CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Excise Appeal No. 40967 of 2025

(Arising out of Order-in-Appeal No.35/2025-MDU-CE-APP dated 19.02.2025 passed by Commissioner of GST and Central Excise (Appeals), Coimbatore Circuit Office at Madurai, No.4, Lal Bahadur Sasthri Road, GST Bhawan, Bibikulam, Madurai 625 002)

M/s.Sri Cornation Fireworks P. Ltd. **.... Appellant**
No.7-A Chairman A. Shanmugam Road,
Sivakasi 626 123.

VERSUS

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

WITH

(2) Excise Appeal No. 40968 of 2025

(Arising out of Order-in-Appeal No.36/2025-MDU-CE-APP dated 19.02.2025 passed by Commissioner of GST and Central Excise (Appeals), Coimbatore Circuit Office at Madurai, No.4, Lal Bahadur Sasthri Road, GST Bhawan, Bibikulam, Madurai 625 002)

M/s.The Coronation Fireworks P. Ltd. **.... Appellant**
No.7-A Chairman A. Shanmugam Road,
Sivakasi 626 123.

VERSUS

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

AND

(3) Excise Appeal No. 40969 of 2025

(Arising out of Order-in-Appeal No.14/2025-MDU-CE-APP dated 19.02.2025 passed by Commissioner of GST and Central Excise (Appeals), Coimbatore Circuit Office at Madurai, No.4, Lal Bahadur Sasthri Road, GST Bhawan, Bibikulam, Madurai 625 002)

M/s.Bee Cee Fireworks Industries .... Appellant
No.7-A Chairman A. Shanmugam Road,
Sivakasi 626 123.

VERSUS

The Commissioner of GST &
Central Excise, ... Respondent
Madurai Commissionerate,
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
Bbibikulam,
Madurai 625 002.

APPEARANCE :

Shri M .Karthikeyan, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative
for the Respondent

CORAM :

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

FINAL ORDER Nos.41533-41535/2025

DATE OF HEARING : 30.10.2025
DATE OF DECISION :19.12.2025

Per: Shri P. Dinesha

These three Appeals involve a common issue and therefore they are taken up together for common disposal. Facts involved in all these Appeals are also identical and therefore, as a lead case, the facts as discussed in the case of M/s.Sri Coronation Fireworks Pvt. Ltd. (Appeal No.E/40967/2025) is considered. The facts as forthcoming from the Order-in-Original No.06/CE/AC/2024-Refund dated 29.04.2024 which are also undisputed by the Appellant, *inter alia* are as under :

1.1 Appellant filed a refund claim of the amount paid by them as pre-deposit under CTIN No.2102333250 dated 07.03.2021 for an amount of Rs.1,25,12,819/-, during the progress of the investigation by DGCI, Coimbatore.

1.2 Show Cause Notice Nos.04,05,06 & 07/2021 C.Ex., dated 03.09.2021 were issued by the Additional Director General, DGGI, Coimbatore wherein in para Sl.No.g of 16.2 (page No.104), the above payment of Rs.1,25,12,819/- has been clearly mentioned, with the description "*paid by them voluntarily during the course of investigation". The said*

payments were also verified with the data available in ACES and found to be correct.

1.3 The case was adjudicated by the Commissioner of Central Excise, Madurai and Order-in-Original No.MDU/CEX/COM/-01 to 04/2023 dt. 31.01.2023 was passed, wherein the demand for Rs.1,95,30,192/- and interest thereon was confirmed against M/s.Sri Coronation Fireworks P. Ltd., and penalties were imposed on the claimant in Para 33.2 of the said OIO. Further in the order, the amount of Rs.1,25,12,819/- paid by the claimant was appropriated against the duty paid by M/s.Sri Coronation Fireworks P. Ltd.

1.4 Aggrieved by the Order-in-Original, M/s.Sri Coronation Fireworks P. Ltd., and Coronation Group of Companies, filed Appeals before the CESTAT Chennai, in Appeal Nos.E/40135 to 40143/2023. CESTAT passed the Final Order Nos.40303-40311/2024, dated 20.03.2024. In the Final Order, the Appeals filed by M/s.Sri Coronation Fireworks Pvt. Ltd., and Coronation Group of Companies were allowed.

2. As a consequence of the Final Order of this Bench (*supra*), the Appellant appeared to have approached the Deputy / Assistant Commissioner of GST & Central Excise,

Sivakasi vide application dated 23.04.2024 seeking refund of an amount of **Rs.1,25,12,819/-** which payment has been acknowledged in the Order-in-Original and the specific observations at para-14 reads thus :

> "14. Along with their letter dated 23.04.2024, claiming the instant refund, the claimant has furnished copies of "Taxpayer's Counterfoils" in respect of challan. However, in the instant show cause notice itself, the payment of Rs.1,25,12,819/ has been recorded and it has also been vouched therein that the payments were verified in ACES."

3. The Adjudicating Authority without bothering to put the Applicants/Appellants on notice, however, appears to have called for a report from the Range Officer, Vilampatti Village for verification, who vide his report (O.C.No.21/2024) dt. 26.04.2024 appears to have recommended for payment of the refund calculated at 7.5% of the predeposit amount (of Rs.14,64,764/-) with interest at 6% in terms of Section 35FF of Central Excise Act, 1944 and, religiously following the above report, the Assistant Commissioner sanctions an amount of **Rs.15,59,151**/- (predeposit of Rs.14,64,764/- + interest Rs.94,387/-). In the said Order-in-Original, though the Adjudicating Authority has taken the troubles of referring to Board's Circular No.984/08/2014-CX, dated 16.09.2014 however, without even examining the claim of the Applicant

in terms of the said circular grants only the predeposit made by the Applicant that too, on recommendation of the Range Officer, which only indicates the lack of application of mind by the Assistant Commissioner. Further, it is not his case nor is there anything brought on record vide Order-in-Original, that the Department was in the process of or had filed any Appeal against the Final Order of this Bench and that there was any stay of the Final Order. It is, however, a matter of astonishment as to whereabouts of the balance amount paid voluntarily during the very investigation itself, as recorded at para-1 of the Order-in-Original.

4. Seriously aggrieved by the refund of the modest amount as against the actual payment made, the Appellant appears to have filed a first Appeal before the Commissioner (Appeals) and the Commissioner (Appeals) also having upheld the rejection of major portion of the refund claim thereby sustaining the Order-in-Original, the Appeal No.**E/40967/2025** has been filed before us.

5. Similarly, the details of amounts deposited during investigation and the refund sanctioned *vide* Order-in-Original and upheld *vide* Order-in-Appeal respectively are tabulated in respect of other two Appeals viz.

E/40968/2025 & **E/40969/2025** filed by Appellant before us are as under :

Appellant	Order-in Original No.	Order-in-Appeal No.	Refund Claim dt.	Amount deposited	Refund Sanctioned
Coronation Fireworks Pvt. Ltd. (**Appeal No.E/40968 /2025)**	12/CE/AC/ 2024-Refund dated 21.05.2024	36/2025-MDU-CE-APP dated 19.02.2025	02.05.2024	**1,42,26,800/-**	**Rs.13,78,665/-** (predeposit of Rs.12,95,004/- + Interest Rs.83,661)
Bee Cee Fireworks Industries **(Appeal No.E/40969 /2025)**	13/CE/AC/ 2024-Refund dated 21.05.2024	14/2025-MDU-CE-APP dated 19.02.2025	02.05.2024	**95,00,000/-**	**Rs.3,48,303/-** (predeposit of Rs.3,27,167/- + Interest Rs.21,136)

6. Heard Shri M. Karthikeyan, Ld. Advocate for the Appellants and Shri M. Selvakumar, Ld. Assistant Commissioner for the Revenue, we have perused the orders of lower authorities including the Final order of this Bench (*supra*); we have also gone through judicial pronouncements relied upon during the course of arguments before us. Upon hearing both the sides, the following issues crop up for our consideration :

(i) whether the Appellants are entitled to the refund amounts of Rs.1,25,12,819/-, Rs.1,42,26,800/- & Rs.95,00,000/- in respective Appeals paid by them during the course of investigation ? and,

(ii) whether the Appellants are entitled for interest on the above refund claims?

7. A perusal of the Orders-in-Original which stood approved in the respective impugned Orders-in-Appeal (*supra*) reveals that the rejection of portion of refund claim has been made apparently relying on the report of the Range Officer and also on Section 35F *ibid*. Section 35F *ibid* refers only to the 'deposit' to be made while filing an Appeal before the CESTAT and it is well understood factual aspect that any amount deposited right from the stage of investigation before SCN, or amount paid after the issuance of the SCN or after passing of the Order-in-Original could also be adjusted towards such deposit to be made within the meaning of Section 35F ibid. Here the issue is the refund of not only the deposit made in terms of Section 35F, but also about the amount voluntarily paid by the Appellant perhaps at the insistence of the investigation team much prior to the very issuance of SCN and it is a well settled position of law that the Department cannot collect any amount without the authority of law and it goes without saying that when the collection itself if found without the authority of law, then

there is no question of retaining the said amount. The tax authorities could pass an assessment order and only thereafter determine the tax liability and any deposit or predeposit in whatever form made by an Assessee could be adjusted against the demand confirmed in the assessment / adjudication order. Here, in the case on hand, an adjudication order is passed, the amount paid is appropriated as the SCN itself proposes the appropriation of amount paid, which finally stood reversed by the Final Order of this Bench (*supra*) and therefore, the very demand and the collection of it has been held to be without the authority of law. Hence, the authorities cannot have the control over any amount paid either as a deposit or predeposit or whatever mode during investigation. There is also one another angle: it was canvassed during the course of arguments before us that when a normal refund of duty is claimed and for any reason, if the Authority proposes to reject the same, then the statute provides for depositing the refundable amount into the Consumer Welfare Fund but, however, in a case like the one on hand, the Revenue has not even bothered to whisper anything about it, which only means that the said amount has not only been collected, but also retained without the authority of law.

8. In a decision in the case of **Team HR Services Private Ltd. Vs Union of India & Anr. –** 2020 (6) TMI 342 – DELHI HIGH COURT = 2020 (38) GSTL 457 (Del.), the Hon'ble Delhi High Court was seized of an almost identical matter. The Hon'ble High Court after an elaborate discussion has held as under :

> **"2.** It is the case of the petitioner, (i) that an audit/investigation was conducted by the officers of the Service Tax Commissionerate, New Delhi, from 24th July, 2006 to 28th July, 2006, for the period 1st July, 2003 to 31st March, 2005 and a deposit of Rs. 2,38,00,000/- was made by the petitioner on 27th October, 2006, under protest, under pressure from the officers during the audit/investigation of the service tax records, as the officers insisted on the deposit by the petitioner, even without issuing any notice to show cause to the petitioner; (ii) that the petitioner, vide letter dated 30th October, 2006, informed the respondents that the deposit made on 27th October, 2006 ……
>
> (iv) that the Commissioner (Adjudication) Service Tax, New Delhi passed the order dated 3 October, 2011 in respect of the show cause notice dated 28th July, 2008 aforesaid, confirming the demand with interest and penalty and appropriated the amount of Rs. 2,38,00,000/- aforesaid towards the same; (v) that the petitioner preferred an appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT)/Tribunal …….
>
> (viii) that the Tribunal, vide final order dated 22nd February, 2018 allowed the appeal aforesaid of the petitioner, on the ground that the demand was barred by limitation;
>
> (ix) that the petitioner vide application dated 2nd May, 2018 sought refund of Rs. 2,38,00,000/- deposited on 27th October, 2006;
>
> (x) that the respondents challenged the order dated 22nd February, 2018 of the Tribunal before this Court by filing SERTA No. 23/2018, which was dismissed by this Court vide order dated 24th August, 2018, on the ground that no

question of law arose; resultantly, the order of the Tribunal allowing the appeal of the petitioner was affirmed;

(xi) that the petitioner again, on 11th March, 2019 sought refund of the amount aforesaid ……"

... .

7. The purport of the aforesaid order of the respondents declining refund to the petitioner and which forms the defence of the respondents to this petition, is that since the petitioner had deposited the said amount of Rs. 2,38,00,000/-, even though under protest, before preferring the appeal to CESTAT and not by way of pre-deposit under Section 35F of the Central Excise Act, notwithstanding the appeal of the petitioner against total demand of Rs. 4,66,39,061/-, and in which the said sum of Rs. 2,38,00,000/- had been adjusted, being allowed, the petitioner was not entitled to refund of Rs. 2,38,00,000/-.

8. We have enquired from the Counsel for the respondents, whether not the aforesaid logic in the order declining refund, leads to a absurd situation where, the respondents, notwithstanding their demand for the entire sum of Rs. 4,66,39,061/- (and against which the sum of Rs. 2,38,00,000/- deposited under protest had been adjusted) being set aside by CESTAT on the ground of being barred by time, are entitled to appropriate the amount of Rs. 2,38,00,000/- already deposited by the petitioner and demand with respect whereto has also been set aside. We have further enquired, whether not the said logic treats Rs. 2,38,00,000/- out of the total demand of Rs. 4,66,39,061/- differently from the balance, with the respondents being entitled to recover/appropriate Rs. 2,38,00,000/- but not being entitled to recover the balance demanded amount. It was not the case of the respondents before the Commissioner or before CESTAT or before this Court that the deposit by the petitioner of Rs. 2,38,00,000/- even though under protest, was within time and only the demand for the balance amount was barred by time and thus the amount of Rs. 2,38,00,000/- should be permitted to be appropriated. The Commissioner as well as the CESTAT dealt with the entire demand as one and set aside the same and now the same cannot be bifurcated.

9. Since the emphasis of the Counsel for the respondents, during the hearing, also is on the Circular providing for refund of pre-deposit amount being not applicable to deposit under protest, we have further enquired, how and under what head have the respondents appropriated Rs.

2,38,00,000/-, when the entire demand of Rs. 4,66,39,061/- of which it was a part, stands set aside.

... .

11. Though there is no clarity of the circumstances under which the petitioner deposited the said sum of Rs. 2,38,00,000/- during audit/investigation **but the undisputed position remains that the deposit was under protest and against anticipated liability and which liability though fructified by the respondents was set aside by the CESTAT and which order has attained finality**. It is not the case of the respondents that the said deposit was voluntary or by way of self-assessment and which has been accepted by the respondents and in which case the respondents could perhaps have argued that the said deposit was voluntary and not refundable, as was the case in *Commissioner of Income Tax, Bhopal* v. *Shelly Products*, (2003) 5 SCC 461. On the contrary, the **assessment done by the respondents and the demand raised in pursuance thereto, of Rs. 4,66,39,061/- and whereagainst Rs. 2,38,00,000/- was adjusted, has been set aside in entirety** and as of today there is no assessment which had attained finality assessing the liability of the petitioner to tax of Rs. 2,38,00,000/-. **The respondents as State can recover and/or retain as tax only such amounts which are assessed and found due as tax and which assessment has attained finality. The respondents, as State, cannot retain even a single paise of the assessee, unless has been found due towards tax liability and which is not the case here. At the time when the amount of Rs. 2,38,00,000/- was deposited, there was no assessment and no demand**.

12. The respondents are reminded of Article 265 of the Constitution of India prohibiting any tax to be levied or collected except by authority of law. **The respondents have also not pleaded a case of the petitioner being not entitled to refund,** on the ground of the petitioner having passed of the liability to another as illustrated in the Nine Judge Bench's judgment of the Supreme Court in *Mafatlal Industries Ltd.* v. *Union of India,* (1997) 5 SCC 536 = 1997 (89) E.L.T. 247 (S.C.). Allowing the respondents to retain the said amount, would also be in violation of Section 72 of the Contract Act, 1872, obliging a person to whom money has

been paid by mistake or under coercion, repay the same. The said provision enshrines the principle of unjust enrichment and restitution and the respondents State, by refusing to refund the sum of Rs. 2,38,00,000/-, are purporting to unduly enrich themselves.

13. We may however mention that the Counsel for the petitioner also, perhaps to bring the case of the petitioner within the Circular relied upon, has sought refund of the amount by calling it "pre-deposit", when it was not deposited by way of pre-deposit but under protest, even before any demand was raised and while the petitioner was still being investigated against. Such deposits under protest, to ease the rigors which the Tax Authorities otherwise are entitled to impose, are not unknown and judicial notice has been taken thereof. However as long as the amount deposited is under protest and in which protest, as held in *Mafatlal Industries Ltd.* supra no grounds are required to be stated, no right thereto accrues in favour of the depositee till the depositee is held entitled in law thereto. Thus, the wrong nomenclature given by the petitioner to the deposit would not be a ground for allowing the respondents State to unduly enrich themselves. A Division Bench of this Court in *Indglonal Investment and Finance Ltd.* v. *Income Tax Officer,* (2012) 343 ITR 44 has held that refund provisions should be interpreted in a reasonable and practical manner and when warranted, liberally in favour of the assessee.

14. To be fair to the Counsel for the respondents, he has only placed before us what is recorded in the final rejection refund order but reasoning wherein is illogical and contrary to the expected conduct from the State and unjustifiable. The said order does not disclose any ground or statutory provision whereunder the respondents State are entitled to retain the said amount of Rs. 2,38,00,000/-.

... .

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.

... .

> **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." (emphasis added)

9. The ratio in the above decision squarely applies to the facts of the present Appeals as well and therefore, the Revenue cannot pretend ignorance in not refunding the entire amount of Rs.1,25,12,819/-, Rs.1,42,26,800/- & Rs.95,00,000/- as tabulated above which, as held by the Hon'ble Delhi High Court, is in violation of Article 265 of the Constitution of India and the reasoning spelt out in the Orders-in-Original which unfortunately came to be upheld by the Commissioner (Appeals), is clearly illogical, unsustainable in law and contrary to not only the expected conduct but also the spirit of Board circular (*supra*) and therefore, is unjustifiable. In view of the above, we are of the firm view that the rejection of refund is unsustainable which deserves to be set aside, which we hereby do.

In the result, we allow the Appeals.

10. Insofar as the interest claimed by the Appellants are concerned, they have prayed for 12% but however, going by

the decision of Hon'ble Delhi High Court (supra), we deem it appropriate to restrict the interest at 6% which is also in terms of the provisions of the statute. As there is considerable delay in sanctioning the Refunds, it is directed that Refund Sanction Orders are to be issued within 60 days from the date of communication of this order.

11. In the result, the Appeals are allowed with consequential benefits as indicated above.

(Order pronounced in open court on 19.12.2025)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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