., ...**Respondent**
(D-14-15, Sector-A-3, Tronica City Loni,
U.P., Ghaziabad-201102)

APPEARANCE:

Shri Santosh Kumar, Authorized Representative for the Revenue
Shri S. A. Khan, Consultant for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70296-70297/2026

INTERIM ORDER NOs.- 19-20 /2024 dated 14.11.2024

DATE OF HEARING : 16 July, 2024
DATE OF DECISION : 17 August, 2026

P. K. CHOUDHARY:

Revenue has preferred the present appeal against the Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/83/2019-20 dated 28.06.2019 passed by the Commissioner (Appeals) CGST

& Central Excise, Meerut wherein the first Appellate Authority has granted refund of amount deposited by the Respondent Assessee.

2. The brief facts of the case are that officers of Central Excise Meerut Zone searched the factory premises of the Respondent on 12.03.2015 and made certain inquiries regarding fraudulent availment of Cenvat Credit. On pursuance of the Department, the Respondents had deposited a total of Rs.8 Crore (Rs.5 Crore on 13.03.2015, Rs.1.5 Crore on 19.03.2015 and Rs.1.5 Crore on 30.03.2015). Later on, the enquiry was transferred to DGCEI who issued a demand cum show cause notice[1] dated 08.11.2016 proposing recovery of Cenvat Credit amounting to Rs.25,53,00,660/- under Cenvat Credit Rules[2] 2002. During pendency of the SCN the Respondents applied for refund of Rs.8,21,30,257/- on 26.02.2018. Out of Rs.8,21,20,257, the amount of Rs.8,00,00,000/- was paid during investigation in the month of March, 2015 and Rs.21,20,257/- was balance in PLA as on 30.06.2017. The refund application was rejected but in appeal the Ld. Commissioner (Appeals) allowed the refund alongwith interest to be paid from the date of its deposits vide the impugned Order-in-Appeal dated 28.06.2019. Aggrieved with the Order-in-Appeal dated 28.06.2019 the Revenue has filed Appeal No.70713/2019-EX[DB]. In the meantime, the Assistant Commissioner in compliance of the Commissioner (Appeals) order dated 28.06.2019 granted refund alongwith interest through Order-in-Original dated 28.08.2019.

3. In the meantime, the Respondents applied for SVLDRS Scheme w.r.t. the SCN F. No.52/INT/DGCEI/HQ/2015/12 dated 08.11.2016 by filing SVLDRS-1 on 20.12.2019 which was accepted by the Department after deposit of an amount of Rs.12,76,50,330/- and a discharge certificate in Form SVLDRS-4 was issued on 15.05.2020.

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[1] SCN
[2] CCR

3.1 Both these appeals were taken up together for hearing on 16.07.2024. The Learned Departmental Representative fairly conceded that the refund of the amount was rightly paid to the Respondent because no demand notice was pending against the Respondent now. However, he contested the payment of interest paid to the Respondent on the ground that on the one hand the Ld. Commissioner (Appeals) has held that provisions of Section 11B of the Central Excise Act[3], 1944 will not apply to refund of such deposits but on the other hand he allowed payment of interest without mentioning any provision of law. If Section 11B is not applicable then there is no statutory provision to sanction interest on the refund amount. Secondly, he argued that ownership of the deposited amounts lying unutilized in PLA was always with the Respondents. Hence, there is no logic in allowing interest on refund of PLA balance.

3.2 On the contrary, the ld. Authorized Representative on behalf of the Respondents submitted that the deposit of Rs.8,00,00,000/- made by them during investigation which cannot be treated as deposit of Central Excise Duty but it is a revenue deposit. Hence, provisions of Section 11B will not apply. Relying on Hon'ble Supreme Court decision in case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune [2006 (196) E.L.T. 257 (S.C.)] and Hon'ble High Court of Gujarat in case of Hindustan Coca Cola Beverage Pvt. Ltd. Vs. Union of India [2015 (324) E.L.T. 299 (Guj.)] he submitted that interest is automatic on general commercial principles. He further submitted that the plea of the revenue that deposited amount was always with the Respondent is not tenable because as soon as any amount is deposited through Challan its ownership gets transferred to Government, because the account in which it is deposited belongs to Government. In support, he relied on the Hon'ble Supreme Court order dated 24.11.2017 in case of Commissioner of Income Tax-II vs. M/s Modipon Ltd. in Civil Appeal No.19763 of 2017 and Hon'ble Madras High Court order in case of Eicher

[3] CEA, 1944

Motors Ltd. Vs. Superintendent of GST and Central Excise, Chennai [2024 (81) G.S.T.L. 418 (Mad.)].

3.3 In regard to the issue whether interest was correctly paid from the date of deposit or it should be governed by Section 11BB where interest is calculated after three months from the date of filing of refund application the Ld. Departmental Representative referred the case of Ranbaxy Laboratories Ltd. [2011 (273) E.L.T. 3 (S.C.)] whereby it was settled by the Hon'ble Supreme Court that interest on delayed prefund is payable under 11BB on expiry of three months from the date of receipt of application under Section 11B(1) of the CEA, 1944. On this, the Ld. Authorized Representative submitted that it is not applicable in their case because admittedly it was not covered under Section 11B of CEA, 1944. He contended that in case of revenue deposits interest has to be paid from the date of deposit.

3.4 In support of his contention, he relied on the following case laws:-

(i) Kesar Enterprises Vs. Commissioner of CGST, Noida [2022 (380) E.L.T. 319 (Tri-Alld.)]

(ii) LANVIN Synthetics Pvt. Ltd. Vs. Commissioner of Central Excise (Appeals) Mumbai-I [2020 (374) E.L.T. 759 (Tri-Mum.)]

(iii) Duggar Fibre Pvt. Ltd. Vs. Commissioner of C. Ex, Customs and CGST, Delhi [2021 (378) E.L.T. 293 (Tri-Del.)]

(iv) Shahi Exports Ltd. Vs. Commissioner of Central Excise and Service Tax, Gurgaon-I [2022 (58) G.S.T.L. 367 (Tri-Chan.)]

(v) Parsvnath Traders Vs. Principal Commissioner of CGST [2023 (77) G.S.T.L. 413 (P & H)]

(vi) Binjrajka Steel Tubes Ltd. Vs. Commissioner of Central Excise, Hyderabad-II [2007 (218) E.L.T. 563 (Tri-Bang.)]

3.5 Having considered the contention of both sides we have come to the conclusion that there is no dispute regarding payment of refund of the balance amount lying in PLA unutilized as on 30.06.2017. Now, the dispute remains whether interest is to be paid from the expiry of three months of the date of filing of refund claim in terms of Section 11BB of the CEA, 1944 or it should be paid from the date of deposit. We find that PLA was being maintained in terms of Clause 2, Part V of Chapter 3 of CBEC's Excise Manual of Supplementary Instructions, 2005 which is extracted below:-

"2. Account current and procedure relating thereto

2.1 Omitted (Circular No. 662/53/2002-Cx. Dated 17-09-2022. Common No. for registration adopted, no need of ECC no. now.)

2.2 The manufacturer working under the procedure shall maintain an account current (Personal Ledger Account) in the Form specified in Annexure-8 and as given in part 7.

2.3 Each credit and debit entry should be made on separate lines and assigned a running serial number for the financial year.

2.4 The account current must be prepared in triplicate by writing with indelible pencil and using double-sided carbon – original and duplicate copies of the account current should be detached by the manufacturer and sent to the Central Excise Officer in charge along with the monthly/quarterly periodical return in form E.R.-1/E.R.-2/E.R.-3."

3.6 Proforma for maintaining account current (PLA) was prescribed under Annexure-8 of the said CBEC's Excise Manual of Supplementary Instructions, 2005. In case of Sun Pharmaceuticals Industries Ltd. Vs. Commissioner of Central Excise and Service Tax, Daman [2022 (382) E.L.T. 808 (Tri-Ahmd.)], the Tribunal Ahmadabad has discussed in details the applicability of Section 11B of the CEA, 1944 in case of refund of unspent amount lying in PLA due to change in taxation regime from Central Excise to GST w.e.f. 01.07.2017. Relying on various decisions the Tribunal held that unspent amount lying as balance in PLA is not a duty but an advance towards duty. It takes colour of duty only when it is utilized for payment of duty. Hence, provision of Section 11B of CEA, 1944 providing limitation period of one year is not applicable for refund of such unspent amount in PLA. In the instant case Rs.8,21,30,257.00 was refunded which was lying unspent in their PLA on 30.06.2017. Out of the said amount the amount of Rs.8,00,00,000/- was deposited in March, 2015 during investigation. This Tribunal in case of Parle Agro Pvt. Ltd. Vs. Commissioner, CGST Noida [2018 (360) E.L.T. 1005 (Tri-Alld.)] has held that amount deposited during pendency of investigation is a revenue deposit and provisions of Section 11B of the CEA, 1944 are not applicable in such cases. The operating part of the order is extracted below:-

> ***"6.*** *Having considered the rival contentions, we find that as held by Hon'ble Punjab and Haryana High Court and as earlier held by this Tribunal the amounts, which are deposited during the pendency of investigation and proceedings, if the same are not adjudged as duty, fine or penalty then the amount that is not adjudged as duty, fine and penalty is to be treated as revenue deposit and the provisions of refund of duty shall not be applicable to the same. The amount which has been adjudged is as per the authority of law and the amount which is in excess of the adjudged amount if retained that such retention of said amount shall be without authority of law and Article 365 of Constitution of India has not authorized Revenue to retain such amount. In the present case, the penalty was reduced to Rs.10 lakh. Therefore, we allow Revenue to recover Rs.10 lakh from Rs.1.5 crore which was deposited by the appellant and direct the Original Authority to refund Rs.8,36,185/- and Rs.1,40,00,000/- and also pay the appropriate interest on the same. We do not pass any order in respect of bank guarantee since the matter was not subject matter of either the Order-in-Original or Order-*

in-Appeal impugned. We allow the appeal as held hereinabove."

