CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 40977 of 2016

(Arising out of Order-in-Appeal No. 45/2016 (CXA-II) dated 29.01.2016 passed by Commissioner of Central Excise (Appeal-II), No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

And

Excise Appeal No. 40663 of 2017

(Arising out of Order-in-Appeal No. 439/2016 (CXA-II) dated 30.11.2016 passed by Commissioner of Central Excise (Appeal-II), No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Jyothi Laboratories Ltd. **...Appellant**
R.S. No. 12/1&2,
Thethampakkam Village,
Suthukeny,
Puducherry – 605 502.

Versus

Commissioner of GST and Central Excise **...Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue,
Beach Road,
Pondicherry – 605 001.

APPEARANCE:

For the Appellant : Ms. Nimrah Ali, Advocate
For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40141-40142 / 2025

DATE OF HEARING : 16.12.2024
DATE OF DECISION : 31.01.2025

Per Mr. VASA SESHAGIRI RAO

Excise Appeal No. E/40977/2016 has been filed by M/s. Jyothi Laboratories Ltd. (hereinafter referred to as 'Appellant' assailing the impugned Order-in-Appeal No. 45/2016 dated 29.01.2016 of Commissioner of Central Excise (Appeals-II), Chennai upholding the Order-in-Original No. 50/2014-PA dated 29.09.2014 which finalised the provisional assessment in respect of clearances of plastic containers and closures for captive consumption during 2013-2014 under Rule 7(3) of Central Excise Rules, 2002 (Rules) and demanding an amount of Rs.21,91,252/- towards differential duty along with applicable interest and appropriating an amount of Rs.21,91,252/- already paid towards the duty demand, besides rejecting their claim for refund /adjustment in respect of an amount of Rs.2,73,179/- excess paid by the Appellant and crediting it to the consumer welfare fund in terms of Rule 7(6) of the Rules read with Section 11B(2) and Section 12(C) (2) of the Central Excise Act, 1944 (ACT).

1.2 Excise Appeal No. E/40663/2016 has been filed by the Appellant aggrieved by the impugned Order-in-Appeal

No. 439/2016 dated 30.11.2016 of Commissioner of Central Excise (Appeals-II), Chennai upholding the Order-in-Original No. 39/2008 dated 30.07.2008 which finalised the provisional assessment in respect of clearances of plastic containers and closures for captive consumption during 2007-08 under Rule 7(3) of the Rules and demanding an amount of Rs.18,19,882/- towards differential duty & Cess along with applicable interest and appropriating an amount of Rs.18,19,882/- already paid towards the duty demand, besides rejecting their claim for refund / adjustment in respect of an amount of Rs.1,02,278/- excess paid by the Appellant, and crediting it to the consumer welfare fund in terms of Rule 7(6) of the Rules read with Section 11B(2) and Section 12(C)(2) of the Central Excise Act, 1944 (ACT).

1.3 As the issue involved in both the appeals are similar, they are being taken up together for common disposal.

2. The Appellant is engaged in the manufacture of HDPE containers, lids, closures, etc. which have been captively consumed within the factory of production or cleared to their other factories for packing the Liquid Blue which is

not subject to excise duty. As there was no sale involved, the value was determined in terms of Section 4(1)(b) of the ACT read with Rule 8 of central Excise (Determination of Price of Excisable goods) Valuation Rules, 2000 (CEVR) as per which value to be adopted was 110% of Cost of Production of such goods. As the Appellant was unable to determine the cost of production of such goods at the time of clearances from factory, a request was made for provisional assessment in terms of Rule 7 of the Rules. The Appellant thereafter submitted CAS 4 certificates based on which provisional assessments were finalised. The Appellant paid the differential duty and also sought for refund of excess duty paid by them towards differential duty. The lower authority confirmed the demand and appropriated the amount already paid by the Appellant but dis-allowed the claim for refund/ adjustment of amount paid in excess and credited the same in the consumer welfare fund. Aggrieved, the Appellant went on appeal before the Lower Appellate Authority who dismissed the appeal and upheld the Orders-in-Original. Hence, the present appeals preferred by the Appellant before this forum.

3. The main contentions of the Appellant as culled out from the Grounds of Appeal have been summarised below: -

i. It was submitted that the issue was no longer *res integra* as the issue of whether excess payment can be adjusted towards short payment and whether unjust enrichment would apply to excess amount paid on provisional basis was already settled by the Hon'ble Tribunal in the Appellants own case in Final Order Nos. 40818-40819/2015 dated 27.07.2015 read with Miscellaneous Order Nos. 40164-40165/2016 dated 01.03.2016 filed in ROM Application for the period 2004-2005 and 2005-2006, following the decisions in *Jonas Woodhead &Sons (I) Limited Vs. CCE [2015 VIL 344 CESTAT-CHE] and Toyota Kirloskar Auto Parts Pvt. Ltd. Vs. CCE [2012 (276) ELT 332 (Kar)]* and the relevant portion of the ROM order is extracted as follows: -

> *"5. By respectfully following the Hon'ble Karnataka High Court decision in the case of Toyota Kirloskar (supra), and the Tribunal's order (supra), we hold that appellants are eligible for adjustment of excess duty paid while finalizing the provisional assessment for the year 2004-05 and for the year 2005-06 and the question of unjust enrichment does not arise. Accordingly, the impugned orders*

are set aside and appeals are allowed with consequential relief."

ii. It was averred that finalisation is to be done on a consolidated basis and not transaction wise as there was no provision to split up the assessment between excess payment and short payment.

iii. It was pointed out that principle of unjust enrichment is inapplicable in the case of captive consumption and hence impugned order demanding differential duty on one hand and crediting excess duty paid to consumer welfare fund on the other hand was not sustainable.

iv. It was pointed out by the Ld. Counsel that the Tribunal's Larger Bench decision in the case of *Excel Rubber Ltd. Vs. CCE [2011 (268) ELT 419 (Tri.-Bang.)]* was distinguished by the Tribunal Delhi (Third Member reference) in the case of *Hindustan Zinc Vs. CCE [2015-TIOL-2427-CESTAT-Del]* and by the Division Bench in the case of BSL Ltd. and also in the Appellants own case and the decisions have held that adjustment of excess payment against short payment of duty was permissible.

v. It was contested that only the actual duty payable could be passed on and not the excess duty paid. If duty provisionally paid was deemed to be passed on, then refund of excess duty paid would not arise in any of the provisional assessment cases which is against the spirit of Rule 7.

4.1 The Ld. Counsel Ms. Nimrah Ali representing the Appellant reiterated the averments in the grounds of appeal and further submitted that that the excess amount of Rs.2,73,179/- and the interest was paid only on finalization of the assessment *i.e.,* post the clearance of goods from the Appellant's premises and it was settled law that unjust enrichment is not applicable to any duty paid after the clearance of goods. Reliance in this regard is placed on the case of *Silwester Textiles Private Limited v. Commissioner of Central Excise, Mumbai [2003 (156) E.L.T. 216 (Tri. - Mumbai)].*

4.2 It was submitted that it was evident from Rule 7(6) of the Central Excise Rules, 2002, that unjust enrichment is applicable only on the refund of net amount of duty paid in excess after the finalization of the provisional assessment which was not the case of the Appellant.

5. The Ld. Authorised Representative Shri M. Selvakumar representing the Department affirmed the findings in the impugned order and submitted that the Appellant had passed on the duty incidence and is not entitled to claim refund of excess duty paid. Hence, it was prayed for dismissal of the appeal filed by the Appellant.

6. We have carefully considered the submissions made by both the sides and also documentary evidence as available on appeal records.

7. The issues which arise for decision in these appeals are whether the excess duty paid is to be set off against demand towards differential duty and whether doctrine of unjust enrichment is applicable to reject the claim of refund of excess duty paid on finalisation of provisional assessment?

8. We find that the Appellant is engaged in the manufacture of HDPE containers, closures and plastic items which are not sold but are captively consumed by the Appellant in packing 'Liquid Blue' manufactured in the said unit and also in other units of the Appellant. The final

product, *i.e.,* Liquid Blue is non-excisable. Since there is no sale involved, the goods are valued under Section 4(1)(b) of the Central Excise Act, 1944 and the assessable value of the goods was determined as per Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, at 110% of the cost of production. As the actual cost of production could not be determined at the end of the financial year, the Appellant opted for Provisional assessment in terms of Rule 7 of the Rules. The main dispute in these appeals relates to adjusting excess duty paid against short payment and rejection of refund claim of excess duty paid. The Lower Adjudicating Authority dismissed the Appellant's refund claim on the ground of doctrine of unjust enrichment and the impugned Orders-in-Appeal dated 29.01.2016 and 30.11.2016 upheld the same.

9. The Provisional assessment is ordered under Rule 7 of the Central Excise Rules which reads as follows: -

> ***"RULE 7. Provisional assessment.*** *- (1) Where the assessee is unable to determine the value of excisable goods or determine the rate of duty applicable thereto, he may request the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the*

case may be, may order allowing payment of duty on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of duty on provisional basis may be allowed, if the assessee executes a bond in proper form with such surety or security in such amount as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, deem fit, binding the assessee for payment of difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed.

(3) The Assistant Commissioner of Central Excise or the Commissioner of Central Excise as the case may be, shall pass the order for final assessment, as soon as may be, after the relevant information, as may be required for finalizing the assessment, is available, but within a period not exceeding six months from the date of the communication of the order issued under sub-rule (1) :

Provided that the period specified in this sub-rule may, on sufficient cause being shown and the reasons to be recorded in writing, be extended by the Commissioner of Central Excise for a further period not exceeding six months and by the Chief Commissioner of Central Excise for such further period as he may deem fit.

(4) The assessee shall be liable to pay interest on any amount payable to Central Government, consequent to order for final assessment under sub-rule (3), at the rate of twenty four per cent per annum from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof.

(5) Where the assessee is entitled to a refund consequent to order for final assessment under sub-rule (3), subject to sub-rule (6) there shall be paid an interest on such

> *refund at the rate of fifteen per cent per annum from the first day of the month succeeding the month for which such refund is determined, till the date of refund.*
>
> *(6) Any amount of refund determined under sub-rule (3) shall be credited to the Consumer Welfare Fund :*
>
> *Provided the amount of refund, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -*
>
> *(a) The duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person, or*
>
> *(b) The duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person".*

Sub-rule 6 *ibid* safeguards the right of the assessee to claim refund in case any amount is found paid in excess. However, this right is subject to the applicability of principle of unjust enrichment. Rule 7 nowhere talks about adjustment of excess duty paid towards the duty short paid. The view held by the Larger Bench in the *Excel Rubber Limited* case relied in the impugned order is that before grant of adjustment, the authority finalizing the provisional assessment will have to ascertain whether such excess amount is to be actually refunded or is liable either wholly or partly to be credited to the Consumer Welfare Fund and only thereafter make an order of adjustment to the extent the amount found to be actually refundable. However, this has been interpreted differently by the Hon'ble High Court of Karnataka in the case of *Toyota Kirloskar Auto Parts Pvt. Ltd.* (*supra*). The relevant decision reads as under: -

> "8*. Therefore, it is clear that after a final assessment order is passed, if the duty paid in terms of provisional assessment is less than the duty payable after the final assessment, the assessee is liable to pay the interest on the short fall. In the entire scheme of Rule 7, there is no indication that when an assessee is permitted to pay duty in pursuance of a provisional assessment order, if he is dealing with more than one goods, they have to be treated separately. Even though the duty payable under the Act is to be calculated under each head of each case ultimately it is the total duty payable for all the goods which are the subject matter of the provisional assessment and final assessment which is to be taken into consideration. If after taking into consideration the duty payable in respect of all the goods and the duty paid in pursuance of the final assessment order, if still the assessee is due in any duty, then for the short fall in payment of duty, the assessee is liable to pay interest.*
>
> *9. In the instant case, admittedly for certain items the Adjudicating Authority has held the shortfall in payment of duty after the final assessment order as Rs. 10,63,417/-. In respect of other items, the assessee has paid Rs. 1,77,20,157/- in excess. But before imposing interest, the authority should have deducted the short fall in the excess payment made. If there is no short fall in payment of duty, payment of interest does not arise. They have treated the duty payable under two categories. It was found in respect of some items the duty payable after the final order is more than what was paid under*

provisional assessment. The approach of the authorities in this regard is erroneous, unwarranted and unsupported by any statutory provision. If we keep in mind the principle underlying the provisions, it is only when the duty is due and it is not paid within the stipulated time and the duty is paid thereafter, in order to compensate the revenue, interest is imposed. If that is to be kept in mind, in the instant case, when the assessee has paid a sum of Rs. 1,66,56,740/- excess duty which is entitled to claim refund, he cannot be taxed with payment of excess duty in the form of interest. The entire approach of the department is unreasonable, contrary to the scheme of the Act and negatives the principle underlying these provisions. Therefore, all the authorities were in error in levying and upholding the levy of interest. In that view of the matter, we pass the following".

The Hon'ble High Court thus held that when there is provisional assessment, the same is applicable to the entirety of the goods and to arrive at final duty liability, adjustments of duty excess paid against short payment will have to be made.

10. We find that the very same issue has been considered by this Tribunal in the Appellant's own case *vide* Final Order Nos. 40818-40819/2015 dated 27.07.2015 read with Miscellaneous Order Nos. 40164-40165/2016 dated 01.03.2016 following the judgements in the case of *Jonas Woodhead & Sons (I) Limited Vs. CCE [2015 VIL 344 CESTAT-CHE]* and *Toyota Kirloskar Auto Parts Pvt.*

Ltd. Vs. CCE [2012 (276) ELT 332 (Kar.)] has held therein as follows: -

> *"2. The Ld. Counsel, Shri Sai Prashanth, Advocate appearing on behalf of the applicant submits that in both the appeals, finalization of provisional assessment relates to the period 2004- 05 in respect of appeal No. E/127/2007 and finalization of provisional assessment relates to the period 2005-06 in respect of appeal No. E/99/2008. He submits that in para-5 of the Tribunal's Final Order dated 27.07.2015, the <u>Tribunal has recorded that the appellants are eligible for adjustment of excess duty paid while finalizing the provisional assessment for the year 2005-06.</u> He submits that in para 3 the Tribunal recorded that the appeals involve finalization of provisional assessment for the years 2004-05 and 2005-06. Hence, he requests to rectify the mistake apparent on record as para-5 of the Tribunal's Final order dated 27.07.2015 should be read as "finalization of provisional assessment for the year 2004-05 and 2005-06".*
>
> *3. On perusal of the impugned order and the respective appeals E/127/2007 and E/88/2008, we find that finalization of provisional assessment relates to the period 2004-05 and 2005- 06, which is clearly recorded at para-3 of the Tribunal's final order dated 27.07.2015. Whereas, in para-5 while concluding the provisional assessment for the year 2004-05 has been omitted, which is a factual mistake on record and it is rectified. The para-5 in final order dated 27.07.2015 should be read as follows:*
>
> > *"5. By respectfully following the Hon'ble Karnataka High Court decision in the case of Toyota Kirloskar (supra), and the Tribunal's order (supra), we hold that appellants are eligible for adjustment of excess duty paid while finalizing the provisional assessment for the year 2004-05 and for the*

year 2005-06 and the question of unjust enrichment does not arise. Accordingly, the impugned orders are set aside and appeals are allowed with consequential relief."

11. On similar issues, in the case of *Jonas Woodhead & Sons (I) Limited Vs. CCE,* this Tribunal *vide* Final Order No. 40480 to 40484/2015 dated 20.4.2015 reported in *[2015 (329) ELT 577]* has held as follows: -

> ***"1.2*** *Learned Counsel submitted that it is rule of law that during a period when clearances are allowed provisionally for no appropriate duty liability being determinable for that period, at the time of clearance, provisional assessment is made under Rule 7 of the Central Excise Rules, 2002. Later all such provisional assessments are finalised and duty liability determined. Duty paid in excess of actual liability on certain clearances is adjusted against short payment of duty and upon such adjustment, excess duty paid is refundable without bar of unjust enrichment being applicable to such refund.*
>
> ***1.3*** *In finalization of assessment, an integral approach is made to determine ultimate duty liability in respect of all clearances for the relevant period. Since such situation is outcome of application of law and excess duty paid is refundable, bar of unjust enrichment is not applicable.*
>
> ***...***
>
> ***...***
>
> ***2.1*** *Appellant explains further that allegation of Revenue that short payment and excess payment if any being independent of each other, that is of no sense to law in view of the Hon'ble High Court of Karnataka in the case of*

Toyota Kirloskar Auto Parts Pvt. Ltd. v. Commissioner of Central Excise, LTU, Bangalore reported in 2012 (276) E.L.T. 332 (Kar.).

2.2 *So far as appeal Nos. E/41680 to 41682/2014, is concerned he submits that other than the issue of adjustment of short payment against excess payment involved in these appeals, additional three issues arise. One such issue is whether cost of freight incurred by the appellant post clearance shall be includible in the assessable value. He submits that such freight is not incurred for clearance of the goods. Therefore, that shall not form part of the assessable value. But the stand of Revenue is contrary.*

...

...

3.2 *So far as the moot question of adjustment of excess payment of duty against short payment thereof is concerned, the ratio laid down in the judgment of the Hon'ble High Court of Karnataka (supra) read with mandate of Rule 7 of the Central Excise Rules, 2002, leads to the conclusion that there is no warrant in law to deal with the consequence of each clearance on case to case basis to determine shortage and excess of payment of duty and consequence thereof. The ultimate duty liability of a relevant period is to be determined in final assessment taking into consideration entire clearance of that period in aggregate and if there arises excess payment of duty upon such finalization of making due adjustment, that shall be refundable. Hon'ble High Court examining the issue, in the case of Toyota Kirloskar case (supra) in para 9 of judgment held as under :-*

> *"9. In the instant case, admittedly for certain items the adjudicating authority has held the shortfall in payment of*

duty after the final assessment order as Rs. 10,63,417/-. In respect of other items, the assessee has paid Rs. 1,77,20,157/- in excess. But before imposing interest, the authority should have deducted the shortfall in the excess payment made. If there is no shortfall in payment of duty, payment of interest does not arise. They have treated the duty payable under two categories. It was found in respect of some items the duty payable after the final order is more than what was paid under provisional assessment. The approach of the authorities in this regard is erroneous, unwarranted and unsupported by any statutory provision. If we keep in mind the principle underlying the provisions, it is only when the duty is due and it is not paid within the stipulated time and the duty is paid thereafter, in order to compensate the revenue, interest is imposed. If that is to be kept in mind, in the instant case, when the assessee has paid a sum of Rs. 1,66,56,740/- excess duty which is entitled to claim refund, he cannot be taxed with payment of excess duty in the form of interest. The entire approach of the department is unreasonable, contrary to the scheme of the Act and negatives the principle underlying these provisions. Therefore, all the authorities were in error in levying and upholding the levy of interest."

In view of the reasoning given by the Hon'ble High Court of Karnataka as above, all the appeals on the point of adjustability of excess payment of duty against shortage of duty paid is allowed and excess duty paid is refundable without bar of unjust enrichment applicable."

12. We find force in the arguments advanced by the Ld. Counsel that the impugned order relied on the decision in the case of *Excel Rubber Ltd. Vs. CCE [2011 (268) ELT*

419 (Tri.-Bang.)] which was distinguished by the Tribunal Delhi (Third Member reference) in the case of *Hindustan Zinc Vs. CCE [2016 (336) E.L.T. 328 (Tri. - Del.)]*, and relevant extracts of which has been reproduced below: -

> ***"37.*** *As the facts of this case are similar to the facts in the case of Toyota Kirloskar Auto Parts Pvt. Ltd. (supra) therefore, the decision of the Larger Bench of this Tribunal in the case of Excel Rubber Ltd. (supra) has no relevance. Consequently, I am of the considered view that "It is total duty payable of all the goods which are subject matter of provisional assessment and final assessment which is to be taken into consideration. After taking into consideration duty payable in respect of all goods and duty paid in pursuant to the final assessment order if still the assessee is due in any duty then for short fall in payment of duty the assessee is liable to pay interest."*
>
> ***38.*** *Admittedly, in this case the Adjudicating Authority has held that for the part of the period in hand the appellant has short paid the duty of Rs. 3,52,78,170/- and in respect of other part of the period the appellant has paid Rs. 3,53,74,279/- duty in excess. Therefore, the duty excess paid by the appellant is more than the duty short paid by the appellant. Therefore, appellant is not required to pay any duty. Consequently, interest is not payable. In these circumstances, I agree with Ld. Sister, Member (Judicial)"*

An appeal was filed by revenue in the above case which was dismissed by the Hon'ble High Court of Rajasthan on monetary limits.

13. Further, we also find that the Hon'ble Supreme Court in the in the case of *Commissioner of Customs Vs. Hindustan Zinc Ltd [2023 (384) E.L.T. 626 (S.C.)]* has held as follows: -

*"**2.** In all these cases the common question which arises is whether claim for refund of amounts deposited towards provisional duty, as a condition for clearance of imported goods can be the subject matter of refund after conclusion of assessment proceedings and having regard to its outcome, under Section 18 of the Customs Act. It is not disputed that this issue has been considered both in the context of provisional assessment under Rule 9B of the Central Excise Rules by judgments of this Court as well as in the context of Section 18 of the Customs Act, in "Commissioner of Customs, New Delhi v. M/s. Oriental Exports, New Delhi" [2006 (200) E.L.T. A138 (S.C.)]. The Court held that even though Rule 9B of the Customs Rules (applicable in that case) was not retrospective, nevertheless pending applications were entitled to the relief prescribed by it. This Court had occasion again to consider the issue in the light of the conflict of decision by a three Judge Bench, in a three Judge Bench decision in "Commissioner of Central Excise, Mumbai-II v. Allied Photographics India Ltd." [(2004) 4 SCC 34 = 2004 (166) E.L.T. 3 (S.C.)]. The Court held that the doctrine of unjust enrichment was not applicable to provisional assessment even after finalization of the proceedings.*

***3.** The impugned judgments in all these appeals have followed view expressed in "Oriental" and "Allied".*

4. *It is brought to the notice of this Court that a judgment subsequent to the ruling in "Allied" i.e. "Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs" [(2005) 3 SCC 738 = 2005 (181) E.L.T. 328 (S.C.)] appears to have expressed a different view in that the Court held that to maintain a claim for refund, the assessee has to establish that he or it had paid the amount for which relief is sought and had not passed on the burden to the consumers. This judgment though rendered by a three Judge Bench, overlooked the ruling in Allied (supra). Furthermore, even though the judgment has generally referred to the nine Judge Bench ruling in "Mafatlal Industries Ltd. & Ors. v. Union of India & Ors." [(1997) 5 SCC 537 = 1997 (89) E.L.T. 247 (S.C.)] nevertheless the specific observations in Para 104 appears to have escaped the attention of the Court. Para 104 in Mafatlal Industries Ltd., is extracted below :*

> *"104. Rule 9B provides for provisional assessment in situations specified in clauses (a), (b) and (c) of sub-rule (1). The goods provisionally assessed under sub-rule (1) may be cleared for home consumption or export in the same manner as the goods which are finally assessed. Sub-rule (5) provides that "when the duty leviable on the goods is assessed finally in accordance with the provisions of these Rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisional assessed falls short of or is in excess of the duty finally assessed, the assessee shall pay the deficiency or be entitled to a refund, as the case may be". Any recoveries or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B as the case may be. However, if the final orders passed under sub-rule (5) are appealed against - or*

> *questioned in a writ petition or suit, as the case may be, assuming that such a writ or suit is entertained and is allowed/decreed - then any refund claim arising as a consequence of the decision in such appeal or such other proceedings, as the case may be, would be governed by Section 11B. It is also made clear that if an independent refund claim is filed after the final decision under Rule 9B(5) reagitating the issues already decided under Rule 9B - assuming that such a refund claim lies - and is allowed, it would obviously be governed by Section 11B. It follows logically that position would be the same in the converse situation. Nature and character of refund claims under the Central Excises and Salt Act and the Customs Act."*

> ***5.*** *The judgment in "Sahakari Khand Udyog Mandal Ltd.", in this Court's considered view, has to be confined to the facts of that case for the reasons mentioned above. In this view of the matter, there is no infirmity with the findings and conclusions recorded in the impugned judgments, which are in accord with the ratio in Allied (supra). The revenue's appeals are, accordingly, dismissed"*

14. We concur with the above Final Order of the Bench where similar issue has been decided in the appellants own case and there being no change in the facts or law, following judicial discipline, we are inclined to decide the issue in favour of the Appellants.

15. In the result, the impugned Orders-in-Appeal No. 45/2016(CXA-II) dated 29.01.2016 and No. 439/2016 (CXA-II) dated 30.11.2016 are set aside and the appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 31.01.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK