CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No.40153 of 2017

(Arising out of Order-in-Appeal No.TNL-ST-000-APP-96-2016 dated 19.08.2016 passed by Commissioner of Central Excise (Appeals-I), Madurai)

M/s. Vedanta Ltd., **....Appellant**
Sipcot Industrial Complex,
Madurai Byepass Road,
Tuticorin.

Versus

Commissioner of GST & Central Excise **... Respondent**
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai-625 002.

APPEARANCE:

Shri Vishal Agrawal, Advocate for the Appellant
Shri Sanjay kakkar, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41496/2025

DATE OF HEARING: 21.08.2025
DATE OF DECISION: 17.12.2025

Per: Shri P. Dinesha

The present appeal is filed by M/s. Vedanta Ltd., aggrieved by the Order-in-Appeal No.96/2016 dated 19.08.2016 passed by Commissioner of Central Excise (Appeals-I), Madurai.

2. Brief facts of the case are that the Appellants are engaged in the manufacture of Copper Anodes and cathodes falling under Chapter 74 of the CETA, 1985 by subjecting the Copper concentrate to one smelting process. During the smelting process, Sulphur di-oxide gas emerges which is further converted into Sulphuric acid, an excisable product falling under chapter 28.07 of CETA. This Sulphuric acid is partly cleared to fertilizer units without payment of Duty by availing exemption under Notification No.04/2006-CE dated 01.03.2006 and w.e.f. 17.03.2012 under Notification No. 12/2012-CE. The remaining Sulphuric acid is used to manufacture Phosphoric Acid. Since, same input services were being used for the manufacture of both

copper anode/cathode the excisable final product and sulphuric acid the excisable product cleared without payment of duty, the appellant were liable to maintain separate accounts for dutiable final product and the exempted product as per Rule 6 of Cenvat Credit Rules, 2004(CCR). It is admitted that they did not maintain separate accounts for the manufacture of copper anode/cathode and sulphuric acid, they were liable to pay an amount equivalent to 6%/5% of the value of exempted goods as per Rule 6(3) of CCR. Hence, the Appellants were reversing credit equivalent to 6%/5% of the value of sulphuric acid from April, 2011. From April, 2011 to March, 2014 they had reversed a total amount of Rs.94,94,363/- from their Cenvat Credit account.

3. The Hon'ble Supreme Court in the case of ***Union of India & others Vs. M/s.Hindustan Zinc Ltd.***, 2014-TIOL-55-SC-CX/2014 (303) ELT 321 (SC), had held that "S*ulphuric acid was only a by-product- Conversion of sulphur dioxide to sulphuric acid could not elevate sulphuric acid to status of final product - It*

was more so as technologically, commercially and in common parlance, sulphuric acid was treated as a by-product in extraction of non-ferrous metals by companies not only in India but all over the world…. Application of Rule 57CC ibid when Rule 57D ibid does not talk about its application when by-product emerged as technological necessity, would equate by-product and final product thereby obliterating difference though recognized by legislation itself. There was no necessity and actually it was impossible to maintain separate records for zinc concentrate used in production of sulphuric acid -Requirements of Rule 57CC of erstwhile Central Excise Rules, 1944 were fully met and recovery there under of 8% sale price of exempted sulphuic acid to fertilized plants was unsustainable…."

4. Supreme Court in the case of ***Hindustan Zinc Ltd. [supra],*** held that sulfuric acid generated as a byproduct in the manufacture of zinc or similar products is not in the nature of a final product and thus, the assesse was not required to follow the procedure prescribed under Rule 57CC of the Central Excise Rules,

1944 (Rule 6 of Cenvat Credit Rules, 2004); and as such, was not required to pay the requisite amount, i.e., 5% or 6%, of the value of exempted sulfuric acid, cleared by it. The Appellant accordingly filed an application dated 28.05.2014 seeking refund of the amount of Rs.94,94,363/- which was paid by it under mistaken belief of law during the period of dispute i.e., April, 2011 to March, 2014. The said claim was received by the Department on 05.06.2014.

5. The Revenue appears to have issued a Show Cause Notice dated 29.11.2014 to the Appellant proposing to reject the Appellant's refund claim primarily on the ground that the same was barred by limitation prescribed under Section 11B of the Central Excise Act, 1944 and after due process, *vide* Order-in-Original No.39/2015 (ST) dated 06.07.2015 the said refund claim came to be rejected. Aggrieved by the denial of refund, the Appellant appears to have filed an Appeal before the Commissioner (Appeals) and the First Appellate Authority after hearing the Appellant, partly allowed the refund claim thereby modifying the Order-

in-Original. The Appellant has filed the present Appeal against the partial rejection but the Revenue has accepted the partial refund granted by the First Appellate Authority.

6. Heard Shri Vishal Agrawal, Ld. Advocate for the Appellant and Shri Sanjay Kakkar, Ld. Deputy Commissioner for the Respondent; perused the Appeal-record and the judicial pronouncements relied upon by both the sides during the course of hearing.

7. After hearing both the sides, the only issue that crops up for our consideration is, "whether the refund claim to the extent it is subject-matter of this Appeal, is hit by time bar as held by the authorities below?"

8. Thrust of the contentions of Shri Vishal Agrawal, Ld. Advocate is that the refund claim was not a 'Central Excise duty' but was relating to the exempted goods as per Rule 6(3)(i) of CCR, 2004 for which, limitation prescribed under Section 11B could not apply. He would also submit that the ratio of **Mafatlal**

Industries Ltd. Vs UOI - 1997 (89) ELT 247 (SC) was therefore not applicable as the refund claim here, in the case on hand was not refund of 'duty'. He would rely on the following decisions/orders, in support of his contentions:-

- ***3E Infotech Vs. CESTAT, Chennai*** *2018 (18) G.S.T.L. 410 (Mad.)*

- ***S. Sakthikumar Vs. Commissioner of GST & Central Excise, Madurai****, 2022 (61) G.S.T.L. 364 (Tri.-Chennai)*

- ***Commissioner of Customs and Central Excise, Hyderabad GST Commissionerate Vs. Credible Engineering Construction Projects Ltd.****, MANU/TL/0625/2024*

- ***Commissioner of Central Excise and Service Tax Vs. Oriental Insurance Company Ltd.****, MANU/DE/6586/2023*

- ***M/s. Natraj and Venkat Assocaites Vs. Assistant Commissioner, Service Tax****, 2010 (249) E.L.T. 337 (Mad.)*

9. *Per contra*, Shri Sanjay Kakkar, Ld. Deputy Commissioner supported the findings of the First Appellate Authority. He also relied heavily on the decision of Hon'ble Apex Court in Mafatlal Industries Ltd. (*supra*) by inviting our attention to paragraph 82 of

the said judgment wherein, the Apex Court has held that all claims for refund shall be filed, considered and disposed of in accordance with the provisions relating to refund. Further, he would also draw our attention to para 70 of Mafatlal (*supra*) wherein, the Hon'ble Apex Court has clearly laid down that the theory of mistake of law and the consequent period of limitation would not be invoked by an Assessee taking advantage of the decision in another Assessee's case; an Assessee must succeed or fail in his own proceedings. In this context he would further place reliance on Orders of Chennai Bench in i) ***ZF Commercial Vehicles Control System India Ltd.*** ii) ***M/s. India Yamaha Motor Pvt. Ltd.***, apart from relying on one another decision of the Apex Court in ***VKC Footsteps India Pvt. Ltd***. In the light of the above, he would submit that the denial of refund being time-barred, as confirmed in the impugned order, may kindly be upheld.

10. We have considered the rival contentions at length; there is no dispute insofar as the facts are concerned. The Appellant clearly admits that the period

of dispute is from April 2011 to March 2014 for which the application for refund was filed on 05.06.2014 (date of the application doesn't matter). The Commissioner (Appeals) has, after a detailed analysis granted partial refund for the period which was not hit by limitation, which order stands accepted by the Department and, hence, insofar as the earlier periods of dispute are concerned, they are apparently barred by limitation.

11. We find that but for the decision of Apex Court in Hindustan Zinc Ltd. (*supra*), the Appellant would not have even conceived of filing any refund claim and clearly, it is only the decision of Supreme Court (*Supra*) that triggered the filing of refund claims in question, by the Appellant. This is precisely what the Hon'ble Apex Court in Mafatlal – at para 70 has held, the relevant observation reads as under:-

> *"70…….*
> -
> -
> *Every decision of this Court and of the High Courts on a question of law in favour of the assessee is giving rise to a wave of refund claims all over the country in respect of matters which have become final and are closed long number of years ago. We are not shown that such a thing is happening anywhere else in the world. Article 265*

> *surely could not have been meant to provide for this. We are, therefore, of the clear and considered opinion that the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, filed only under and in accordance with Rule 11/Section 118 and under no other provision and in no other forum."*

12. Further, we also note that in Mafatlal's case (*supra*) it has been declared by the Apex Court that any action taken to refund an amount collected as tax, under and in accordance with the provisions of Section 11B would be an action taken under the 'authority of law' and hence, any and every claim for refund of excise duty would only be made under and in accordance with Rule 11 or Section 11B, as the case may be. This ratio, in fact, takes care of the arguments of the Appellant that what was claim by it was not the refund of "Central Excise duty" under Rule 2(e) of the Central Excise Rules, 2002 read with Section 3 of Central Excise Act, 1944. This also became evident when the whole refund mechanism is provided under Section 11B alone.

13. In view of the above discussion, we do not find any infirmity in the impugned order to the extent it is appealed against in this Appeal and, therefore, we reject the Appeal filed by the Appellant.

(Order pronounced in open court on 17.12.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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