

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60671 of 2017

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-008-16-17 dated 03.02.2017 passed by the Commissioner (Appeals), Central Excise, Ludhiana]

M/s S S Marketing

3/2, Manjit Nagar, Basti, Sheikh,
(present address – 28-6, Model Town,
Jalandhar, Punjab-144002

.....Appellant

VERSUS

**Commissioner of Central Excise,
Ludhiana**

GST Bhawan, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

.....Respondent

APPEARANCE:

Shri Ravi Chopra, Advocate for the Appellant

Shri Ram Niwas and Shri Yashpal Singh, Authorized Representatives
for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61031/2025

DATE OF HEARING: 06.08.2025

DATE OF DECISION: 01.09.2025

P. ANJANI KUMAR:

This appeal has been filed by M/s S S Marketing, the appellants against the impugned order dated 03.02.2017 passed by the learned Commissioner (Appeals).

2. Briefly stated the facts of the present case are that the appellants have filed a claim of refund for Rs.4,52,523/-; the refund claim came to be partially rejected, by the Original Authority vide Order dated 30.08.2017, on the grounds of limitation, holding that Rs.3,27,145/-, out of the Rs.4,52,523/- was already availed by the appellants and the balance Rs.1,25,378/- was liable for rejection; the impugned order further held that the appellant cannot claim refund on the basis of the decision of CESTAT in the case of Mahavir Generics vide Final Order No.12/2004-NB (A) dated 27.04.2004. Learned Commissioner (Appeals) rejected the appeal filed by the appellants and upheld the original order.

3. Learned Counsel for the appellants reiterates the grounds of appeal and submits that they are eligible for the refund claim on the grounds that limitation is applicable from the date of knowledge of the mistake rather than the date of making deposit due to mistaken notion. He relies on the following cases:

- Mahavir Generics Vs. CCE, Bangalore - 2004 (170) ELT 78 (Tri - Del.)
- Parijat Construction Vs. CCE, Nashik - 2018 (9) GSTL 8 (Bom.)
- CCE (Appeals), Bangalore Vs. KVR Construction - 2012 (26) STR 195 (Kar.)
- Commissioner Vs. KVR Construction - 2018 (14) GSTL J7 (S.C.)
- Tripura Cricket Association Vs. Union of India - 2023 (70) GSTL 259 (Tripura High Court)
- CCE, Bangalore-III Vs. Motorola India Pvt. Ltd. - 2006 (206) ELT 90 (Kar.)
- Bellatrix Consultancy Services Vs. CCT, Bangalore -2022 (67) GSTL 59 (Kar.)

- Rattan India Power Ltd. Vs. CCE & CGST, Delhi 2022 (65) GSTL 122 (Tri - Del.)
- Executive Engineer, Transmission System, Haryana Vidyut Prasaran Nigam Limited – 2024 (8) TMI 1151- P&H

4. Learned Authorized Representative for the Revenue opposes and submits that the appellant cannot take benefit of refund on the basis of a decision in some other cases. He submits that ratio of any case shall be applicable to that particular case only. He relies on Hon'ble Apex Court's decision in the case of Mafatlal Industries – 1997 (89) ELT 247 and Metec Construction Technology Pvt. Ltd. – Final Order No.40761/2025 dated 24.07.2025.

5. Heard both sides and perused the records of the case. We find that Section 11B prescribes time limit for filing a refund claim. A statutory timeline cannot be given a go by because in some other case, Tribunal or the higher Courts have given the benefit to some other party. We find that Hon'ble Supreme Court in the case of Mafatlal Industries (supra) held that:

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.

(ii) Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition. This principle is, however, subject to an exception : where a person approaches the High Court or Supreme Court challenging the constitutional validity of a provision but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on another ground; this is for the reason that so far as he is concerned, the decision has become final and cannot be re-opened on the basis of a decision on another person's case; this is the ratio of the opinion of Hidayatullah, CJ. in *Tilokchand Motichand* and we respectfully agree with it.

Such a claim is maintainable both by virtue of the declaration contained in Article 265 of the

Constitution of India and also by virtue of Section 72 of the Contract Act. In such cases, period of limitation would naturally be calculated taking into account the principle underlying Clause (c) of sub-section (1) of Section 17 of the Limitation Act, 1963. A refund claim in such a situation cannot be governed by the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be, since the enactments do not contemplate any of their provisions being struck down and a refund claim arising on that account. In other words, a claim of this nature is not contemplated by the said enactments and is outside their purview.

(iii) A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the petitioner/plaintiff alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not

possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State, i.e., by the people. There is no immorality or impropriety involved in such a proposition.

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched.

(iv) It is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment of levy has become final in his case, he cannot seek to reopen it nor can he claim refund without re-opening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well established principles of law. It also leads to grave public mischief. Section

72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund.

(v) Article 265 of the Constitution has to be construed in the light of the goal and the ideals set out in the Preamble to the Constitution and in Articles 38 and 39 thereof. The concept of economic justice demands that in the case of indirect taxes Central Excises duties and Customs duties, the tax collected without the authority of law shall not be refunded to the petitioner-plaintiff unless he alleges and establishes that he has not passed on the burden of duty to a third party and that he has himself borne the burden of the said duty.

(vi) Section 72 of the Contract Act is based upon and incorporates a rule of equity. In such a situation, equitable considerations cannot be ruled out while applying the said provision.

(vii) While examining the claims for refund, the financial chaos which would result in the administration of the State by allowing such claims is not an irrelevant consideration. Where the petitioner-plaintiff has suffered no real loss or prejudice, having passed on the burden of tax or duty to another person, it would be unjust to allow or decree his claim since it is bound to prejudicially affect the public exchequer. In case of large claims, it may well result in financial chaos in the administration of the affairs of the State.

(viii) The decision of this Court in *Sales Tax Officer, Benaras v. Kanhaiyalal Mukundlal Saraf* [1959 S.C.R. 1350] must be held to have been wrongly decided insofar as it lays down or is understood to have laid down propositions contrary to the propositions enunciated in (i) to (vii) above. It must equally be held that the

subsequent decisions of this Court following and applying the said propositions in *Kanhaiyalal* have also been wrongly decided to the above extent. This declaration - or the law laid down in propositions (i) to (vii) above - shall not however entitle the State to recover the taxes/duties already refunded *and* in respect whereof no proceedings are pending before any Authority/Tribunal or Court as on this date. All pending matters shall, however, be governed by the law declared herein notwithstanding that the tax or duty has been refunded pending those proceedings, whether under the orders of an Authority, Tribunal or Court *or* otherwise.

(ix) The amendments made and the provisions inserted by the Central Excises and Customs Law (Amendment) Act, 1991 in the Central Excises and Salt Act and Customs Act are constitutionally valid and are unexceptionable.

(x) By virtue of sub-section (3) to Section 11B of the Central Excises and Salt Act, as amended by the 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 whereunder 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. Even so, the Court would, while exercising the jurisdiction under the said articles, have due regard to the legislative intent manifested by the provisions of

the Act. The writ petition would naturally 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 regime of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them.

(xi) Section 11B applies to all pending proceedings notwithstanding the fact that the duty may have been refunded to the petitioner/plaintiff pending the proceedings or under the orders of the Court/Tribunal/Authority or otherwise. It must be held that *Union of India v. Jain Spinners* [[1992 \(61\) E.L.T. 321](#) (SC) = 1992 (4) S.C.C. 389] and *Union of India v. I.T.C.* [[1993 \(67\) E.L.T. 3](#) (SC) = 1993 Suppl. (4) S.C.C. 326] have been correctly decided. It is, of course, obvious that where the refund proceedings have finally terminated - in the sense that the appeal period has also expired - before the commencement of the 1991 (Amendment) Act [September 19, 1991], they cannot be re-opened and/or governed by Section 11B(3) [as amended by the 1991 (Amendment) Act]. This, however, does not mean that the power of the Appellate Authorities to condone delay in appropriate cases is affected in any manner by this clarification made by us.

(xii) Section 11B does provide for the purchaser making the claim for refund provided he is able to establish that he has not passed on the burden to another person. It, therefore, cannot be said that Section 11B is a device to retain the illegally

collected taxes by the State. This is equally true of Section 27 of the Customs Act, 1962.

6. In view of the above, we do not find any merit in the appeal and accordingly, we are inclined to dismiss the appeal.

(Order pronounced in the open court on 01/09/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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