3.7 Further, in the impugned order dated 12.07.2019 the Ld. Commissioner (Appeals) has mentioned that-*"the adjudicating authority himself has stated that the refund of such deposit was not governed by any of the provisions of Section 11B of the Act."* This fact has not been controverted by the Revenue. Moreover, the refund granted through Order-in-Appeal has not been challenged by the Revenue on the ground of limitation as provided in Section 11B of the CEA, 1944, even when the amount of Rs.8,00,00,000/- was deposited in March, 2015 and refund application was filed on 26.02.2018. This shows that Revenue is also in agreement that the provisions of Section 11B were not applicable in the instant case of refund.

4. In view of the above discussions, we arrive at the conclusion that provisions of Section 11B of CEA, 1944 are not applicable in the instant case of refund. Now, it is to be seen whether provisions of Section 11BB of CEA, 1944 will apply in the instant case for payment of interest which is extracted below:-

> *"**Section 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 , National Tax 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 , National Tax 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."*

4.1 It is seen that Section 11BB itself provides that it applies only on the refund granted under Section 11B. Thus, there is no question of applicability of the provisions of Section 11BB for granting interest in the instant case because it has been held that provisions of Section 11B are not applicable in the case in hand. The Revenue has contended that there is no provision in CEA, 1944 to grant interest on such deposits. We observe that this issue appears to be no more *res-integra*. The Hon'ble Apex Court in case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I Pune [2006 (196) E.L.T. 257 (S.C.)] has held that on general principles the Assessee ought to have been compensated. The Hon'ble Apex Court further held that this compensation includes interest on interest wrongly withheld irrespective of absence of any statutory provisions granting the same. Similarly, the Hon'ble High Court of Gujarat at Ahmedabad in case of Hindustan Coca Cola Beverage Pvt. Ltd. Vs. Union of India [2015 (324) E.L.T. 299 (Guj.)] has held that even in absence of any statutory provision interest on refund is automatic and has to be granted on commercial principles. Once it is established that provisions of Section 11BB of CEA, 1944 are not applicable in the instant case of refund, the grant of interest thereon is automatic and has to be paid from the date of deposit as has been ordered by the Ld. Commissioner (Appeals) in the impugned Order-in-Appeal.

4.2 We, therefore, hold that there is no infirmity in the impugned Order-in-Appeal dated 12.07.2019 granting interest on the refund amount from the date of deposit. Our findings find support from the following case laws:-

- This Tribunal in case of Kesar Enterprises Vs. Commissioner of CGST, Noida [2022 (380) E.L.T. 319 (Tri-Alld.)] has granted interest @ 12% p.a. on such deposits from the date of deposit till the date of refund.
- The Tribunal West Zone Bench, Mumbai in case of Lanvin Synthetics Pvt. Ltd. Vs. Commissioner of Central Excise (Appeals), Mumbai-I [2020 (374) E.L.T. 759 (Tri.-Mumbai)] has upheld the order of Assistant Commissioner who had granted interest from the date of deposit made during investigation.
- In case of Duggar Fibre Pvt. Ltd. Vs. Commissioner of Central Excise, Customs and CGST, Delhi [2021 (378) E.L.T. 293 (Tri-Del.)], the Tribunal Principal Bench, New Delhi has granted interest @12% from the date of deposit.
- The Tribunal, Regional Bench, Chandigarh in case of Shahi Exports Ltd. Vs. Commissioner of Central Excise and Service Tax, Gurgaon-I [2022 (58) G.S.T.L. 367 (Tri-Chan.)] has also granted interest on such deposits @12% p.a. from the date of deposit till its realization.
- In case of Parsvnath Traders Vs. Principal Commissioner of CGST [2023 (77) G.S.T.L. 413 (P & H)] the Hon'ble High Court of Punjab & Haryana in a similar case in GST regime ordered refund of the amount paid during search alongwith interest from the date of deposit.
- This Tribunal in case of Parle Agro Pvt. Ltd. Vs. Commissioner, CGST, Noida [2022 (380) E.L.T. 2019 (Tri-Alld.)] has granted interest on such revenue deposits @ 12% p.a. from the date of deposits upto the date of payment.

4.3 From facts on record and as discussed supra, it is obvious that the amount deposited by the Respondent has taken the Colour of "Revenue Deposit" and this Tribunal & Constitutional Courts in catena of orders have held that refund of such type of deposit attracts interest @12%.

5. In view of the above discussions and the various orders of the Tribunal, we are of the considered opinion that both the appeals filed by the Revenue are without any merits and are accordingly dismissed.

(Order pronounced in open court on……………………………………………..……………..)

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

-Separate Order-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS

SANJIV SRIVASTAVA:

I have gone through the order prepared by the learned Member (Judicial). However after long persuasion I do not find myself in position to agree with the same.

2.1 The facts leading top the present two appeals have been narrated by the respondent in their submissions made before us as titled "Dates & Events".

S No	Date	Event
1		The Respondent were registered with the Central Excise Department and were engaged in manufacture and clearance of rolling mills, gears & gear boxes, parts and accessories thereof chargeable to Central Excise Duty.
2	12.03.2015	The officers of CIU Meerut Zone visited the respondents' Unit and a case of alleged fraudulent availment of Cenvat Credit was initiated against the respondents and further investigation was taken up by DGCEI (Now DGGI).
3	13.03.2015 19.03.2015 30.03.2015	On being persuaded by the department the Respondents deposited Rs. 8,00,00,000.00. Further, the Respondents had already a balance of Rs. 21,30,257.00 in their PLA. Thus, the Respondents had a total balance of Rs. 8,21,30,257.00 in their PLA at the end of June 2017 i.e. at the time of introduction of GST
4	08.11.2016	DGCEI issued demand cum Show Cause Notice vide F No. 52/INT/DGCEI/HQ/2015/12132 dated 08.11.2016 answerable to ADG(Adjudication), DGCEI, Delhi Zonal Unit, New Delhi proposing disallowance and recovery of CENVAT Credit amounting to Rs. 25,53,00,660/- under Rule 3 & 4 of CENVAT Credit Rules read with Rule 14 and Section 11A(4) of CEA, 1944 along with interest and penalty.
5	26.02.2018	The Respondents applied for refund of the aforesaid balance amount of Rs. 8,21,30,257.00 lying in their PLA as on 30.06.2017 vide refund application filed before the Assistant Commissioner, Central Excise Division-IV, CGO Complex-II, Ghaziabad.
6	04.06.2018	Show Cause Notice was issued to the respondents under C.No. V(18)Ref/Preet/DIV-IV/ GZB/245/2018 dated 04.06.2018 proposing to reject the refund claim filed by Respondents
7	13.06.2018	The Assistant Commissioner passed Order-in-Original No. 06/AC/REF/Preet rejecting the refund

		claim filed by Respondents
8	28.06.2018	Respondents preferred an Appeal No. 43-CE/APPL-MRT/GZB/2018-19 with the Commissioner (Appeals), Meerut against the said O-I-O dated 13.06.2018.
9	28.06.2019	The Commissioner (Appeals) vide Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/83/2019-20 Dated 28.06.2019 rejected the grounds taken by the Assistant Commissioner for rejection of refund and allowed the appeal of Respondents. He ordered for refund of the amount applied for along with applicable interest from the date of deposit till date of actual payment.
10	07.08.2019	The respondents requested the Assistant Commissioner, Div –IV Ghaziabad to allow the refund along with interest in compliance of O.I.A. dated 28.06.2019.
11	28.08.2019	The Assistant Commissioner vide his Order-in-Original No 24/AC/Refund/D-IV/GZB/2019-20 dated 28.08.2019 granted the refund of Rs. 8,21,30,257/ along with interest.
12	15.10.2019	The appellant department reviewed the aforesaid Order-in-Appeal dated 28.06.2019 and filed Appeal No E/70713/2019-Ex[DB] before the Hon'ble CESTAT.
13	02.12.2019	Being aggrieved with the Order dt. 28.08.2019 of the Assistant Commissioner granting refund, the department filed Appeal No. 87-CE/ APPL-MRT/GZB/2019-20 dated 02.12.2019 before the Commissioner (Appeals), Meerut camp office at Ghaziabad.
14	20.12.2019	Respondents in respect of the show cause notice F. No. 52/INT/DGCEI/HQ/ 2015/12131-71 dated 08.11.2016 issued by DGCEI chose to opt SVLDRS scheme launched by Govt of India and filed SVLDRS-1 having ARN No. LD2012190002027 dated 20.12.2019 under the category "litigation"
15	15.05.2020	The said option was accepted by the department and after depositing an amount of Rs. 12,76,50,330.00 SVLDRS-4 No. L150520SV400121 dated 15.05.2020 was issued to the respondents, thus finally settling the issue, leaving nothing to be recovered from the Respondents now.
16	10.06.2020	The Commissioner Appeal vide his Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/46/2020-21 dated 10.06.2020 rejected the Appeal No. 87-CE/APPL- MRT/GZB/2019-20 dated 02.12.2019 filed by the department.
17	28.09.2020	Feeling aggrieved with the aforesaid Order-in-Appeal dated 10.06.2020, the department

		preferred Appeal No. 70404/2020-EX[DB] before the Hon'ble CESTAT.

2.2 Appeal No E/70713/2019 has been filed by the revenue stating the following grounds:

"2.2 The Commissioner (A) has observed that the Order of Adjudicating Authority was passed without following the principles of natural justice and is therefore bad in law. Instead of remanding the case for fresh adjudication after following the principles of natural justice, he has gone ahead and decided the case as if he is the Original Authority while as an Appellate Authority, he can decide appeals on valid Original Orders only.

2.3 The Commissioner (A) has given the following findings in para 5.1 of his OIA, "Accordingly I hold that the amount deposited by the appellant was a mere deposit and in the absence of any order of its appropriation, the same is required to be refunded to the appellant with applicable interest AS PER LAW, AS APPLICALBE IN CASE OF REFUND OF DEPOSITS. Further, as mentioned below, the provisions of Sec 11B of the Act WILL NOT APPLY TO THE REFUND OF SUCH DEPOSITS". On one hand, OIA rules out applicability of Section 11B to this refund application, on the other hand, it says the refund alongwith interest is to be given AS PER LAW. The OlA fails to mention under which law and under which provisions or sections, this refund is being allowed with interest. It is trite to say that Commissioner (A) and Tribunal are creations of the Central Excise Act and they therefore cannot venture outside the boundaries of the Act which created them. Therefore, by giving such findings and conclusions, it appears that the Commissioner (A) has created an unknown law with unknown provisions to give effect to this refund alongwith interest.

2.4 The OlA grants interest on refund from the date of deposit till the date of actual payment by citing decision of Madras High Court in Ucal Fuel where interest was given @ 6% per annum. Under their equity jurisdiction, High Courts *are empowered to decide cases but that power is not available to Commr (A). Secondly, in this case, the balance in PLA account was never utilized by the party for payment of duty and therefore, the money was always of the party. An amount deposited in PLA (Personal Ledger Account) of the party becomes duty only when it is debited against duty liability against goods cleared by the party. Else it remains a deposit only. Thus, there is no logic in allowing interest on refund of PLA deposit.*

2.5 The amount was paid by the party in their PLA at time of investigation which is still under process and where the party may eventually be levied with the tax liability. Generally business entities deposit money in their Personal Ledger account in advance in anticipation of such tax liability, when investigation against them for tax evasion is in progress.

2.6 The Commissioner (Appeal) referred to decision of Hon'ble High Court of Delhi, in the case of M/s Digipro Import &Export Pvt. Ltd. vs UOl, as reported in 2017(350) EL T 145. The said decision deals with altogether different issue and hence has no direct application. It may be seen that Hon'ble High Court in this decision has criticized the practice of collection of cheques from the assessee during investigation and asked to stop such practice.

2.7 In this case, the amount deposited by the party was kept in PLA and the ownership of the amount was always with the party, still the Commissioner (Appeals) has allowed interest on the said amount without authority of law. The Hon'ble CESTAT, Mumbai in the case of M/s Navdeep Packaging Industries Vs CCE, Ahmedabad-II reported in 2007 (210) E.L.T. 417 (Tri. - Mumbai) has held that- "Interest on delayed refund of unspent PLA balance - Unspent PLA balance not duty, and refund of same specifically covered under Rules 9(1A) and 173G(1A) of erstwhile Central Excise Rules, 1944 - Hence, Section 11B *of Central Excise Act, 1944, which applies only for refund of duty, and Section 11BB ibid which provides for granting of interest for delayed refund of duty, not attracted - No infirmity in impugned order. [paras 2, 3]"*

2.3 Appeal No E/70404/2020 has been filed by the revenue stating the following grounds:

"1. The Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/46/2020-21 dated 10.06.2020 has apparently been passed by the Commissioner (Appeals) without considering the facts of the case and the established tenets of law with respect to refund and thus appears to be arbitrary and bad in law.

2. The Commissioner (Appeals) in his Order dated 10.06.2020 has not considered the facts of the case, on statutory terms, and has arbitrarily discarded the grounds of appeal put forth by the Department in respect of Appeal filed against the subject Order-in-Original No. R-24/AC/Refund/D-IV/GZB/2019-20 dated 28.08.2019 passed by the Assistant Commissioner, Central Goods and Service Tax, Division-IV, Ghaziabad and consequently have arbitrarily not considered, on statutory merits, the erroneousness of the subject Order-in-Original No. R-24/AC/Refund/D-IV/GZB/2019-20 dated 28.08.2019 and simultaneously have arbitrarily not considered that the Department has filed an appeal against the said earlier Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/83/2019-20 dated 28.06.2019 i.e. the i.e. the OIA on the basis of which the Assistant Commissioner, Central Goods and Service Tax, Division-IV, Ghaziabad had passed the subject Order-in-Original No. R-24/AC/Refund/D-IV/GZB/2019-20 dated 28.08.2019 whereby the subject refund has been wrongfully sanctioned to the said party alongwith interest. Thus, the Commissioner (Appeals) vides his subject Order has again arbitrarily failed to appreciate the facts of the case and has thereby wrongfully rejected the appeal filed *by the Department against the said Order-in-Original No. R-24/AC/Refund/D-IV/GZB/2019-20 dated 28.08.2019 passed by the Assistant Commissioner, Central Goods and Service Tax, Division-IV, Ghaziabad. The facts of the case amply prove that the said party had deposited the subject amount of Rs. 8,21,30,257/- in March, 2015 during the course of investigation carried out by the Officers of CIU, Meerut Zone and DGCEI, New Delhi. Further, the facts of the case also` prove that tigg subject amount of deposit is related to the adjudication proceedings at DGCEI, New Delhi. The Commissioner (Appeals) as also the adjudicating authority have failed to appreciate the legal fact that in case of voluntary deposits made during the course of investigation, refund, if any, can only arise after the demand has been set aside at any stage i.e. either when the demand is dropped at the adjudication stage or is subsequently dropped/set aside by the appellate authorities or by the courts and further, such refund, if and when it arises, is subject to the provisions of Section 11B of the Central Excise Act, 1944. Moreover, the said party, as also the appellate authority, has not contested/disputed the fact that the case in respect of which the subject deposit had been made has, as yet, not attained finality. Thus, as is apparent, the subject Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/46/2020-21 dated 10.06.2020 is in complete disregard to the facts of the case, the related statutory provisions, and is also contrary to the pronouncements made in this regard.*

3. The arbitrariness of the subject Order-in-Appeal is accentuated by the pronouncement made in the following cases

(i) Mahalakshmi Cable Industries Vs CCE, Delhi-II [2010 (258) E.L.T. 369 (Tri. - Del.)] ::

> *'Refund - imitation - Show cause notice struck down and refund application by assessee rejected as barred by*

limitation - Tribunal earlier rejected refund holding that all refund claims are governed by provisions of Section 11B of Central Excise Act, 1944 and application filed beyond one year is time barred - Submission that amount paid during investigation was deposit and limitation provisions not applicable as per Apex Court decision in Mafatlal Industries Ltd. [1997 (89) E.L.T. 247 (S.C.)] and hence order of Tribunal to be rectified – HELD: No elaborate argument made how case covered by Apex Court judgment (Para 69) - Nothing argued or submitted regarding the same - Mafatlal's case held that any collection of tax under wrong notion/conception of law declared unconstitutional, becomes refundable - Present case is of suo motu deposit without any formal protest to get rid of apprehended adjudication - When deposit made under law, such deposit is appropriated against adjudication demand and if found unwarranted., law permits refund - Section 11B ibid".

(ii) ESSAR Projects India Ltd. Vs CCE&ST Ahmedabad [2013 (298) E.L.T. 418 (Tri. - Ahmd.)] ::

"Refund claim - Any deposit made during investigation or after adjudication has to be refunded to assessee when Order-in-Original is set aside and no quantification has been done by passing a suitable order- Section 11B of Central Excise Act, 1944."

(iii) Mahindra Engg. & Chemical Products Ltd. Vs CCE, Pune-I [2019 (368) E.L.T. 84 (Tri.- Mumbai)] ::

Pre-deposit vis-à-vis deposit made during investigation Amount deposited during investigation and pre-deposit made in terms of order of Appellate Authority/Court for purpose of hearing appeal, are different and cannot be treated at par.

Excerpts from relevant paras:

6.5 Accordingly all the amounts deposited other than those deposited as per the specific direction of the Court or appellate authority in terms of Section 35F are nothing but the payment towards the duty and all the claims of the refund of such amount shall be governed by the provisions of Section 11B of the Central Excise Act, 1944 Hon'ble Supreme Court has in case of Mafatlal Industries Ltd. [1997 (89) E.L.T. 247 (S.C.)] observed in the para 99 as under .

"By virtue of sub-section (3) to Section 11B of the Central Excises and Salt Act as amended by he aforesaid Amendment Act, and by virtue of the provisions contained in sub-section (3) of Section 27 of the Customs Act, 1962 as amended by the said Amendment Act, all claims for refund (excepting those which arise as a result of declaration of unconstitutionality of a provision where under the levy was created) have to be preferred and adjudicated only under the provisions of the respective enactment. No suit for refund of duty is maintainable in that behalf. So far as the jurisdiction of the High Courts under Article 226 of the Constitution or of this Court under Article 32 is concerned, it remains unaffected by the provisions of the Act"

4. As regarding the apparent arbitrariness of the subject Order-in-Appeal, it is pertinent to cite and submit the pronouncement made in the case of Steel Strips Vs CCE, Ludhiana [2011 (269) E.L.T. 257 (Tri. - LB)] wherein the Larger Bench of the Hon'ble Tribunal interalia held as hereunder:

"Refund - Right of refund - Claim of refund is not a matter of right unless vested by law - No injustice or hardship can be raised as plea to claim refund in absence of statutory mandate No equity or good - conscience influence fiscal courts without the same being embedded to statutory provisions - Substantial compliance of law

granting refund is sine gua non. - The purpose for which law has been made and its nature, the intention of the legislature in making the provision, the relation of the particular provision to other provisions dealing with the subject including the language of the provision are considerable factors in arriving at the conclusion whether a particular claim is in accordance with law. An eligibility criteria to get refund calls for a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature."

5. The Commissioner (Appeals) in upholding the Order-in-Original No. R- 24/AC/Refund/D-IV/GZB/2019-20 dated 28.08.2019 passed by the Assistant Commissioner, Central Goods and Service Tax, Division-IV, Ghaziabad and discarding the grounds of Appeal put forth by the Department in the appeals filed by the Department against the said Order-in-Original No. 24/AC/Refund/D-IV/GZB/2019-20 dated 28.08.2019 and against the said earlier Order-in-Appeal No. GZB/EXCUS/00/APPL-MRT/83/2019-20 dated 28.06.2019, has together with wrongfully upholding the sanctioning of the subject refund to the said party has simultaneously appeared to have erred in arbitrarily upholding the grant of interest to the said party. In the matter, as submitted herein above, as the subject refund of was not due to the said party on legal terms, supra, so the grant of interest thereon is statutorily ruled out. However, assuming without admitting that the refund claim would be admissible to the party, the Commissioner (Appeals)'s order to uphold the grant of interest in the subject case is arbitrary as it is without the sanction of law in as much as after the said earlier OIA dated 28.06.2019 the said party filed an application for refund vide their letter dated 07.08.2019 and the same was sanctioned on 28.08.2019 i.e. well within three months. The said arbitrariness is accentuated by the pronouncement *made in the case of Ratnamai Metals & Tubes Ltd. Vs CCE&ST, Ahmedabad-III [2019 (366) E.L.T. 139 (Tri. - Ahmd.)] wherein it was held as hereunder::*

> *Interest - Refund of amount paid during investigations - Duty vis-à-vis deposit - Relevant date for interest - There is no provision under Central Excise law to call amount paid during investigations as 'Deposit - Amount so paid is towards probable 'Duty liability only - Further, in adjudication order same is appropriated as duty only - Thus in case said amount requires to be refunded after adjudication, provisions of Section 11B of Central Excise Act, 1944 would be applicable and for interest on delayed refund, provisions of Section 11BB ibid would be applicable - Accordingly date of filing refund claim is relevant date for computation of interest made after 3 months and not date of making deposit - Sections 11B and 11BB of Central Excise Act, 1944.*

3.1 In the order proposed by the learned brother none of the grounds including the decisions relied upon in the appeals filed by the revenue have been considered for arriving at the findings. But reliance has been placed on certain decisions which have been passed by various bench of the tribunal interpreting the decision of Hon'ble Supreme Court in case of Sandvik Asia Ltd. [2006 (196) ELT 257 (SC)].

3.2 However Hon'ble Supreme Court has subsequently in the case of Willowood Chemicals Pvt. Ltd. [2022 (60) G.S.T.L. 3 (S.C.)] explained the observations made by the them in the case of Sandvik Asia case and has clarified contrary to interpretation taken by the tribunal in case of Parle Agro [2018 (360) ELT 1005 (Tri Alld)]. (Appeal against this order is pending before Hon'ble Allahabad High Court). Subsequently Hon'ble Delhi High Court has in case of Goldy Engineering Works after taking note of the observation made by Hon'ble Supreme Court in case of Willowood has set aside the orders of Delhi Bench.

3.3 I have after considering all the decisions on the subject in case of Jindal Pipes Ltd. [Final Order No 70535/2024 dated 08.04.2024] and observed as follows:

> *4.3 Appellant has filed this appeal assailing the above order and have claimed the refund from the date of deposit and at rate of 12%. They have claimed the same on the basis of decision of Chandigarh bench in case of Riba Textiles Ltd [Final Order No 60115/2020 dated 17.01.2020]*
>
> *"6. On going through the decision cited by learned A.R. in the case of M/s Juhu Beach Resort Ltd (supra), I find that in the said case, the decision of Hon'ble Apex Court in the case of Sandvik Asia Ltd 3 Excise Appeal No. 60446 of 2018 vs. CIT, Pune – 2007 (8) STR 193 (SC) and the decision of Hon'ble High Court of Madras in the case of CCE, Chennai-II vs. UCAL Fuel Systems Ltd – 2014 (306) ELT 26 (Mad.) have not been considered. Therefore, the said decision cannot be relied upon. As in the case of M/s Marshall Foundry & Engg. Pvt. Ltd. (supra), this Tribunal has examined all said decisions and thereafter observed as under:*
>
> *"8. The said issue has been examined by this Tribunal in the case of Tribunal in the case M/s. Fujikawa Power and other vs. CCE, Chandigarh-I vide Final Order No. 61041-61042/2019 dt.26.11.2019 wherein this Tribunal has observed as under:-*
>
> *14. I have gone through the decision in the case of Sandvik Asia Limited (supra), wherein the section 243 dealt with situation of interest on delayed refund.*
>
> *15. For better appreciation, section 243 of the Income Tax Act, 1961 reproduced as under:-*
>
> *"243. Interest on delayed refunds-*
>
> *(1) if the Income tax officer does not grant refund-*

(a) In any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and

(b) In any other case, within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation: If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable."

16. Section 35FF of the Central Excise Act, 1944 deals with the situation in hand, the same is extracted below:-

"Section 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F-

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority) under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at *the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."*

17. On-going through the provisions of both Income Tax Act, 1961 and Central Excise Act, 1944, the interest on delayed refund is payable after expiry of 3 months from the date of granting refund or from the date of communication of order of the appellate authority, which are parimateria. Therefore, the decision of Hon"ble Apex Court in the case of Sandvik Asia Ltd. (supra) is law of land, in terms of Article 14 of the Constitution of India which is to be followed by me, wherein the Hon"ble Apex has observed as under:-

"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of

interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

46. The word 'Compensation' has been defined in P. RamanathaAiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows: "An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an *equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; 6 Excise Appeal No. 60446 of 2018 remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."*

47. There cannot be any doubt that the award of interest on the refunded amount is as per the statute 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.

48. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

49. By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side.

Though, we hold that the Department is solely responsible for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31.03.1986, learned counsel for the appellant fairly restricted his claim towards interest from 31.03.1986 to 27.03.1998 on which date a sum of Rs.40,84,906/- was refunded.

50. The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs.40,84,906 (rounded of to Rs.40,84,900) simple interest @ 9% p.a. from 31.03.1986 to 27.03.1998 within one month from today failing which the Department shall pay the penal interest @ 15% p.a. for the above said period."

18. As the Hon"ble Apex Court has answered the issue holding that the assessee is entitled to claim interest from the date of payment of initial amount till the date its refund. Therefore, I hold that the appellants are entitled to claim the interest on delayed refund from the date of deposit till its realization.

19. Further, the interest on the refund shall be payable @ 12% per annum as held by Hon"ble Kerala High Court in the case of Sony Pictures Networks India Pvt.Ltd.-2017 (353) ELT 179 (Ker.) wherein it has held as under:-

"14. Now, the sole question remains to be considered is what is the nature of interest that the petitioner is entitled to get. As discussed above in the judgment Commissioner of Central Excise v. ITC (supra), the Apex Court confined the interest to 12% and further held that

any judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered opinion under similar circumstances. So also in Kuil Fire Works Industries v. Collector of Central of Excise [1997 (95) E.L.T. 3 (S.C.), the pre-deposit made by the assessee was directed to be returned to him with 12% interest. I have also come across the judgment of the Calcutta High Court in Madura Coats Pvt. Ltd. v. Commissioner of C. Ex., Kolkata-IV [2012 (285) E.L.T. 188 (Cal.), wherein the peremptory directions of the Apex Court in the judgment of ITC Ltd. (supra) was considered and ordered 12% interest, and further held that when the High Court directed the respondents to pay interest to the appellant in terms of the circular dated 8-12-2004 on the pre-deposit of the delayed refund within two months, it has to be construed that, the Court meant the rate of interest which was awarded by the Supreme Court in the case of Commissioner of Central Excise v. ITC Ltd., which was the rate quantified by the Supreme Court in the absence of any statutory provisions in the Act in question. Even though various other judgments of various High Courts and the various Tribunals was brought to my notice awarding 15% interest, in view of the directions contained in the judgment of the Apex Court in Commissioner of Central Excise v. ITC Ltd. (supra) rate of interest is to be confined to 12%. I am also bound to follow the same. Therefore the interest that is liable to be paid by the respondents as per the directions of this Court in Ext. P12 judgment is fixed at 12% per annum.

15. Taking note of the compendious circumstances and reckoning the law, there will be a direction to the respondents to pay interest to the petitioner at 12% from the date of expiry of three months from 18-11- 2002, to the amount of refund already made, within a month from *the date of receipt of a copy of this judgment, after adjusting any interest paid."*

20. Further, the same view was taken in the case Ghaziabad Ship Breakers Pvt.Ltd.-2010 (260) ELT 274 (Tri.Ahmd.), wherein this Tribunal observed as under:-

"5. I have considered the submissions made by both the sides. I notice that appellants deposited amount in September, October and in November 2004, as per the directions of the department. In September 2004, the Hon"ble Gujarat High Court had dismissed the SCA filed by the appellants against the order of the Tribunal rejecting the appeal for failure to make the pre-deposit. This SCA was dismissed in September 2004 and SLP was filed in the Hon"ble Supreme Court in October 2004. In July 2005, the Hon"ble Supreme Court ordered that if the amount directed to be deposited by the Tribunal is deposited, the appeals before the Tribunal has to be restored and decided on merits. In these circumstances, the amount deposited by the appellant is to be treated as pre-deposit since the matter had not attained finality during the relevant period. Therefore, refund is to be treated as refund of pre-deposit made when the appeal was pending. There is no dispute that the amounts deposited is duty but this is not the issue which has been taken into account while precedent decisions have allowed the interest at 12% on the refunds claimed in respect of pre deposit. I find that in the decisions cited by the learned advocate, interest at 12% has been allowed. Therefore, following the judicial discipline, I consider it appropriate that interest in this case also is to be allowed @ 12%. Accordingly, original adjudicating authority is directed to workout the differential interest amount and make the payment to the appellants."

21. As the provisions of section 243 Income Tax Act, 1961 and section 35FF of Central Excise Act, 1944, are parimateria. Therefore, following the decision of Hon"ble Apex Court in the case of Sandvik Asia Ltd. (supra) and Sony Pictures Networks India Pvt.Ltd. (supra) I hold that the appellants are entitled to claim interest from the date of payment of initial amount till the date its refund @ 12% per annum."

7. As this Tribunal has examined the issue in details in the case of M/s Marshall Foundry & Engg. Pvt. Ltd. (supra), therefore, I hold that the appellant is entitled to claim the interest on delay refund from the date of deposit till its realization."

4.4 Further decisions in following decisions have been brought to my knowledge where in following has been observed:

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 teh Hon'ble Supreme Court in the case of Sandvik Asia. Interpreting the above decision of Hon'ble Supreme various benches of tribunal have concluded in the favour of the grant of interest form 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 delated 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 subsection (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 impugned order clearly observes that the amount that was deposited by the appellant at the time of visit of officers to their premises was appropriated by the original authority while adjudicating the case of shortages against the appellant. The amount so appropriated acquired the character of duty, the moment it is appropriated against the demand made. 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."

4.6 Even if the amount is considered to be refund of deposit then also the same has to be refunded under *section 11B as the said section has provided for the refund of deposit lying in account current. The said provision as enshrined in Section 11B is reproduced below:*

> *11B. Claim for refund of duty and interest, if any, paid on such duty.—*
>
> *(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise]] before the expiry of two years from the relevant datein 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 12-A) 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 …*
>
> *Provided further that the limitation of two years shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.*
>
> *(2) If, on receipt of any such application, the Assistant Commissioner of Central Exciseor 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 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 account current maintained with the Principal Commissioner of Central Excise or Commissioner of Central Excise;

....

4.7 Further while defining the relevant date under Section 11B of the Central Excise Act, 1944 specifically cases of refund which arise as result of decisions of appellate authority or court have been highlighted. The said provisions is reproduced below:

(B) "relevant date" means,—

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

4.8 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 Mafatlal 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, referred in the impugned order. 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 negatived by the CESTAT in terms of its judgment of 27 September 2016.

21. For the purposes of evaluating the submissions aforenoted, 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 aforenoted 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 aforenoted 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."

3.4 In case of Team H R Services [2020 (38) G.S.T.L. 457 (Del.)] Hon'ble Delhi High Court has after taking into consideration all the decisions though held that appellant sould be granted interest from the date of deposit restricted the same to 6%. The observations made by the Hon'ble High court are reproduced below:

"15. No statutory mechanism whereunder the petitioner is entitled to seek refund in such circumstances also has been disclosed. It is thus not as if, we ought not to exercise our implicit discretion in exercising writ jurisdiction for the reason of any statutory remedy being available to the petitioner. When it is so and when the reasons disclosed in the order refusing refund are found to be illogical and de hors the statutory provision and further when it is found that the respondents State are illegally withholding money, a case for issuing a mandamus as sought is made out.

16. It is perhaps for this reason only that even while issuing notice of the petition, directions for refund were made and which remain uncomplied with.

17. We are unable to find any justification for the respondents to retain the said amount of Rs. 2,38,00,000/-. We have thus enquired from the Counsel for the respondents, what should be the rate of interest for which the respondents should be held liable.

18. The Counsel for the respondents states that as per the statute, the respondents are liable for interest @ 6% per annum only.

19. Per contra, the Counsel for the petitioner has drawn attention to :

(A) Sandvik Asia Ltd. v. Commissioner of Income Tax-I, Pune, (2006) 2 SCC 508 = 2006 (196) E.L.T. 257 (S.C.) where interest @ 9% per annum was awarded;

(B) Surinder Singh v. Union of India, 2006 SCC OnLine Del 1863 (DB) = 2006 (204) E.L.T. 534 (Del.) where interest @ 12% per annum was granted on delayed refund;

(C) Hello Minerals Water (P) Ltd. v. Union of India, 2004 SCC OnLine All 2187 (DB) = 2004 (174) E.L.T. 422 (All.) where interest @ 10% per annum was granted;

(D) Hindustan Coca-Cola Beverages Pvt. Ltd. v. Union of India, 2013 SCC OnLine Guj 1487 (DB) = 2015 (324) E.L.T. 299 (Guj.) where interest @ 9% per annum and future interest @ 6% per annum was granted; and,

(E) Ebiz.com Pvt. Ltd. v. Commissioner of Central Excise, Customs & S.T., 2017 (49) S.T.R. 389 (All.) where costs of Rs. 50,000/- were imposed on the Department.

20. In the present case, as aforesaid, the amount of Rs. 2,38,00,000/- was deposited by the petitioner of its own volition, during the audit/investigation, though under protest and the petitioner has not chosen to detail the circumstances in which the petitioner felt compelled to make *the deposit. The petitioner for the first time sought refund of the said amount vide letter dated 2nd May, 2018.*

21. Considering the said facts, we do not find the petitioner entitled to interest at any higher rate than @ 6% per annum from the date of deposit i.e. 27th October, 2006 till the end of May, 2018 i.e. 31st May, 2018. However, we do not find any justification for the respondents retaining the said amount thereafter and find the respondents liable for interest with effect from 1st June, 2018 onwards and till date @ 7.5% per annum. While so enhancing the rate of interest, we have also taken into consideration the non-compliance by the respondents of the orders of this Court as detailed above, leading to a contempt notice being issued to the respondents and in response whereto Ms. Niharika Gupta, Assistant Commissioner in the Office of Division-Nehru Place, Central GST, Delhi East Commissionerate is present in the Court.

22. The respondents are expected to at least now, on or before 15th July, 2020 refund the amount of Rs. 2,38,00,000/- with interest @ 6% per annum from 1st November, 2006 to 31st May, 2018 and with interest @ 7.5% per annum from 1st June, 2018 till the date of refund on or before 31st July, 2020. However, if the said amount is not refunded by 15th July, 2020, the rate of interest with effect from 1st August, 2020 shall stand enhanced to 12% per annum. A mandamus to the said effect is issued to the respondents GST Department."

This order of Hon'ble Delhi High Court has awarded interest at rate higher than the prescribed rate for certain pertain only by way of writ of mandamus. However for the period of deposit made till the writ petitioner had filed the application for refund the interest has been restricted to the prescribed rate even while issuing mandamus in the favour of petitioner. Tribunal being the creature of statute does not have any power to grant any interest rate other than that prescribed by the statute and hence

I am not even in agreement with the finding recorded to this effect by the learned Member (Judicial). However Hon'ble Delhi High Court has after considering the decision of Hon'ble Supreme Court has in case of Willowood Chemical Ltd, supra has in case of Goldy Engineering Works have taken a view that interest needs to be granted in such case only as per Section 11BB of Central Excise Act, 1944.

3.5 Mumbai Bench of this Tribunal have taken similar view in the case of M/s Guardian Castings Pvt. Ltd. Final Order No.A/85519/2022 dated 13.04.2022 as follows:-

> *"3.2 The Commissioner (Appeals) while disallowing the appeal filed by the appellant observed as under:-*
>
> *"8. In a similar case of Bharat Heavy Electricals Ltd. (BHEL) Vs. Commissioner of Central Excise, Meerut reported in 2002 (139) E.LT. 591 (Tri.-Del), Honorable Tribunal of Delhi held that –*
>
> *The entitlement for refund would arise only when the appeal was finally disposed of in favour of the appellant by the Tribunal. If that be so, no interest can be claimed for the period prior to the date of Final Order.*
>
> *The Honorable Delhi Tribunal, in the case of BHEL (supra), was considering whether interest is applicable from the date of deposit made in respect of mandatory pre-deposit under section 35F of Central Excise Act or otherwise. In the present case also the amount paid by appellant prior to finality of the case is akin to deposit. As mentioned above, Honorable Delhi Tribunal has held that such deposit can be refunded only after final disposal in favour of appellant by the Tribunal and interest cannot be claimed for the period prior to the date of Final Order. In the present case, the date of finality of case can be said to be 03.07.2017, i.e. the date on which the Mumbai Tribunal decided in favour of the appellant, which was subsequently accepted by the Department. Thus, appellant's plea for interest from 21.03.2005 is not sustainable. Therefore, interest on such*

deposit of appellant cannot be prior to 03.07.2017. Held Accordingly."

3.3 In case of Cubex Tubings [2022-TIOL-451-CESTAT-HYD] Hyderabad Bench has on the same issue held as follows:

"4. To appreciate the submissions advanced by Shri PVB Chary, learned counsel for the appellant and Shri AVLN Chary, learned authorized representative appearing for the Department, it would be necessary to reproduce the provisions of section 35FF of the Excise Act, as it stood prior to 6.08.2014 and after 06.8.2014.

Prior to 6.8.2014

"35 FF: Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of the order of the appellate authority, till the date of refund of such amount."

Post 6.8.2014

"35 FF: Where an amount deposited by the appellant under section 35F 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 percent and not exceeding thirty-six percent 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 35F, 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."

8. It is not in dispute that the amount towards pre-deposit under section 35F of the Excise Act was deposited by the appellant on 30.08.2012, which date is prior to 06.08.2014 on which date section 35FF of the Excise Act was amended. The proviso to section 35FF of the Excise Act, as it stood after amendment on 06.08.2014, clearly stipulates that the amount deposited under section 35F of the Excise Act prior to 06.08.2014 shall continue to be governed by the provisions of section 35FF of the Excise Act as it stood before 06.08.2014. Thus, the appellant would not be entitled to claim interest on the pre-deposit amount as the provisions of section 35FF of the Excise Act, as it stood prior to its amendment on 06.08.2014, would be applicable. This is for the reason that section 35FF of the Excise Act, as it existed prior to 06.08.2014, provided that where the amount deposited towards pre-deposit under section 35F of the Excise Act is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of the order of the appellate authority, till the of refund of such amount. In other words, if the amount is refunded within three months from the date of communication of the order, interest would not be paid.

9. In the present case, it is not in dispute that the amount towards pre-deposit was deposited on 30.08.2012 and that the amount was sanctioned within three months from the date of communication of the order of the Tribunal to the adjudicating authority. The appellant would, therefore, not be entitled to claim interest. This is what was observed by the Deputy Commissioner as also the Commissioner (Appeals) while rejecting the claim of the appellant for payment of interest.

10. This view finds support from the judgment of the Allahabad High Court in IFP Products (P) Ltd. vs. Union of India and Anr Writ Tax No. 653 of 2017 decided on 20.09.2017. The High Court held that in view of the proviso to the amended provisions of section 35FF of the Excise Act, the unamended provisions of section 35FF of the Excise Act would be applicable under which no interest can be paid if the amount is deposited within three months from the date of communication of the order of the Appellate Tribunal and the relevant observations made in the judgment are reproduced below:

"Section 35FF of the Act provides for the payment of interest on delayed refund of amount deposited under Section 35F of the Act.

The aforesaid provision as it stood at the relevant time i.e. on 03.08.2016 or 28.11.2016, when the appeal of the petitioner was allowed and the amount was refunded provided that where any amount deposited in pursuance of the order of the Commissioner (Appeals) or the Appellate Tribunal is required to be refunded consequent upon the order of the Appellate Authority, such amount shall be refunded and if it is not so refunded within a period of three months from the date of communication of the order of the Appellate Authority, interest E/85371/2019 6 shall be payable at the rate specified under Section 11BB of the Act after the expiry of the aforesaid three months.

A reading of the aforesaid provision reflects that any amount deposited pursuant to the order passed by any Authority is liable to be refunded within a period of three months from the date, the order is set aside by the Appellate Authority and in case, it is not so refunded within three months of the communication of the appellate order, interest at the specified rate shall be payable on it for the delayed period after three months.

The aforesaid provision of Section 35FF of the Act was amended by the Finance Act No. 25 of 2014 with effect from 06.08.2014 and it was provided that where any amount deposited by the party under Section 35F of the Act is required to be refunded consequent upon the order of the Appellate Authority, it will carry an interest at the specified rate till the date of refund.

It permits payment of interest at the specified rate for the entire period, the amount remains deposited with the authority. However, the aforesaid provision has been subjected to a proviso, which lays down that if any amount has been deposited prior to the enforcement of the Finance Act No. 25 of 2014 i.e. before 06.08.2014, it shall continue to be governed by the unamended provision of Section 35FF of the Act, which means that in cases of deposit made prior to 06.08.2014, interest would be payable only if the amount is not refunded within a period of three months from the date of communication of the appellate order.

Apart from the above provision, there is no other provision, which permits payment of interest on the amount of excise duty deposited in pursuance to the order of the Commissioner (Appeals) or the Tribunal by any party. A composite reading of unamended Section 35FF and amended Section 35FF of the Act reveals that in respect of an amount deposited prior to the commencement of the Finance Act No. 25 of 2014, interest *on the refunded amount is payable only if it is not refunded within three months of the communication of the order of the appellate authority entitling the refund and that too after the expiry of three months of the communication of the order.*

In the present case, the amount was deposited on 24.04.2014 and 28.04.2014, the appeal entitling the refund was allowed on 03.08.2016 and the refund was actually made on 28.11.2016.

All the aforesaid dates are earlier to 06.08.2016, the date of enforcement of Finance Act No. 25 of 2014. Thus, in view of the proviso to the amended Section 35FF of the Act, the payment of interest to the petitioner would be governed by the unamended Section 35FF of the Act.

Accordingly, if at all the petitioner would be entitled to interest on the amount refunded, it will be for the period the amount had remained with the respondents after three months from the date of communication of the appellate order."

11. This judgment of the Allahabad High Court was followed by the Division Bench of the Tribunal in M/s. Fujikawa Power vs. CCE & ST, Chandigarh-I Excise Appeal No. 60966 of 2019 decided on 26.11.2019.

12. A learned Member of the Tribunal in Hindustan Agro Insecticides, also observed as follows:

"5. I have considered the arguments made in the appeal memorandum and the relevant legal provisions. The proviso to amend Section 35FF makes it clear that in respect of any amounts pre-deposited prior to 6-8-2014 will continue to be covered by the provisions of the unamended Section 35FF. The unamended provisions provided for payment of interest only if the pre-deposit was not refunded within three months from the date of communication of the order of the appellate authority.

Therefore, no interest is payable to the appellant in this case. The impugned order is correct and calls for no interference. Accordingly, the appeal is rejected and the impugned order is upheld."

13. Learned counsel for the appellant, however, placed reliance upon a decision of a learned Member of the Tribunal in J.K. Cement Works. In this case the pre-deposit was made on 31.03.2006 but the appellant succeeded before the High Court on 25.01.2018. While claiming refund of the pre-deposit amount, the contention that was advanced was that the appellant would also be entitled to interest under the amended provisions of section 35FF of the Excise Act. The learned Member allowed payment of interest, even though the amount was refunded within three months from the date of communication of the order following the decision of the Supreme Court in Sandvik Asia Ltd. This judgment of the Supreme Court does not deal with the issue in hand. The main issue that arose before the Supreme Court was whether an assessee is entitled to be compensated by the Income Tax department for the delay in paying to the assessee the amount admittedly due. The delay in the matters before the Supreme Court were for various periods ranging from 12 to 17 years and the Supreme Court noticed that there was no justifiable reason for withholding the amount for such long period time. Interest on the amount refunded was granted to the appellant but the appellant also claimed interest on the Advance Tax that was paid. It is in this context that the Supreme Court held that interest was also required to be paid on the Advance Tax since Advance Tax has also to be treated as paid pursuant to an order for assessment. The decision the learned Member of the Tribunal in J.K. Cement Works, therefore, does not lay down the correct position of law and would not come to the aid of the appellant.

14. The decision of the Tribunal in Riba Textiles also does not help the appellant as it also relies upon the decision of the Supreme Court in Sandvik Asia Ltd.

15. The judgment of the Delhi High Court in MRF Limited will also not help the appellant. This judgment holds that the predeposit amount which is required to be deposited when an appeal is preferred does not bear the character of a tax and, therefore, the filing of a form which is purely for the purpose of administrative convenience cannot in any manner fixe the period of limitation.

16. In the present case, section 35F of the Excise Act, as it stood prior to 06.08.2014, provides for payment of interest only if the pre-deposit amount is not refunded within a period three months from the date of communication of the order to adjudicating authority. This is what has been observed by the Commissioner (Appeals).”

3.6. Mumbai Bench of this Tribunal have taken similar view in the case of M/s Hindustan Composite Pvt. Ltd. Final Order No.A/85578/2023 dated 27.03.2023 by holding as follows:-

“2.5 Aggrieved respondent filed appeal to Commissioner (Appeals) and the Commissioner (Appeals) has vide the impugned order allowed the appeal as referred in para 1 above, in favour of the respondent. Aggrieved Revenue has filed this appeal stating the following grounds:-

> *“3.1. In light of the aforementioned statutory provisions the respondent is not entitled for interest from the date of payment of tax, but, after 3 months from the date of filing the refund application. The assessee deposited the duty amount during the period from August 1979 to March 1987, but the claim of refund was filed on 23.06.1997 for Rs.3,31,806/- and Rs.4,55,347/- and 03.07.1997 for Rs.28.49.7621-*

3.2. Further, while placing reliance on the judgements in the case of M/s Ranbaxy Laboratories Ltd. M/s Surajbhan Synthetics (P) Ltd), the learned appellate authority has held contrary to the ratio of the said rulings as, it was held in these cases that, the interest on delayed refund is payable on expiry of three months from the date of receipt of application under section 11(B)(1) of the C.Ex. Act, 1944. Therefore, the learned Commr (Appeals) conclusion have traversed beyond the mandate of the ruling of Hon'ble Supreme Court which is the law of land.

3.1 ………………..

3.2 Arguing for the Revenue, learned AR submits that the interest in the present case needs to be paid after three months from the date of filing the refund application and not from the date of deposit of duty. He relied on the decision in the case of Ranbaxy Laboratories Ltd. and Surajbhan Synthetics (P) Ltd.

3.3 Arguing for the respondent, learned C.A. relied upon the following decisions in support of the impugned order:-

- *Ucal Fuel Systems Ltd. [2014 (306) ELT 26 (Mad.)]*
- *Sandvik Asia Ltd. [2006 (196) ELT 257 (SC)]*
- *Pricol Ltd. [2015 (320) ELT 703 (Mad.)]*
- *Omjai Bhavani Silk Mills (P) Ltd. [2009 (243) ELT 560 (Tri.- Bang.)]*
- *Parle Agro Pvt. Ltd. [2022 (380) ELT 219 (Tri.-All.)]*
- *Shahi Exports Ltd. [2022 (58) GSTL 367 (Tri.- Chan.)]."*

4.2 Section 11BB of the Central Excise Act inserted in the statute with effect from 26.05.1995 by Finance Act, 1995 (22 of 1995) reads as follows:-

"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 [, National Tax 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 [National Tax 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."*

4.3 From the plain reading of the above section it is evident that the interest in case of delayed refund is payable only for the period of delay beyond three months from the date of filing the application.

4.4 Hon'ble Supreme Court has in the case of Ranbaxy Laboratories Ltd. [2012 (27) STR 193 (SC)] held 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, E/87542/2022 6 [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."

4.5 In the case of Surajbhan Synthetics (P) Ltd., similar view has been expressed by the Hon'ble Apex Court.

4.6 During the course of argument, learned counsel relied upon the decision in the case of Sandvik Asia Ltd. [2006 (196) ELT 257 (SC)]. On going through the judgment we find that the issue under consideration before the Hon'ble Apex Court as per para 16 was in respect of interpretation of Sections 237, 240, 243 and 244 of the Income Tax Act, 1961. The said sections are reproduced below:-

"237. Refunds. *If any person satisfies the Income-tax Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is* *properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.*

240. Refund on appeal, etc. - *Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Income-tax Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf."*

240. Refund on appeal, etc. *- Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf :*

7 [Provided that where, by the order aforesaid,-

(a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

(b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax changeable on the total income returned by the assessee".]"

243. Interest on delayed refunds. *- (1) If the Income-tax Officer does not grant the refund –*

(a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and

(b) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter,

the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation *: If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.*

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner whose decision shall be final.

244. Interest on refund where no claim is needed. - *(1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Income-tax Officer does not grant the refund within a period of [three months from the end of the month in which such order is passed], the Central Government shall pay to the assessee simple interest at [twelve] per cent per annum on the amount of refund due from the date immediately following the expiry of the period of [three] months aforesaid to the date on which the refund is granted.*

(1A) Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appear or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple

interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted :

***Provided** that, where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted :*

***Provided further** that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appear or other proceeding :*

***Provided also** that where any interest is payable to an assessee under this sub-section, no interest under sub-section (1) shall be payable to him in respect of the amount so found to be in excess.*

(2) Where a refund is withheld under the provisions of section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appear or further proceeding for the period commencing after the expiry of three months from the end of the month in which the order referred to in section 241 is passed to the date the refund is granted."

4.7 On perusal of the said sections and section 11BB of Central Excise Act, we do not find that these sections are in pari materia. Accordingly the reliance placed by the counsel on the above referred decision of Hon'ble Supreme Court would not be proper.

4.8 Respondent has relied upon various other decisions which do not help the cause of the respondent for the reason that these decisions do not take note of the *decision of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd.*

4.9 Further the amounts deposited by the respondent in the present case are not in nature of deposits made during investigation but is a duty paid by the respondent under protest. Duty paid under protest is for all the legal purposes and the amount deposited as duty though payment of the same is protested."

3.7 Respondent has relied upon the decision of Mumbai Bench in case of Lavin Synthetics [2020 (374) 759 (T-Mum)] (I was part of the bench). However the view taken in that case cannot be applicable to the present case because the same was in respect of a custom matter wherein there is no provision of deposit in PLA. Evidently in the present case it is the submission of the respondent that they are seeking the refund of amount deposited in PLA. Further distinction sought to be made in various decisions referred by learned Member (Judicial) between the payment of duty and advance deposit made in the account current (PLA) is contrary to the observations made by Hon'ble Supreme Court in case of Modipon Ltd [2017 (356) E.L.T. 481 (S.C.)].

"9. *Deposit of Central Excise Duty in the PLA is a statutory requirement. The Central Excise Rules, 1944, specify a distinct procedure for payment of excise duty leviable on manufactured goods. It is a procedure designed to bring in orderly conduct in the matter of levy and collection of excise duty when both manufacture and clearances are a continuous process. Debits against the advance deposit in the PLA have to be made of amounts of excise duty payable on excisable goods cleared during the previous fortnight. The deposit once made is adjusted against the duty payable on removal and the balance is kept in the account for future clearances/removal. No withdrawal from the account is permissible except on an application to be filed before the Commissioner who is required to record reasons for* *permitting an assessee to withdraw any amount from the PLA. Sub-rules (3), (4), (5) and (6) of Rule 173G indicate a strict and vigorous scrutiny to be exercised by the Central Excise authorities with regard to manufacture and removal of excisable goods by an assessee. The self-removal scheme and payment of duty under the Act and the Rules clearly show that upon deposit in the PLA the amount of such deposit stands credited to the Revenue with the assessee having no domain over the amount(s) deposited.*

12. *The above discussions, coupled with the peculiar features of the case, noticed above i.e. consistent practice followed by the assessee and accepted by the Revenue; the decisions of the two High Courts in favour of the assessee which have attained finality in law; and no contrary view of any other High Court being brought to our notice, should lead us to the conclusion that the High Courts were justified in taking the view that the advance deposit of Central Excise Duty constitutes actual payment of duty within the meaning of Section 43B of the [Income-tax] Act and, therefore, the assessee is entitled to the benefit of deduction of the said amount."*

3.8 Thus in my view the above, appeals filed by the revenue need to be allowed to the extent it restricts the interest payable on the admissible refund as admissible in terms of Section 11BB of Central Excise Act, 1944.

4.1 Appeals filed by the revenue are allowed as indicated in para 3.8 above.

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

POINTS OF DIFFERENCE

In view of the difference in opinion expressed by the Member (Judicial) and Member (Technical), following questions are referred to Hon'ble President for referring the same either by himself or by referring the matter to a third member:-

I. Whether in view of the opinion expressed by Member (Judicial), appeals are to be dismissed.

or

Whether in view of the opinion expressed by Member (Technical), appeals are to be allowed.

(Pronounced in open court on- **14th November, 2024**)

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

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT NO.II

Excise Appeal No.70713 of 2019

(Arising out of Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/83/2019-20 dated 28/06/2019 passed by Commissioner (Appeals) CGST, Meerut)

Commissioner, Central Goods & Service Tax, Ghaziabad
.....Appellant
(CGO Complex-I, Kamla Nehru Nagar, Ghaziabad)

VERSUS

M/s Preet Machines Ltd. ....Respondent
(D-14-15, SectorA-3, Tronica City Loni,
Ghaziabad-201102 (U.P.)

AND

Excise Appeal No.70404 of 2020

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APPL-MRT-46-2020-21, dated -10/06/2020 passed by Commissioner (Appeals) CGST, Meerut)

Commissioner, Central Goods & Service Tax, Ghaziabad
.....Appellant
(CGO Complex-I, Kamla Nehru Nagar, Ghaziabad)

VERSUS

M/s Preet Machines Ltd. ....Respondent
(D-14-15, Sector A-3, Tronica City Loni,
Ghaziabad-201102 (U.P.)

APPEARANCE:

Dr. Raju Sakthivel, Commissioner (A.R.) for the Appellant
Shri Vineet Kumar, Advocate &
Shri S. A. Khan, Consultant for the Respondent

CORAM: HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)

INTERIM ORDER NO.-1-2/2026

DATE OF HEARING : 28.07.2026
DATE OF DECISION : 06.08.2026

P. A. AUGUSTIAN:

The issue in the Appeals is based on the Interim Order dated 14.11.2024, regarding difference of opinion in granting interest on refund amount whether sustainable from the date of deposit and also regarding rate of interest.

2. When the Appeals came up for hearing, learned counsel for the Appellant submits that subsequent to the issue of the Interim Order dated 14.11.2024 and framing of 'Difference of Opinion', similar issue came up before the Hon'ble High Court of Allahabad in the matter Principal Commissioner, Central Goods & Service Tax V/s M/s Parle Agro Private Limited in Central Excise Appeal No. 18 of 2021 and the Hon'ble High Court of Allahabad vide Order dated 14.11.2025 considered the issue in detail against the Final Order of this Tribunal dated 25.05.2021 in Excise Appeal No.70628 of 2019 filed by the Assessee M/s Parley Agro Private Limited and Excise Appeal No.70674 of 2019 filed by the Revenue. The Hon'ble High Court admitted the appeal on the following substantial question of law:-

> "(I) Whether the Hon'ble Tribunal is correct in upholding the order dated 28.05.2019 of the Commissioner (Appeals) of CGST, NOIDA granting interest on refund amount from the date of deposit beyond the provisions of Section 11BB/Section 35FF of the Central Excise Act, 1944, as the case may be ?
>
> (II) Whether the Hon'ble Tribunal is correct in granting compensatory interest at higher rate than the prescribed @ of 6% notified vide Notification No.67/2003-C.E. (NT) dated 12.09.2003 under the provisions of Section 11BB of the Central Excise Act, 1944 i.e. beyond the purview of the Statute?"

3. After considering the decisions relied upon by both the sides which was relied upon by this Tribunal in Interim Order No.

19-20/2024 dated 14.11.2024 the Hon'ble Allahabad High Court has observed as under:-

> "23. In the present case duty liability has not been shown to pre-exist as may warrant any further consideration. Suffice to note the decisions in Ranbaxy (supra) and Hamdard (supra) are wholly distinguishable to the facts of present case.
>
> 24. In view of the above discussion question no.1 is answered in the affirmative i.e. against the revenue and in favour of the assessee.
>
> 25. Insofar as question no.2 is concerned, in the instant case the Tribunal has discussed all relevant notifications and, thereafter, reached the conclusion that the interest rate has varied from 6% to 18%. Considering the long duration of retention of the revenue receipt of the assessee, it has awarded 12%. We do not find any substantial question of law has arisen with respect to payment of rate of interest. Suffice to note that the amount was forcibly extracted from the assessee in the year 1994 and it came to be refunded in the year 2018 after 24 years.
>
> 26. In view of such facts and law the question no.2 is answered accordingly.
>
> 27. Consequently, the appeal is dismissed. No order as to costs."

4. Learned counsel for the Appellant further submits that in Appellant's case, there is no dispute regarding the deposit made by the Appellant during the investigation which is before determination of any duty liability under the Central Excise Act and it was not deposited in discharge of any self-assessed or adjudicated demand and the Department retained the money without any statutory liability or lawful appropriation against any liability.

5. Learned counsel further submits that once it is admitted that the principal amount is held refundable, Revenue cannot

simultaneously consider the said amount as duty only for the limited purpose of restricting interest under Section 11BB and such un-consistent approach is unsustainable in law. Even if the Revenue adopted the process of refund through Section 11B as a procedural mechanism, that procedural route cannot alter the substantive nature of the amount and in the absence of that, allegation regarding unjust enrichment is unsustainable since the judgment of the Hon'ble High Court expressly distinguishing Ranbaxy Laboratories Ltd. V/s Union of India and Union of India V/s Hamdar (Waqf) Laboratories . Further submits that Article 265 prohibits collection or retention of tax without authority of law. Thus, the Appellant is eligible for payment of interest @ 12% per annum from the date of deposit until the date of refund.

6. Learned Authorized Representative (AR) for the Revenue relied the submissions and finding of the impugned order that the Assistant Commissioner in his Order-in-Original dated 13.06.2018 in Para 5 has religiously reproduced the entire portion of Section 11 B of Central Excise Act and find that as per section 11B of the Central Excise Act, present Appellants cases are not covered under any provision for refund of amount deposited by them during the investigations. From this decision. it is abundantly clear that the original adjudicating authority did not analyze and apply his mind as to why it is not covered under section 11B. It is a non-speaking order without any reason as to the non-applicability of Section 11B. Further submits that the Original refund sanctioning authority failed to examine the provisions of section 11B and the Commissioner (Appeal) did not spell out any reasons as to why the provisions of Section 11B will not be applicable for the refund of "unspent advance deposit lying in the PLA of the account current", whereas an explicit provision is enshrined in Sub Section 2 (b) of the Section 11B for handling the sort of case of the respondent.

7. Learned Authorized Representative further submits that the non-obstante Sub-Section 3 of Section 11B, lays down that

notwithstanding any such contrary findings of Court/Appellate Tribunal etc. "No refunds shall be made except as provided in sub-section (2)."

8. Learned Authorized Representative also submits that it is also a very strange that the Respondent had applied under Section 11B for seeking refund of Rs 8 Crores, claiming the unspent amount lying in the PLA as "duty" and on the other hand, for the sake of interest from the date of deposit, in the same breath, the Respondent claims that the amount is "not duty".

9. As regards the judgement of the Hon’ble High Court of Allahabad dated 14.11.2025 in the matter Principal Commissioner, Central Goods & Service Tax V/s M/s Parle Agro Private Limited in Central Excise Appeal No. 18 of 2021, Learned A.R. submits that the applicability or non-applicability of the Section 11B of the Central Excise Act was not at all examined in detail for the refund of amount relating to the "unspent advance deposit lying in the PLA of the account current" of the Respondent. Further submits that the said judgment is issued without considering the judgment of the Hon’ble Supreme Court in the case of Willowood Chemicals Pvt. Ltd. [2022 (60) G.S.T.L. 3 (S.C.)] after elaborately discussing about the context of the case history that they were dealing with and the limited scope and applicability of their decision in the case of Sandvik Asia case, the Hon'ble Supreme Court in the case of Willowood Chemicals Pvt. Ltd. [2022 (60) G.S.T.L. 3 (S.C.)] has observed the following:

> **“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."

10. Considering the ratio above, it is held that the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation. Lr. A.R. also submits that such a clarification against any blanket and indiscriminate application and invocation of the Sandvik case by the Hon'ble Supreme Court fairly and squarely goes to the root of the matter and is categorically against the kind of interpretation taken by the Tribunal in case of **Parle Agro [2018(360)ELT 1005 (Tri Alld)]** and other such decisions of other branches which are relied up by the Member (Judicial) for allowing 12% interest. All these Branches of the Tribunals have gone overboard and shown misplaced sympathy to all and sundry de hors of the special facts and circumstances of the Sandvik case and started granting 12 % interest without any judicial discipline and regard to the observations of the Hon'ble Supreme Court in the cases of M/s WilloWoods and M/s Gujarat Fluoro Chemicals. Thus, granting 12 % interest is unsustainable.

11. Heard both the sides and perused the appeal records.

12. Since the issue in the present appeal is squarely covered by the decision of the jurisdictional High Court in the matter of Commissioner, Central Goods & Service Tax V/s M/s Parle Agro Private Limited in Central Excise Appeal No. 18 of 2021, the opinion expressed by the learned Member (Technical) is not correct in law.

13. Now, let the matter be placed before the Regular Division Bench for drawing majority view.

(Third Member's Order pronounced in the court on 06.08.2026)

Sd/-
(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

Nihal

In view of the majority order, both the appeals filed by the Revenue are dismissed.

(Order pronounced in open court on 17.08.2026)

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

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal