CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 2

SERVICE TAX APPEAL NO. 51300 OF 2025

[Arising out of Order-in-Appeal No.249(GS)ST/JPR/2025 dated 24.07.2025 passed by the Commissioner (Appeals), Central Excise-I, Jaipur]

M/s. KBS Enterprises **Appellant**
A-169, Shikha Vihar, Ram Nagariya Mod,
Jagatpura, Jaipur

Vs.

The Commissioner, Central Excise & CGST, Jaipur-I **Respondent**

WITH

SERVICE TAX APPEAL NO. 51304 OF 2025

[Arising out of Order-in-Appeal No.248(GS)ST/JPR/2025 dated 24.07.2025 passed by the Commissioner (Appeals), Central Excise-I, Jaipur]

M/s. KBS Enterprises **Appellant**
A-169, Shikha Vihar, Ram Nagariya Mod,
Jagatpura, Jaipur

Vs.

The Commissioner, Central Excise & CGST, Jaipur-I **Respondent**

WITH

SERVICE TAX APPEAL NO. 51758 OF 2025

[Arising out of Order-in-Appeal No.325(GS)ST/JPR/2025 dated 13.10.2026 passed by the Commissioner (Appeals), Central Excise-I, Jaipur]

M/s. KBS Enterprises **Appellant**
A-169, Shikha Vihar, Ram Nagariya Mod,
Jagatpura, Jaipur

Vs.

Commissioner of CGST And Central Excise-Jaipur **Respondent**
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur, Rajasthan- 302005

WITH

SERVICE TAX APPEAL NO. 51759 OF 2025

[Arising out of Order-in-Appeal No.318(GS)ST/JPR/2025 dated 26.09.2025 passed by the Commissioner, Central Goods and Service Tax-I, Jaipur]

M/s. Laduram Babulal **Appellant**
49, Mali Ki Dhani, Sanganer, Jaipur

Vs.

The Commissioner, Central Excise & CGST, Jaipur-I **Respondent**

AND

SERVICE TAX APPEAL NO. 51760 OF 2025

Arising out of Order-in-Appeal No.317(GS)ST/JPR/2025 dated 26.09.2025 passed by the Commissioner, Central Goods and Service Tax-I, Jaipur]

M/s. Laduram Babulal **Appellant**
49, Mali Ki Dhani, Sanganer, Jaipur

Vs.

The Commissioner, Central Excise & CGST, Jaipur-I **Respondent**

Appearance:
Present for the Appellant : Shri Bipin Garg and Ms. J. Kainaat, Advocates
Present for the Respondent: S/Shri Rohit Issar, Ram Pravesh Prasad, Vishwa Jeet Saharan, All Authorised Representative

CORAM:
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Date of Hearing: **19/05/2026**
Date of Decision: **14/07/2026**

Final Order No's.51180-51184/2026

RAJEEV TANDON:

All the appeals impugned, involve a common question of law and hence are being considered by way of this common order.

2. The table below gives a statistical snapshot of the details of each of these case:

Sl no	Appeal no	Appellant	OIA No. & date	OIO No. & date	SCN date	Period of dispute	Date on which refund claim filed	Amount of refund claimed	Remarks
1	ST/51300/ 2025	KBS Enterprises	Dated: 24.07.2025 No. :- 249(GS)ST/JPR/2025	Dated: 20.01.2025 No:- 18/CGST DIV-F/REF/2024-25	30.12.2024	01.07.2012 to 31.03.2013	26.11.2024	Rs 47,21,257/-	Refund allowed of Rs 44,15,387/-. Rejected of Rs. 3,058,70/-due to non-submission of challan/certificates
2	ST/51304/ 2025	KBS Enterprises	Dated: 24.07.2025 No:- 248(GS)ST/JPR/2025	Dated: 20.01.2025 No:- 17/CGST DIV-F/REF/2024-25	30.12.2024	2014-15	26.11.2024	Rs.50,43,929/-	Refund allowed of Rs 49,60,947/- Rejected of Rs. 82,982/-due to non-submission of challan/certificates
3	ST/51758/ 2025	KBS Enterprises	Dated:13.10.2025 No:- 325(GS)ST/JPR/2025	Dated: 26.02.2025 No:- 22/CGST DIV-F/REF/2024-25	23.01.2025	2015-16	06.01.2025	Rs.31,94756/-	Refund allowed of Rs 26,15,372/- Rejected of Rs. 5,79,384/-due to non-submission of challan/certificates
4	ST/51759/ 2025	Ladu Ram Babulal	Dated: 26.09.2025 No:- 318(GS)ST/JPR/2025	Dated: 11.07.2025 No:- 17/REF-ST/2025-26	04.04.2025	01.07.2012 to 31.03.2014	07.02.2025	Rs.51,94,908/-	Refund allowed of Rs 51,15,158/- Rejected of Rs. 79,750/-due to non-submission of challan/certificates
5	ST/51760/ 2025	Ladu Ram Babulal	Dated: 26.09.2025 No:- 317 (GS)ST/JPR/ 2025	Dated: 11.07.2025 No:- 15/REF-ST/2025-26	03.04.2025	2015-16	03.02.2025	Rs.29,78,083/-	Refund allowed, no interest payable as refund passed within 3 months.

3. The short question in the impugned appeals essentially concerns claim for interest on the amount refunded. Appeals No.ST/51300/2025, ST/51304/2025, ST/51758/2025 and ST/51759/2025, also seek to claim refund for Rs.3,05,870, Rs.82,982, Rs.5,79,384 & Rs.79,750 respectively for which the refund claims were rejected by the lower authority for want of documents evidencing duty payment.

4. The refund of service tax paid by the appellants for period aforesaid (as in the Table in Para 2), was made good to the appellants vide the impugned orders of the lower authority as indicated in the Table above, on the ground that the service tax deposited on account of works executed in respect of construction of low cost house of carpet area less than 60 square meters and single independent house/ flats built by Rajasthan Housing Board (RHB) was not leviable. It was the contention of the appellant before the lower authority that the service tax paid on the projects undertaken was exempt from levy of service tax and hence the said amount of tax was erroneously paid by them. As the said tax has said to have been paid under a mistaken belief in law, it according to them was in the nature of the deposit and the appellants have now vehemently emphasized that apart from the refund amount claimed by them and paid by the authorities within three months of lodging the claim (this statement of the appellant is however not borne out of records), they should also be allowed interest thereon @ 12%, from the date of the said deposit made by them. For contextual appreciation of the matter, the following paras of the order passed by the learned Adjudicating Authority, (ref. Appeal No. ST/51759/2025) are reproduced

below, indicating the case law support drawn before the authorities by the appellants, in the matter :

> "7.3 I have carefully gone through documents submitted and reply submitted by the taxpayer **wherein there is no evidence of 50% tax paid by RHB on RCM**. The remaining 50% which seems to have been deposited by the taxpayer is also not evident that the 50% shown in GAR-7 challan pertains to the remaining 50%. In absence of such evidence of payments, Service Tax on work executed by the taxpayer, paid in government account cannot be ascertained. Hence, when tax is not paid there is no question of Refund to be sanctioned.
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> 7.4 The taxpayer has cited the case of GEOJIT BNP PARIBAS FINANCIAL SERVICES LTD. Vs. C.C.E., CUS. & S.T., KOCHI Citation:2015 (39) S.T.R. 706 (Ker.). On being perusal of the case, it is learnt that the case is not similar in the instant refund claim. In that case, the taxpayer had deposited Service Tax due to the reason that they need not pay the same, since the recipient of such service was located outside India and the payment received was in convertible foreign exchange which qualifies as export of service. Whereas, in the instant case, the taxpayer and the recipient both are located within India and it is not the case of export of services, thus the cited case law is not applicable in the instant case. Further, other case laws cited by the taxpayer has different facts also the taxpayer in every citation has mentioned that the tax has been deposited by mistake whereas in the instant case I find that 50% Service Tax was deducted by RHB and 50% of Service Tax was to be paid by the taxpayer as per terms and condition mentioned in the contract awarded by RHB to the taxpayer, which is not similar of the instant claim, thus, not applicable in the instant claim. Further, I also find that the taxpayer has submitted the GAR 7 challan for deposition of service tax, however on perusal of challan, it is not clear for which period such amount has been paid by the taxpayer, thus the deposit of Service Tax cannot be verified.
>
> 7.5 The taxpayer highly relied upon the following cases for the 50% amount which required to be deducted by the awarder i.e. RHB:-

P. S. Builders, Jodhpur Versus Commissioner of Central Excise, Jaipur II Vide Final Order No. 50234-50237/2023 dated 22.02.2023 Wherein the Hon'ble CESTAT Tribunal allowed the refund for the both amount i.e. Service tax deposited by the applicant and wrongly deducted and deposited by the awarder i.e. RHB.

Secondly,

C.D Construction Company Versus Commissioner of Central Excise & CGST Jodhpur

Final Order No. - 51307/2023 dated 14.09.2023

Wherein the amount deposited under any mistake of law, is to be refunded when the work exempted from the Service tax.

Thirdly,

P.S Builders, Gajendra Singh Sankhla, Jeet Construction Company, I.P.

Singh Construction Company Versus Commissioner of Central Excise, Jodhpur Final order No. 50859-50862/2023 dated 04.07.2023.

Wherein the Tribunal allowed the Refund Application and considered that no unjust enrichment and limitation period applicable on the amount deposited under mistake of law."

5. The Learned Adjudicating Authority had thus held that the amount of deposit claimed was not refundable as the claim was not only time barred, in terms of Section 11B of the Central Excise Act, 1944[1] besides there being no clear evidence of payment of tax for which the impugned refund claims. As a counter to the appellant's submissions, the adjudicating authority had placed reliance on the landmark ruling of the

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1. The Act

hon'ble apex court in the case of **Mafatlal Industries Ltd. v. UOI & Ors** [2]. Extract of the order in one such case (ST/51759/2025) is as under:

> "7.6 In view of this I place my reliance on the case of Mafatlal Industries (supra), the Supreme Court has raised the question in the following terms:
>
> "We may now consider a situation where a manufacturer pays a duty unquestioningly -or he questions the levy but fails before the original authority and keeps quiet. It may also be a case where he files an appeal, the appeal goes against him and he keeps quiet. It may also be a case where he files a second appeal/revision, fails and then keeps quiet. The orders in any of the situations have become final against him. Then what happens is that after an year, five years, ten years, twenty years or even much later, a decision rendered by a High Court or the Supreme Court in the case of another person holding that duty was not payable or was payable at a lesser rate in such a case. (We must reiterate and emphasise that while dealing with this situation we are keeping out the situation where the provision under which the duty is levied is declared unconstitutional by a court; that is a separate category and the discussion in this paragraph does not include that situation. In other words, <u>we are dealing with a case where the duty was paid on account of misconstruction, misapplication or wrong interpretation of a provision of law, rule, notification or regulation, as the case maybe.)</u> Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the case may be, in the case of another person has made him aware of the mistake of law and, therefore, he is entitled to refund of the duty paid by him?"
>
> The Apex Court has answered the question posed above as follows :
>
> "Where a duty has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid is set aside according to law. So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be

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2 . [(1997) 5 SCC 536]

entertained. .....All claims for refund ought to be, and ought to have been, filed only under and in accordance with R. 11/S. 11B and under no other provision and in no other forum. An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case a similar point is decided in favour of the manufacturer/assessee".

Finally, the Apex Court has laid down the dictum in this regard as follows :

"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 alieged 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 or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without reopening 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".”

6. The learned adjudicating authority had extensively dwelt upon the provisions of Section 11B of the Act while rejecting the refund claims filed by the appellants, on grounds of limitation, amongst others.

7. The learned appellate authority in a comprehensive finding, in para 8 of his order observed that the aspect of time bar was not applicable as the service tax had been paid under a mistake of law. He had also recorded that unjust enrichment was also not applicable in the matter as the burden of tax was borne by the appellant and not passed to any

other person. He, therefore, allowed refund of service tax of the amounts held admissible (Rs.51,15,158/- in Appeal No. ST/51759/2025, Rs.49,60,947/- in Appeal No.ST/51304/2025, Rs.26,15,372 in Appeal No.ST/51758/2025, Rs.29,78,083/- in Appeal No.ST/51760/2025 & Rs.44,15,387/- in Appeal No.ST/51300/2025), wherever the appellant had submitted the requisite documents to establish the payment of the said sums. In so far as interest was concerned, the learned Commissioner (Appeal) has recorded an express finding in the aforesaid orders that no interest is payable as the orders were passed well within three months from the date of filing of the refund claims/ application as prescribed under law. Thus he has held that no interest was payable on the amount so paid by the appellants.

8. No Cross-objections have been filed by the Revenue.

9. Before dwelling into the matter any further, it would be apposite to place on record, the provisions of Section 11B and 11BB of the Act that govern the claim for refund and the liability for interest payments in case of a delayed payment. The said provisions are reproduced hereinbelow :

> **"Section 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 [Principal Commissioner of Central Excise or Commissioner of Central Excise] 1 [or Deputy 2 [Principal Commissioner of Central Excise or Commissioner of Central Excise]] before the expiry of [two years] [from the relevant date] [in such form 6 [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 7 [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 8 [duty and interest, if any, paid on such duty] had not been passed on by him to any other person:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act.

[**Provided** further that] the limitation of [one year] 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 Excise or 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];

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the [duty of excise and interest, if any, paid on such duty] paid by the manufacturer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(e) the [duty of excise and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(f) the [duty of excise and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of [duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.

(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 any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

[***Explanation*. —** For the purposes of this section, -

(A) "refund" includes 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) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

[(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]

[(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;]

[(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;]

[(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;]

(f) in any other case, the date of payment of duty.]

Section 11-BB. Interest on delayed refunds.

If any duty ordered to be refunded under sub-section (2) of Section 11-B 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, 2 [not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed 3 [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 11-B 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 [Principal Commissioner of Central Excise or Commissioner of Central Excise] [or Deputy [Principal Commissioner of Central Excise or Commissioner of Central Excise]], under sub-section (2) of Section 11-B, 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.”

10. The appellants have submitted that they were engaged in civil construction of individual/independent residential houses (stand alone houses) i.e. single unit/row houses of carpet area less than 60 square meters, as per the the work order issued by the RHB, under the scheme for Affordable Housing of the Central Government. They submitted that w.e.f. 01.07.2012, this activity was exempted from payment of service tax vide the Notification No. 25/2012-ST dated 20.06.2012, Sr. No. 14(b) and (c). It was the appellant's case, that in ordinary course when leviable to tax, they would be liable to pay service tax to the tune of 50% while RHB would be required to make the balance 50% of the leviable tax under a reverse charge mechanism (RCM). They submit that the bills raised by the appellants were cleared by RHB after deducting the service tax amount and depositing the same to the government account (though no proof for such a deposit with government is placed on record). The appellants, strongly, contended that they paid the service tax not due by way of a mistake of law, as the same was not leviable in the first instance being an exempted service.

11. Three refund claims were, accordingly, filed by appellant KBS Enterprises and two refund claims were filed by the appellant, Laddu Ram Babu Lal. The Revenue had issued show cause notices to the appellants in the matter, as indicated in table in para 2. Pursuant to the adjudication of, these notices, the present litigation for claim of interest have arisen, as the refund claims have since been allowed by Commissioner(Appeals), besides the non-refunded amounts with claim for interest thereon as well, has also been sought by the appellants. The facts concerning the payment of refund claims are not disputed by either

side, hence, no more required to be gone into in greater details, but to mention that for the refund amount of 50% said to be deposited by RHB, as was said to be deducted by RHB from the appellant's bill, it is the case of the appellant that the said amount was borne by the appellants, though no evidence thereto in support of their contention was ever placed on record. There has been no evidence tendered thereto, before the lower authorities, including at the time of the initial hearing of the matter, except stating that the said fact was so noted and recorded in the show cause notice itself. Simultaneously, it is also on record and an admitted position, that no challan or a certificate, was issued by RHB to establish that the service tax, as said to have been deducted from the bills of the appellant, was ever deposited with the revenue. The necessary vital evidence, has nowhere been placed on records. Thus, in the absence of any documentary evidence on record, regarding payment of the said service tax by RHB, the amount prestated as in Para-2 has been disallowed by lower authorities, while sanctioning the refund amounts.

12. As for the interest amount as claimed by the appellant, the ld.advocate to a specific pointed query has submitted before me that they were granted the refund within three months, for the amount allowed by the authorities. It is recorded by the ld.Commissioner(Appeals), that the adjudication order for refund was passed within three months, from the date of the refund claims and therefore, no interest outgo has been directed by him.

13. The contention of the learned Advocate Shri Bipin Garg is that the fact of mentioning in the show cause notice at Para 3 that "Service Tax deposited by the claimant and the service tax deposit by the awarder on non taxable/exempted service" was in itself sufficient compliance of the legal requirements, for purpose of entertaining the refund claim. He thus contended that there was no warrant to furnish any documentary evidence in support of duty payment, to buttress their claims filed for refund and therefore, they would be not required to indicate anymore, by way of primary evidence in the form of duty payment challan/counter foils etc to prove the fact of duty payment. He contends that the need for tendering such evidence would have arisen, had the said fact was not discernible from the show cause notice itself. The requirement for furnishing of challan/certificate from the appropriate authority (RHB), for purpose of claim for refunds, in these cases can thus be dispensed with, in order to seek the benefit of the refund amounts claimed even though there is nothing to show on record, by way of primary evidence and to establish the deduction of the said amounts from the contractors bill and that the said amount have been paid to the government coffers. While I shall deal with the contention later in the order in detail, suffice at this juncture to state that, am however, not the least impressed by the contention of the appellant in this regard. As can be noted even the show cause notice issued, in para 4 specifically mentions that the appellant assessee have not submitted the original duty paying document in support of their refund claim. Moreover, Section 11B (1) of the Act unambiguously provides for such an application of refund to be accompanied by such "documentary" evidence, as would *"establish that*

the amount of [duty ………….] in relation to which such refund is claimed was collected from, or paid by, him ……… " The detailed procedure prescribed by CBIC, for consideration of refund claims, provides for defacing and endorsement of such supporting evidence, while sanctioning the refund amount, which has more to do by way of evidencing official verification and acceptance by the concerned authority and the operational recognition of the document tendered.

14. Learned counsel has further vehemently argued that the refund of the amount sought was towards tax deposited and paid under a mistake of law. He has, therefore, submitted that the concept of time bar would not be applicable in respect of the said amount paid by way of a mistake, as it was merely a deposit. It is his plea that they have not claimed the refund amount under Section 11B of the Act, and hence, Section 11BB of the Act was also not applicable. Learned counsel has, therefore, claimed that the appellant is entitled for interest at the rate of 12% on the whole of the amount refunded from the date of the deposit made till the date of the refund. He has also claimed interest on the said amount held ineligible, by the lower authorities for reason of non-furnishing of the requisite documentary evidence as discussed in earlier paras. The learned counsel submits that his claim for refund is based on the "Doctrine of Parity" and has relied upon various case laws in support of his proposition, notably the following:-

(i) Raj Construction v. Commr. of C.Ex. & ST, Jaipur [Final Order No.51743-51764/2025]
(ii) KBS Enterprises v. Commr. of C.Ex. & ST, Jaipur [Final Order No.51743-51764/2025]
(iii) Meenu Builders v. Commr. of C.Ex. & ST, Jaipur [2025 (31) Centax 356 (Tri-Del.)]

Each of the said case laws are being discussed, deliberated and dwelt upon in this order at appropriate places.

15. Countering the appellant's arguments, the ld.Authorized Representatives for the Revenue have supported the orders passed by the ld.Commissioner(Appeals) as to be in accordance with law and hence calling for no interference. They submit that in the absence of necessary supporting vouchers, the part amounts of refund claims, as in four of the five claims herein, have been rightly withheld, and cannot be allowed in the absence of requisite documentary evidence to support the claim of duty payment. They further submit that question of interest payment would not arise in the matter, as all admissible and eligible payments were released within three months of the refund claim falling due/filing of the refund claim/application, by the appellants, which fact has also not been controverted by the appellant. (However, this does not reflect the correct picture vis-à-vis the date of filing of the refund claim). The ld.Authorized Representatives have also sought to outright dismiss the argument of the appellant that as the matter related to refund of money paid as tax leviable, allegedly under a mistaken belief in law, the amounts paid were not in the nature of deposits and hence the argument of the ld.advocate regarding inadmissibility of Section 11B and Section 11BB of the Act was inappropriate. It is the claim of the department that any and all refunds claimed by an assessee would necessarily lie within the framework of Section 11B and any claim for interest would be governed by the provisions of Section 11BB of the Act. They however submit that by virtue of judicial precedents, the aspect of limitation

would have to be liberally construed and may not be read into strictly, in case the said amounts were understood as deposits. It is however made clear at this juncture that as the refund amounts stand paid to the appellants, and the revenue has filed no appeal in the matter, against the said order of refund, I am inclined not to go into the aspect of limitation in the present case. It would however be imperative to point out herein, that self-assessment is indeed an order of assessment, as defined in Rule 2(b) of the Service Tax Rules, 1994 and therefore limitation would ordinarily run from the date of payment of duty/tax, or may alternatively at best from the date of such order whereby the said tax paid was held as refundable (depending upon the outcome of the factual narrations as duty/deposit).

16. From the facts on records, it emerges clearly that in the first place, the appellant of their own volition had paid the amount towards duty for which they have later filed the respective claims for refund of duty paid. The said "duty" amounts and refund claims filed thereto for the periods as noted in Table in para-2, were thereafter claimed to be paid under an erroneous assumption in law and refund claims filed thereto. These refund claims were based essentially on the ground that the work undertaken by the appellant was in respect of construction of single independent residential unit or low cost houses which were not liable for payment of service tax upto 30.06.2012 and subsequently exempted by virtue of Notification No. 21/2012-ST dated 20.06.2012 in terms entry serial No. 14(b)/14(c). Though, the adjudicating authority rejected the impugned refund claims on ground of non-maintainability due to non-

submission of documents, limitation and unjust enrichment, the Commissioner (Appeals), however, allowed the said refund claims, either in full or in part, and did away with both the bar of limitation and unjust enrichment. The refunds, only to the extent, where no proper supportive documents were tendered, was denied to the appellants, precisely for failure of submission of any challan/certificate from RHB to establish and ascertain that service tax refund claim had actually been deducted from the contractors bills and the same deposited with the department and no separate refund thereof was claimed or made to RHB.

17. Strictly speaking the appellants assertion, dispensing the need for proper documentation, cannot be taken as a gospel, least of all a substitute for hard evidence, as the show cause notice while stating so, is dealing with the refund claim filed by the appellants, as to be on the grounds of "Service Tax deposited by the claimant and Service Tax deducted by the awarder on the Non Taxable/ exempted service". This narration of the appellant's refund claim, by the Revenue, in its notice issued to the appellant, however, cannot be considered as a stamp of assertion by the authority, to the fact of such deduction by the agency concerned and its payment to the revenue – with no refund thereof having been taken. Least of all it cannot even be a poor substitute to the absence of any documentary claim evidencing the said payment. Moreover, there is no cross-reference of such action, buttressed and supplemented, by any proof of payment and deposit of the said tax by way of challans etc., as has also been noted in the adjudication order. The amount so claimed to be paid, is unknown; the date on which such

amounts were said to be paid is unknown; the head under which the said amounts said to be paid is unknown, the purpose for such payment, if made, is also unknown. With so many unknown settings it fails rational logic to accept the claim of the appellants on its face value, when the law mandates furnishing of such "documentary and other evidence" in support of the claim. This assertion of the appellant is therefore vague and indeterminate, completely non-verifiable and no more than a bland and a loose statement, which cannot substitute the need for hard evidence as required for allowing a refund claim under Section 11B of the Act. In the circumstances, the plea of the appellant in this regard is certainly non-acceptable and shorn of merit. The learned counsel's plea that the finding of the adjudicating authority on this count was beyond the scope of the show cause notice is also not acceptable for the fact that appellant has been disallowed a certain sum of amount said to be deducted by RHB (towards 50% of duty paid) from the bills of the appellant for the reason – (i) as the primary claim of the appellant in itself was in the context of the refund of the amount, said to be paid by them towards ineligible/inadmissible duty payments and (ii) the show cause notice clearly brings out the fact of non-submission of the documents evidencing duty payment. Refund amounts thus withheld cannot be faulted upon and have been rightly done so.

18. Another question that does arise in the matter, as a result of settled law, though is now no more relevant, for want of an appeal against the impugned orders of the Ld. Commissioner (Appeals) by the Revenue, concerns the sanction of the refund, applied for under section 11B of the Act; the duty payment for which (that wasn't either payable

or exempted) in the first place was done so post assessment undertaken in the matter by the appellant themselves. An order/decree was thus required to modify the said assessment, before entertaining any refund claim, as the refund sanctioning authority was not empowered to sit in judgement of the assessing authority, as was held by the Apex Court in the case of **ITC Ltd. vs. Commissioner of Central Excise, Kolkata-IV**[3]. A re-assessment of the original assessment was required to be undertaken before such a sanction was ordered; as it is an established legal principle that refund sanctioning authority acts merely by way of execution of the original assessment and cannot re-open the assessment already undertaken.

19. In order to appreciate the factual position in the matter let it be emphasized that the law on refund has since been settled by the Constitutional Bench of the Apex Court in the case of **ITC Limited vs. Commissioner of Central Excise, Kolkata-IV**[3], wherein it was held by the Hon'ble Apex Court that the refund can be sanctioned only in pursuance of an assessment made and not *de hors* the assessment. However, in the present case, as evident, the impugned refunds so sanctioned by the lower authority, were so done without applying the prescriptions of law as laid down by the Apex Court.

20. Addressing the question as to the factors determining if the amount paid as duty was payable or not, Courts have often applied the ruling of the larger Bench of the hon'ble Supreme Court in the case of **ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV**[3] wherein

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3 2019 (368) ELT 216 SC(LB)

the apex court had held that the person seeking refund had to assail the order by way of appeal and get it modified, whereupon only would they be eligible for a refund. The position in respect of a case of self-assessment would indeed be no different. The exact wordings of the apex court's order are enumerated below :

> *"41. It is apparent from provisions of refund that it is more or less in the nature of execution proceedings. It is not open to the authority which processes the refund to make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise."*

21. The Revenue has strongly contended that no invoices in support of the refund claim, in certain cases were produced by the appellant, therefore the appellant cannot thereto derive the benefit of the provisions of Sections 12A and 12B of the Act. Incidentally, the Authorized Representatives for the revenue have also mentioned the aspect of limitation stating therein that the impugned refund claims were filed after a very long period in time, well beyond the stipulated provisions of law, even well beyond the provisions of the Limitation Act, 1963. For reasons of no appeal/cross objections filed by revenue against the impugned orders, these aspects would not arise for consideration in the present matter and cannot be looked into. Revenue has however quite categorically raised the plausible premise that the possibility of RHB also making a claim for refund of the said amount borne by them or having availed cenvat credit of the said amount cannot be discounted and ruled out.

22. Interestingly, it may also be mentioned, as noticed and is borne from the records, that the contract for construction awarded to the

appellants was inclusive of the service tax amount. It is now claimed that M/s RHB had paid 50% of the service tax amount towards the construction service rendered, to the appellant. Bills raised were said to be inclusive of the service tax payable by the appellant, and were claimed to be settled after deduction of 50% of the amount payable by RHB on RCM basis. The appellant has contended that the amount paid by the appellants towards service tax was so done under a mistaken belief of law. However, from the facts on record it nowhere emerges so, as the said service tax was paid continuously over a period of four years between 2012-2013 to 2015-2016, whereas the refund claims were filed almost a decade later during the years 2024 and 2025. It is anybody's guess as to why it took the appellants almost over a decade, to realize that the said tax was paid under a mistaken legal belief. This is so when ordinarily all statutory timelines are of limited shelf life and are generally restricted to a period of five years. Extrapolating this premise further, were the appellants to realize their mistaken belief, say after twenty five years, obviously then it would be their contention that being a case of duty payment under a mistaken belief, it being a case of deposit, no limitation aspect would arise for consideration in the matter, and in ordinary course would have staked a claim for interest payment for twenty five long years, even though the refund was said to be made to the party concerned within three months of the claim falling due. Moreover, this is so, despite the fact that the said amount was paid voluntarily as tax by the appellants, of their own accord without any co-ercion/demand, by the authorities, without any payment being made "under protest", and was certainly not required/directed to be deposited during the course of an investigation and thereafter to claim 12% interest thereon, in addition to the return of the principal amount after nearly ten long years is nothing short of sacrilege of the legal stipulation and an abuse of the judicial process. It on the other hand seems to be a wise and sound economic investment proposal, yielding higher assured returns on investments, without the least risk and fear of loosing money vis-a-vis an ordinary investment made with various financial institutions/banks. Indeed, it is a clever exercise as an investment proposition, laying claim at higher rate of interest – well beyond the prescribed bank rate for fixed deposits, without fear of loosing money, claiming it well beyond ordinarily stipulated contextual timelines as laid out in the statute.

23. A case of voluntary payment under the statute, ordinarily cannot be construed as a case of mistaken payment, moreso when no such claims are made within a reasonable period say within an year, but as goods as after ten years and more. Any payment made through service tax challans in terms of self assessment, without any protest or demur or in the absence of a direction from an authority can indeed be a well thought out payment strategy, made under the statute, only to claim it after ten long years or beyond. Classifying the same as a deposit therefore, is rather incongruous, incomprehensible and bordering absurdity. What can normally be a case of mistaken belief of payment of duty would be one that is *ultra vires* or collected illegally and obviously one that is not voluntarily paid.

24. In the context of the interpretation of the language used in Sections 11B & 11BB of the Act, it need to be stated, that it is too well known that when the language deployed is not ambiguous, or uncertain then the plain words used in the statute, have to be given effect to. This position of law has been affirmed by the apex court long back in the case of **Girdhari Lal Sons v. Balbir Nath Mathur**[4] in the following terms :

> *"This is the real basis of the so-called golden rule of construction that where the words of statutes are plain and unambiguous effect must be given to them. A court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because <u>plain words may be expected to convey plainly the intention of the legislature to others as well as judges."</u>*
>
> *[Emphasis Supplied]*

25. I am afraid no judicial/quasi judicial authority by torturing the language of Section 11BB or by other means attribute to itself a meaning/jurisdiction that it naturally does not bear. In the case of **Commissioner of Inland Revenue v. Rossminister Ltd.**[5] it was held that in construing statutory provisions the rule of construction must be *"however much, a court may deprecate an Act, it must, it must apply it. It cannot by torturing its language or any other means construe it so as to give a meaning which the Parliament did not clearly intend it to bear."*

26. It is settled law that none can be deprived of his money or subjected to levy of a tax, by the State, without the authority of law. The

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4 1986 (2) SCC 237
5 (1980) AC-952-1018

following legal principles in taxation jurisprudence are too well known to be reiterated.

- A taxation Statute has to be construed strictly.
- The law is to be read as it is, attributing natural meaning to the words deployed.

Thus, the excise officer and so the Tribunal, cannot insert a clause to provide for a higher rate of interest than as enabled in law and dispense with the requirement in law for production of documents evidencing payment of duty/tax/deposit (call by whatever name) while entertaining a refund claim. There is no discretion vested thereto in any authority, agency or even the courts, to dispense with such a necessity. Thus, as tax was voluntarily paid, without any demand or coercion/from the state any claim for restitution/compensation to the party can arise only if there is a breach of the provisions of Section 11B. The fact that Section 11B(3) of the Act, is "non-obstante", would only re-inforce the aforesaid principle.

27. The Principal Bench of the Tribunal in the case of **Essjay Telecommunications and IT Services Private Limited** versus **Commissioner, of Central Tax & CGST, Delhi**[6] had held that in any case an amount deposited as service tax cannot take any other colour and remains restricted as "service tax". The Tribunal in the said case was posed with the question, as to how to treat an amount that was deposited as service tax (during investigations), but which consequent

6 2025 (3) TMI 743 (T)

upon an order of the Tribunal/Court subsequently became refundable – i.e. would it be service tax, pre-deposit or a mere revenue deposit. It was noted by the Tribunal therein that there were no separate provisions in the statute other than by way of Sections 11B, 11BB, 35F and 35FF of the Central Excise Act that would be concerned with the matter. Answering the appellant's plea that what they had paid was not duty, as no duty was payable in the first instance, the Bench noted that –

> *"9. ……………… what is the situation under which a duty becomes refundable. If amount which is paid as duty is due, it will not be refundable at all. If it is not payable as duty, then it becomes refundable under Section 11B."*

That being so, refund of such amount would certainly be required to be governed by the provisions of Section 11B of the Act. Incidentally, the appellants in the present case have however taken the line of argument to state that refund sought was a case of deposit, and as such "Section 11B shall not apply", which plea is however not acceptable, in view of the hon'ble apex court's watershed pronouncement in the Mafatlal Industries Ltd.[2] case on the subject of refund of duty.

28. Moreover, it was thus held by the Tribunal in the aforesaid case, that interest as per Section 11BB of the Act would become payable only if there was a delay in processing and sanction of the refund claim under Section 11B ibid, beyond the specified timeline of three months. It be noted that despite the appellant Essjay Telecom praying for a higher rate of interest @ 12%, on the amount held refundable consequent to the order passed by the lower authority, the Tribunal held that interest at

the notified rate of 6% only (Notification No.24/2014-CE(NT) dated 12.08.2014 would be payable in terms of Section 11BB of the Act, for the delay in processing of the refund claim.

29. The Tribunal in the case of **M/s J K Lakshmi Cement Works v. Commissioner, CGST & Central Excise, Udaipur**[7] after examining a series of case laws relied upon by the two sides affirmed that Section 11BB would come into play only when there was a delay in sanctioning of the refund claim, beyond the timeline indicated in Section 11B of the Act and as in the said matter there was no delay in sanctioning of the refund amount due, the order of the lower authority was maintained and the claim for award of interest was dismissed.

30. The learned counsel at the time of hearing, admitted, that the appellants had filed the impugned refund claims in terms of Section 11B of the Act and had filled in the prescribed form for claiming refund. That being so, accepting the applicability of Section 11B (by way of filing of the refund claims) on one hand, while on the other ousting its jurisdiction to state non-applicability is incoherence and inconceivable. The appellants cannot take two diametrically opposite stance in the same vein. It is settled by the hon'ble apex court that indeed Section 11B would apply in all matters of refund (Mafatlal Limited[2]), except where the levy has been held to be unconstitutional and the only grace being that for a bonafide deposit (like the kind of amounts paid during investigation) at the behest of the authority, the limitation contained in Section 11B would not be binding.

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7 Final Order No.50922-50927/2025 dated 18.06.2025

31. The concept of mistake of law had once again come up for consideration before the Tribunal in the case of **Saf Yeast Company Limited** versus **Commissioner, CGST & Central Excise, Kolhapur**[8]. After extensive analysis of the factual and legal contentions and the case law support drawn by the two sides, the Tribunal held that for refund of any tax paid under a mistake of law, the limitation set out under Section 11B of the Act would kick-in. While arriving at its findings in the matter, the Tribunal had taken note of the famous words of "Salmond" as quoted in his seminal work on Jurisprudence, that *"the law comes to the assistance of the vigilant and not the sleepy".* I could but agree no less with this principle in view of the Latin maxim *"interest republican ut finis litium"* (in the interest of the state as a whole there has to be a limit to litigation). The Tribunal in this case had also distinguished the decision of the Hon'ble Karnataka High court in the case of **Commissioner of Central Excise (A) v. KVR Construction**[9], relied upon by the appellant, which order passed by the Hon'ble High Court has been dealt in later paras.

32. A nine member Bench of the apex court in the case of **Mafatlal Industries Ltd.**[2] in Part-IV of its order, while summarizing the discussions, had categorically addressed the question of limitation, unjust enrichment (which to my mind has not been properly gone into by the lower authority), unconstitutional levy etc. and had dwelt upon the same in Para 99 of its order. For the purpose of the present appeals, it is felt appropriate to reproduce the apex court's findings quoted in Para 99

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8 Final Order No.85581/2024 dtd. 11.06.2024
9 2012 (26) STR 195 (Kar.)

of its order, as are germane and material for purpose of the present appeal.

> ***"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 <u>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</u>. 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 salutory 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 over-ride 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."*

Thus, simply put, on the basis of a finding rendered by a quasi-judicial/judicial body, in respect of another person, re-opening of an assessment is also not permissible and without a reassessment no refund claim can even be entertained.

33. The plea therefore that provisions of Sections 11B and 11BB of the Act will not be applicable to the present matter, as this being a case of deposit (for duty having been paid on an erroneous assumption) carries no legal force.

34. Moreover, it is essential to point out that the Apex Court in the case of **Mafatlal Industries Ltd.[2]** (quoted earlier) had unequivocally held that notwithstanding anything to the contrary contained in any judgement, decree, order or direction of the Appellate Tribunal or any court or under any other provisions of the 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 terms of 11B of the Act. There can be no stronger language to emphasize the principle, that so long as Section 11B was not held to be ultravires it would be required to be given effect to.

35. It is noticed that over the years, after the hon'ble Supreme Court's ruling in **Mafatlal Industries Ltd.**[2] case, slowly but steadily, the concept of "deposit" has evolved. What started as a deposit in terms of Section 35F of the Act has later branched into sums paid during investigations towards the presumed duty liability though may have been ordered refundable at a later stage. What constituted a "deposit", in terms of apex court's ruling in **Mafatlal Industries Ltd.**[2], was an unconstitutional levy held as *ultra vires.* Certainly no sums paid as a result of self-assessment towards assessed duty liability could strictly invite the undertones of a deposit, as they do not fall into this domain. This is so very clear from the apex court's ruling in the case of **Mafatlal Industries Ltd.**[2] supra (as also the Tribunal's rulings cited earlier – the Essjay Telecommunications[6] case as well as the Saf Yeast Company[8] case). The apex court had made it clear that but for cases of unconstitutional levy (deposit) to which Section 17(1)(c) of Limitation Act, 1963 applies, all other cases of refund would fall within the statutory stipulation of Section 11B and would also be required to undertake the test of Section 11B(2).

36. In the case of **Nanavaty Chemical Industries v. Union of India**[10], in respect of a refund claim filed, based on a mistake of law, it

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10 **1992 (43) ECR 329 (SC)**

was pointed out by the hon'ble apex court that for restitution claim to be sustained, the ground of mistake of law was insufficient and it was essential that the mistake is common to both the recipient as well as the payer of the money seeking a refund. It was also held therein that a restitution claim would not lie in a case where injury was suffered by a third person. That is why the test of Section 11B, is vital to the success of a refund claim under section 11B.

37. From the foregoing, it is also clear that no consequence by way of refund could lie on a mistake of law to a third assessee, as would arise on the basis of judgment/decision in another's case. The long unexplained hiatus in the present appeals, of upto a little over ten years, between the self assessed duty payment and claiming it back by way of "*deposit*", cannot be ordinarily sanctified in the backdrop of the stated proposition laid out by the hon'ble Supreme Court. The law as laid down by the apex court is the law of the land and is binding on all subordinate authorities, by virtue of the aegis of Article 141 of the Constitution. Moreover, judicial discipline warrants that the law laid down by the Apex Court being the law of the land is adhered to, in letter and spirit, by all subordinate judicial and quasi-judicial authorities. In the case of **Union of India & Others v. Kamalakhi Finance Corporation Ltd.**[11] while coming down heavily upon the departmental authorities for disregarding the orders of the superior authority the apex court noted that :

> *"6. ……………………………..The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities."*

11 AIR (1992 SC 711)

Rendering a piece of advice to the adjudicating and appellate authorities in the matter, the hon'ble apex court sensitized them to the importance and need for judicial discipline and to giving effect to the orders of the higher appellate authorities, which indeed are binding on the lower authorities.

38. Coming back to the claim of interest sought by the appellant @ 12% alleging that the impugned amount was paid by them under mistake of law, let the appellants be reminded of the age old maxim "*Ignorantia Juris Non Excusat"* (ignorance of law is no excuse). It may however be added that the term "mistakes of law" has evolved significantly over the years moving from a rigid rejection of the defence to a more nuanced approach. Over time judicial decisions have carved distinct exceptions where a mistake of law goes in to mitigate the liability and answered as a valid defence. This would include –

(i) Entrapment of Estoppel – i.e. to say reliance on an official misstatement; when a person commits an act after being explicitly told to so do by a competent legal authority.

(ii) Lambert Exception – this legal principle arises out of the famous US Supreme Court case of **Lambart v. California (1957)** where the Hon'ble Court had ruled that a municipal ordinance requiring convicted felons to register with the Police was unconstitutional, as applied to someone who had no knowledge of the duty to register as there was no 'fair' or proper notice of law.

(iii) In case of a specific intent abridgement of law [Mistake of law negating *mens rea*]. This is to say where the law specifies requirement of a specific mental state - such as 'willful', 'knowingly', 'intentional', violating the legal provision although under a *bonafide* mistake of law can negate that specific intent.

39. Thus is in the field of complex tax laws, it is a given principle that a defendant cannot willfully break a law howsoever genuinely mis-understood. In the case of **Cheek v. United States (1991)** the US Supreme Court had held that a good faith mis-understanding of tax laws, even if objectively unreasonable, negates statutory element of 'willingness'. Given this backdrop of the discussions herein, the aspect of the alleged mistake of law in the given circumstances certainly gives rise to a presumption of an error committed by the appellants. It is however felt that the present omission or commission by the appellants rather than being a mistake of law is a mistake of fact as it does not involve any question of legal interpretation. The appellants very well know of their activity undertaken and had duly entered into an agreement thereto with RHB. Thus they were in error in not realizing that they were not liable to pay tax, given the nature of the exempted service rendered, which Service Tax they had voluntarily paid, as felt applicable, while undertaking self-assessment.

40. It is since long settled by the hon'ble Apex court that interest under the provisions of Section 11BB is applicable only in cases of delayed payments for a period beyond three months from the date of application of refund claim filed under Section 11B(1) of the Central Excise Act. Though the Ld.Counsel conceded at the time of hearing that they were paid the refund amounts claimed within three months of

lodging the claim, the facts on record do not support the said premise. The aforesaid position is clear from the order of the Commissioner(Appeals) in the impugned cases wherein he has specifically noted in the penultimate para of the Order-in-Appeal as under, :

> *"……………………….Further, as far as interest on amount of refund is concerned, I find that the adjudication order was passed well within 3 months from the date of filing of refund claim application as prescribed under the law, therefore, no interest is payable on amount of refund."*

and when it is undisputedly evident on record, that the adjudication order did not allow the refund and had rejected the same as already noted above in Para 16. The hon'ble Apex court in its authoritative pronouncement in the case of **Ranbaxy Laboratories Ltd. v. Union of India**[12] had in no uncertain terms held that the claim of interest would arise only after three month from the date of application date and not from the date of order. It also stressed upon the need for submission of documentary evidence, evidencing the payment of duty/interest along with refund claim. <u>The court had further maintained an interest rate of 6% as per the statutory provisions to be paid, in the event of a delay beyond the stipulated timeline</u>. It is thus important to note that for reasons discussed and the laid down principle, the award of interest would mature only when there is a delay beyond three months of the lodging of the claim, in the sanction of the refund amount held due. The

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12 2011 (273) ELT 3 (SC)

hon'ble apex court in Para 15 of its order in the Ranbaxy Laboratories Ltd. has clearly noted as under :

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> *"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."*

The dates of sanction of the refund amount are nowhere on record. However, the obvious conclusion is that the said refund claims were in fact paid only in pursuance of the Commissioner(Appeals)'s order and therefore well beyond the stipulated three months timelines specified in Section 11BB of the Act.

41. It also needs to be placed on record that the aforesaid judgement of the hon'ble apex court in the **Ranbaxy Laboratories Ltd.**[12] case has been followed consistently. Thus, the hon'ble apex court in the case of **Manisha Pharmo Plast Pvt.Ltd. vs. Union of India**[13], also set aside the hon'ble Gujarat High Court's order, stating that the issue regarding interest payments stood settled by its decision in the case of **Ranbaxy Laboratories Ltd.** and re-approving that the relevant date for interest on belated refund is the date of making of the application for refund.

42. This Tribunal in the case of **M/s Triumph International India Private Limited Vs. Commissioner of GST & Central Excise,**

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13 2020 (374) ELT 145 (SC)

Chennai[14], following the hon'ble apex court's benchmark ruling in the Ranbaxy Laboratories Ltd.[12] case on refunds, had indeed held that where the claim for interest payment on the refund amount sanctioned under Section 11B was allowed and where it does not pertain to an unconstitutional levy, interest thereto would be payable only in terms of Section 11BB of the Act. Only the said two provisions viz. Section 11B and Section 11BB would come into play and the interest would be payable only in the manner as prescribed according to law. While arriving at this finding, the Tribunal had also examined various decisions, including the one in the case of **Parle Agro Pvt.Ltd. v. Commissioner, CGST, Noida**[15] which has also been cited by the ld. advocate for the appellants and constitutes the mainstay of his arguments. It may be pertinent to mention that the decision of the Tribunal in the **Parle Agro Ltd.**[15] case was based on the apex court's judgement in the case of **Sandvik Asia Ltd. v. Commissioner of Income Tax-I, Pune**[16] amongst others. Relying thereon the Tribunal in **Parle Agro Ltd.**[15] case, granted interest @ 12% where the amount rendered refundable, was deposited, during the investigation stage of the matter. The factual position in the present appeals ironically is not even remotely akin to the said cases, as in the present appeals (i) there was no "deposit" done during investigations, but "duty" was voluntarily paid on self-assessment basis. (ii) no case for compensatory payment did arise in the present matter, as the refund was disbursed within three months of holding the admissibility of the claim, unlike the **Sandvik Asia Ltd.**[16] case, where

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14 Final Order No.40795 of 30.07.2024
15 2021-TIOL-306-CESTAT-ALL.
16 2006 (196) ELT 257 (SC)

delay ranged around 17-12 years and it was held by the hon'ble apex court that the award of interest at such high a rate was a compensatory retribution and was awarded considering the gross delay caused by the Department and therefore interest on interest was so ordered. It is also to be noted that the appeal filed by the Revenue against the Tribunal's decision in the **Parle Agro Pvt.Ltd.**[15] case is pending in appeal before the hon'ble apex court and thus in the backdrop of such phenomenal and resounding jurisprudence on the subject, cannot be considered as the last word in the matter.

43. An indepth analysis of the issues involved in the present appeals, like the question of relevant date for purpose of interest computation, the requirement of a format refund application in terms of Section 11B etc. was also undertaken by the Chennai Bench of this Tribunal in the case of **Triumph International India Pvt. Ltd. v. Commissioner of Central Excise & CGST, Chennai**[14], wherein it was held that any case of claim for interest on refund will have to be considered only in terms of Section 11B and 11BB of the Act. Relying on the decision of the hon'ble apex court in **Mafatlal Industries Ltd.**[2] case, the premise that deposits are extraneous to Section 11BB of the Act, was dismissed outright. Likewise, the Tribunal in the case of **Wonder Packaging Industries v. Commissioner of Central Excise**[17]**,** as also **SRF Ltd. v. Commissioner, GST & Central Excise**[18] have repeated the oft held settled position that interest on refund is payable only after three months from the date of the application. No interest is held to be

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17 2022-TIOL-492-CESTAT-AHM
18 F.O. No.40471/2023 dated 23.06.2023

payable from the date of deposit made during the course of investigations. It need be noted thus.

44. The aforesaid detailed treatment and extensive discussion over the relevant date for the commencement of interest computation has been done, so as to clear the cobwebs and set to naught misgivings, if any as the appellants have pressed for interest payment not from the date of lapse of three months of their refund application but from the date of payment of duty/tax, that was discharged by them while undertaking the self-assessment exercise.

45. Dealing with a case of interest payment in a matter where the question concerned was of refund of amounts voluntarily deposited, though during the course of investigation prior to the issuance of a show cause notice, the hon'ble Delhi High Court in the case of **Nino Chaks Pvt.Ltd. v. Commissioner of Customs (General)**[19], did not accept the appellant's plea for payment of interest from the date of payments of the said amounts on three different dates and further noted that interest cannot be awarded merely on the principles of Equity. However, in view of the fact that the principal amount was not paid within three months of the Tribunal's order, it allowed interest only from a date three months after the Tribunal's order till the date of the refund and that too @ 6% only. While passing the aforesaid orders, the hon'ble Delhi High Court, relied on the following orders of the hon'ble Apex court, wherein the Apex court had held that interest on delayed refund cannot be granted on the basis of equity, unless expressly provided by the Statute.

(i) State of Punjab v. Atul Fastners Pvt.Ltd.[20]

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19 2020 (371) ELT 701 (Del.)
20 2007 (211) E.L.T. 519 (SC)

(ii) Union of India v. Orient Enterprises[21]

It would be of interest and relevant in the background of the aforesaid discussions to place on record the following paragraphs of the hon'ble High Court's orders (supra) :

*"**9.** Looking to the facts of the present case that -*

(a) The amount of Rs. 28,76,578/- was paid on three different dates i.e. on 11-3-1998, on 12-5-1998 and on 13-5-1998 and hence it cannot be said that the said deposition of the amount was involuntary.

(b) First deposition of Rs. 10,00,000/- was made on 11-3-1998 and the last deposition of Rs. 4,00,000/- on 13-5-1998. If there was any coercion, undue influence or compulsion on the part of the petitioner, then there was no need of repeated payments/depositions to be made by the petitioner.

These facts make the present case different from the facts of the cases upon which the reliance is placed by the counsel for the petitioner as well as the judgments upon which reliance is placed by the petitioner are of no help to the petitioner.

***10.** Moreover, it appears from the facts of the case that CESTAT order is dated 20-11-2003 and it has been ordered by CESTAT, New Delhi that <u>if the amount is not returned to the petitioner by the respondents within a period of three months the interest shall be payable.</u> The said period comes to an end on 21-2-2003. As the amount at Rs. 28,76,578/- was not paid on 21-2-2003 by the respondents, the payment of interest starts till the actual date of payment. The amount was refunded by the respondents on 14-5-2004. Hence, at the highest, the petitioner is entitled to get interest at a reasonable rate of interest for the period running from 21-2-2003 to 13-5-2004.*

***11.** In fact, the <u>petitioner is in search of payment of interest from March/May, 1998 which cannot be granted because there is no provision</u>*

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21 1998 (99) ELT 193 (SC)

for the payment of interest nor the aforesaid amount was deposited under any coercion or compulsion. Moreover, the aforesaid amount was deposited by the petitioner voluntarily and, that too, prior to the issuance of the show cause notice dated 4-4-2001.

12. *Thus, we see no reason to entertain this writ petition for grant of interest from March/May, 1998 upon an amount at Rs. 28,76,578/-. The principal amount has already been paid by the respondents to the petitioner on 13-5-2004. Thus, after three months period is over from the date of the order of the CESTAT (20-11-2003) till the actual payment of the amount (14-5-2004) i.e. for the period running from 21-11-2003 to 13-5-2004, the respondents are hereby directed to make the payment of interest upon the amount at Rs. 28,76,578/- @ 6% p.a.*

[Emphasis supplied]

46. There are several decisions where the Tribunal has itself held that it not being a Court of Equity could not live up to the prayers of the appellant. Thus to mention :

(i) Sudhir Engineering Co. v. Commissioner of Central Excise, Daman[22]

(ii) ICI India Ltd. v. Commissioner of Customs, Calcutta[23]

It is therefore imperative for us to note that our actions should not be so directed to reduce the command of the legislature to a dead letter.

47. Interestingly, the apex court's decision in **Sandvik Asia Ltd.**[16] case was examined and explained by a three Judge Bench of the hon'ble apex court in the case of **Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals**[24]. It was pointed out therein that the said judgement has been "*misquoted*" and "*misinterpreted*" by the assessees

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22 2006 (206) ELT 481 (T)
23 2003 (151) ELT 336 (T)
24 2017 (51) STR 236 (SC) (LB)

as well as the Revenue. It was categorically held by the Larger Bench of the hon'ble Apex court that it is only the interest provided under the statute that may be claimed by the assessee from the Revenue and no other interest on such statutory interest.

48. Furthermore, it is absolutely crucial and vital to appreciate that the Tribunal is not a Constitutional Court, but a creature of the statute and therefore there are limitations and fretters imposed to the exercise of its powers. The Tribunal can only exercise and wields such authority as is vested in it by the express language of the statute. The Tribunal therefore cannot travel beyond the express provisions of law and will have to exercise restraint in the blanket adoption of court rulings of the hon'ble High Court and the hon'ble Supreme Court pronounced in exercise of their inherent powers vested in them by virtue of being a Constitutional Court. Moreover, this Tribunal also has no mandate to venture into domain of the the Executive i.e. it cannot abrogate to itself the power to legislate, and would be required to honour the Notifications issued and be guided by the express words in law unless the same are held to be *ultra vires*. Thus arbitrary upholding and fastening of 12% interest under a given circumstance, by the Tribunal, would not only be disrespectful of the very statute creating it, but is also absolutely without a rational and legal basis and in authoritative exercise of powers not vested with. Also holding an amount paid towards "duty" as a "deposit" can only be done on the basis of law as settled and be guided thereto by pronouncements of the highest court of the land. Any such order thereto would be in violation of law and therefore would be a nullity in the eyes of law.

49. The Ld.Counsel for the appellants also mentioned during the course of hearing that his claim for interest was based on 'Doctrine of Parity'. The right to seek interest is indeed a statutory right and in so far as Tribunal is concerned, the latter being a creature of statute cannot exercise this right of interest interpreting it as a common law right. This right in the statutory scheme of things triggers only after the expiry of three months period from the date of the refund application made. Moreover, any claim for award of interest cannot be based out of nowhere and arbitrarily sought/sanctioned – it ought to arise out of the statutory prescriptions alone, to enable the Tribunal to exercise the same. The liability to pay interest would in law not arise in case the refund claims as are processed, sanctioned and paid within specified timelines of three months. Since the starting point is specified within Section 11B, the appellant cannot artificially impute a different commencement date so as to kick off interest claims. The apex court in the case of **Northern Plastics v. Hindustan Photofilms Mfg. Co. Ltd.**[25] had held that Tribunal being a creature of the statute derives its power and jurisdiction only from the statute creating it and not outside of it. Instances of the award of interest by Constitutional Courts are a direct outcome of their inherent powers vested in them under the Constitution of India. To even adopt those cases as examples, citing award of interest in a given contextual framework, by the Tribunal would tantamount to exercise of jurisdiction where none vests in the Tribunal and therefore would be outright illegal and not sanctified in law.

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25 1997 (91) ELT 502(SC)

50. It is too well known, that Tribunal is not a Court of Equity. The appellants if intending to seek recourse in the matter based on Doctrine of Parity, ought to look for remedy elsewhere and not before this Tribunal, whose powers are circumscribed by the words used in the Statute. The Tribunal does have its limitation, being a creature of the Statute. Therefore, any orders for grant of interest where it falls beyond the realm of Section 11BB of the Act, if issued by the Tribunal are in complete respect no more but an overreach of jurisdiction and are per se *ex facie* improper and *void ab initio.* It is undisputed that while the Tribunal may have many of the trappings of a Court, it indeed is not a full-fledged court and only exercise quasi-judicial functions within the larger framework of the word Tribunal under Article 136 of the Constitution. The said difference has been explained way back by the hon'ble Apex Court in the case of **Harinagar Sugar Mills Ltd. v. Shayam Sunder Jhunjhunwala**[26], where his Lordship Hidayatulla, J. explained the said difference as :

> *"……..These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary courts of civil judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to courts, but are not courts. When the Constitution speaks of a "courts" in Article 136, 227 or 228 or in Articles 233 to 237 or in the Lists, it contemplates courts of civil judicature but not tribunals other than such courts. This is the reason for using both the expressions in Articles 136 and 227."*

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26 AIR 1961 SC 1669

51. It may also be added that, it is not that the higher judiciary is not conscious of the decision makers making an incorrect assertion. Thus a Bench of seven Judges of the apex court in the case of **Smt. Ujjam Bai v. State of Uttar Pradesh**[27] way back over sixty years, in the context of the binding nature of a decision, had held as under :

> *"A taxing authority, which has the power to make a decision on matters falling within the purview of the law under which it is functioning is undoubtedly under an obligation to arrive at a right decision. <u>But the liability of a tribunal to err is an accepted phenomenon</u>. The binding force of a decision which is arrived at by a taxing authority acting within the limits of the jurisdiction conferred upon it by law cannot be made dependent upon the question whether its decision is correct or erroneous. For, that would create an impossible situation."*

[Emphasis supplied]

52. In the case of **Dinesh Tobacco Industries** versus **Commissioner, CGST & Central Excise-I, Jodhpur**[28] though the Tribunal, was concerned and dealing with a case of pre-deposit, on the aspect of the payment of interest, it was held that the provisions of Section 11BB of the Act would squarely apply thereto and a notification prescribed thereunder would be required to be given effect to, in terms of which were issued the notification prescribing the rate of interest admissible which currently stands at 6% w.e.f. 12.09.2003 under Section 11BB of the Act.

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27 1962 (AIR) 1621 SC
28 Excise Appeal No. 50455 & 50697/2019 vide Final Order No. 57990-57991/2024 dated 09.08.2024

53. In the case of **Devendra Udyog v. Commissioner, CGST, Jodhpur**[29] it was held by the Tribunal that Section 11BB prescribes the rate at which interest payments are required to be made. This rate is specified to be in the range of 5-30%. The statute empowers the Central Government to fix the rate of interest by way of Notification. Thus, once there is a Notification of the Central Government fixing interest @ 6%, the same has to be followed as being a part of the statute. The Tribunal noted the relevance of the notification issued under Section 11BB and held as under :

> "7. In Section 11BB, to clarify the rate of interest in the range of 5% to 30%, the statute itself has empowered the Central Government to fix any rate of interest for the time being by way of a notification. **This clarifies that once there is a notification of Central Government fixing 6% as the rate of interest same has to be followed as having the power of statute**."

(Emphasis Supplied)

54. While deliberating on the matter, it would be worthwhile to add that there have been umpteen instances, where hon'ble courts have either set aside the orders of interest passed by various quasi-judicial bodies, as also the Tribunal, or have lowered the rate of interest awarded by the statutory authorities and held the same, wherever payable in terms of Section 11BB of the Act[1] at 6%. The following cases are indicatively referenced here for records :

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29 2020 (372) ELT 385 (T)

- **Commissioner of Customs (Exports) ICD, Tughlakabad, New Delhi v. S.S. Automotive Pvt.Ltd.**[30] – Interest lowered from 12% to 6% by Delhi High Court.
- **Commissioner of Customs v. D.D. International**[31] – Interest lowered from 12% to 6% by hon'ble Delhi High Court.
- **Commissioner of Customs (Port), Kolkata v. Vedanta Ltd**.[32] – The hon'ble Calcutta High Court reduced the rate of interest from 12% to 0%.

The hon'ble High Court allowed the revenue's appeal, setting aside the tribunal's order. The court held that the refund crystallized only upon the reassessment order dated 05.09.2023, so interest could not be awarded from any earlier date; awarding interest from 11.01.2011 was unsustainable and that the Tribunal was clearly in error in doing so. It also mentioned that the refund proceedings cannot be used to reassess self-assessment orders. Consequently the respondent was not entitled to interest for any alleged earlier delay. On the question of nature of payment (deposit vs. voluntarily paid as duty) the Court referred to the authority, distinguishing errors of department versus errors of assessee and to the decisions holding that voluntary payment following self-assessment is an assessment and not a deposit.

Adopting the said logic the interest clock in this case would start clicking not from the date of deposit but three months after filing of the refund claim.

30 Cus AA 153/2022, CM Nos.45855-56/2022, Order dt.30.11.2022
31 Cus. AA – 69/2023 & CM Appl 48489/2023, Order dtd.05.12.2023
32 2025 (9) TMI – 771 Calcutta High Court

55. As for the submissions and citations made by the appellants citing certain cases sanctioning payment of interest @ 12%, it is seen that in all these cases, the duty was deposited "under protest" and obviously therefore in the first place it cannot be construed as voluntary payment. There indeed is an entire world of difference between amounts paid voluntarily towards duty and that paid grudgingly registering a protest towards payment of duty. The two cannot be equated and indeed are two extremes of discharging the tax liability. In the present appeals, tax was paid on self-assessment basis willingly of one's own free accord. When there is no such payment under protest and the tax was deposited by the appellant themselves without any compunction, I am of the view that the case laws relied upon by the appellants, would not come to their rescue. However, for sake of records the case laws relied upon by the appellants are being deliberated upon in later paras.

56. As for the refund, the appellant has sought to extricate themselves out of the purview of Section 11B of the Act. That being so, applicability of Section 11BB of the Act, for grant of interest is also bound to fail and cannot be sustained, as Section 11BB, refers in the context, such refund claims of duty, as are ordered to be refunded under Section 11B. No question of payment of interest, by a Tribunal (not being a court of equity), could thus arise in view of the clear and unambiguos language of the statute in Section 11BB of the Act. A similar rationale was followed in the case **of M/s. Kunj Lub Marketing Pvt. Ltd. Vs. Commissioner, Central Excise, Sitapur Division**[33], wherein the Tribunal relied upon

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33 2024 (10) TMI 326 - CESTAT ALLAHABAD

two decisions of the Hon'ble Delhi High Court in the case of **M/s. Goldy Engineering Works v. Commissioner of Central Excise**[34] and **M/s. Sharp Moulds And Dies v. Commissioner Of Central Excise & Anr.**[35].

57. A Division Bench of the Hon’ble Delhi High Court in the case of **Goldy Engg. Works**[34], which order of the hon’ble High Court, was also affirmed by the division bench of the hon’ble apex court **[2025 (29) Centax 286 (SC)]** as recently as in April 2025, had categorically held that for interest on delayed refund, Section 11BB of the Act laid out a starting point to be a date when the said application for refund is received by the authorities and the same held payable, if refund is effected three months after the date of receipt of the said application. The hon’ble apex court while upholding the aforesaid order of the hon’ble Delhi High Court noted once again that in the Mafatlal Ltd.[2] case it was categorically held that notwithstanding anything to the contrary contained in any judgement, decree, order or direction of the appellate tribunal or any court or any other provision of Central Excise Act or the Rules made thereunder or in any law for the time being in force, no refund shall be made except for as provided in Section 11B. The hon’ble Apex court thus went on to add and repeat that so long as Section 11B is Constitutionally valid, it had to be followed and given effect to. It had extensively examined the catena of decisions on the subject of interest and distilled its findings as under :

34 2023 (10) Centax 189 (Del.)
35 2023(7) TMI 715 - DELHI HIGH COURT

> *"The subject of interest in 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 Section 11B and 11BB of the 1944 Act, therefore the irresistible conclusion arrived at that interest on delayed refund is clearly dependent upon making of a formal application as stipulated by Section 11B of the 1944 Act.*
>
> *[Emphasis supplied]*

58. Moreover, in respect of the part payments, as held back by the authority below and the appellant's argument that Section 11B of the Act was not applicable, it would be relevant for purpose of clarification and ease of appreciation, to extract Para 29 of the said order of the hon'ble Delhi High Court in the Goldy Engineering Works[34] case. The same reads as under :

> *"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."*
>
> [Emphasis supplied]

Obviously the reference to the application would imply the same to be complete in all respects, with all its accompaniment (*"documentary or other evidence")* as required to be enclosed in terms of the purport of the plain words used in Section 11B of the Act.

59. It would be in sync with the discussions supra, that it is a well-settled proposition of law that a fiscal legislation has to be construed strictly. In fact in this context in the case of **Cape Brandy Syndicate v. IRC**[36], as well as **CIT v. Ajmera Housing Corpn. & Anr.**[37], it has been held that for fiscal statutes intendment is irrelevant and one is to look merely at the express words contained in the relevant provison, *"there is nothing to be read in, nothing to be implied and there is no room for any intendment".*

60. The issue of interpretation to be accorded to Sections 11B and 11BB of the Act, have arisen on multiple occasions, even before the hon'ble Apex court. Not too long ago, the hon'ble Supreme Court was occasioned to examine this aspect once again, in the case of **Union of India & Ors. v. Hamdard (Waqf) Laboratories**[38], and it is the following, that it had to say :

> ***17.*** *The seminal issue is whether there has been delay in grant of refund and consequently, whether the respondent-assessee is entitled to interest. Keeping in view the enumerated facts, the submissions canvassed and the provisions referred to, it is necessary to appreciate the principle stated in Ranbaxy Laboratories Limited (supra). In the said case, the question arose whether 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 or on the expiry of the said period from the date on which the order of refund is made. The two-Judge Bench after analyzing the provision has held as follows :-*
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> *"12. 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*

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36 1921 (1) KB-64
37 2010 (8) SCC 739
38 (2016) 6 SCC 621

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.

13. ***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.*

(Emphasis supplied)

18. *While dealing with the said facet, the Court also referred to Circular, dated 1-10-2002 issued by the Central Board of Excise and Customs, New Delhi 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 the application. Appreciating the import of the said circular, the Court opined as follows :-*

"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."

The ultimate conclusion was recorded thus :-

"19. 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."

[Emphasis supplied]

19. *We will be failing in our duty if we do not refer to the Larger Bench decision rendered in* ***Mafatlal Industries Ltd. & Ors. v. Union of India & Ors. - (1997) 5 SCC 536 = 1997 (89) E.L.T. 247 (S.C.)*** *which has been emphatically relied upon by Mr. Adhyaru, learned senior counsel for the Revenue. He has drawn our attention to paragraphs 83 and 91. Relying on the said paragraphs, it is contended by Mr. Adhyaru that the onus is on the assessee to satisfy the competent authority that he has not passed on the burden of duty to others, for the claim of refund is founded on the said bedrock. The Bench dealing with this facet has expressed thus :-*

"... Where the petitioner-plaintiff alleges and establishes that he has not passed on the burden of the duty to others, his claim for refund may not be refused. In other words, if he is not able to allege and establish that he has not passed on the burden to others, his claim for refund will be rejected whether such a claim is made in a suit or a writ petition. It is a case of balancing public interest vis-a-vis private interest. Where the petitioner-plaintiff has not himself suffered any loss or prejudice (having passed on the burden of the duty to others), there is no justice or equity in refunding the tax (collected) without the authority of law) to him merely because he paid it to the State. It would be a windfall to him. As against it, by refusing refund, the monies would continue to be with the State and available for public purposes. The money really belongs to a

third party - neither to the petitioner/plaintiff nor to the State - and to such third party it must go. But where it cannot be so done, it is better that it is retained by the State. By any standard of reasonableness, it is difficult to prefer the petitioner-plaintiff over the State. …"

20. *In paragraph 91, this court was dealing with the constitutional validity of Section 11B. It was contended that there is no reason why the person who becomes entitled to refund of duty, as a result of appeal or courts order, should also be made to apply and satisfy all the requirements of sub-sections (1) and (2) of Section 11B, when he is entitled to such refund as a matter of right. The said contention was not accepted by the Court and while not accepting the larger Bench stated that :-*

"... Such a holding would run against the very grain of the entire philosophy underlying the 1991 Amendment. The idea underlying the said provisions is that no refund shall be ordered unless the claimant establishes that he has not passed on the burden to others. Sub-section (3) of the amended Section 11B is emphatic. It leaves no room for making any exception in the case of refund claims arising as a result of the decision in appeal/reference/writ petition. There is no reason why an exception should be made in favour of such claims which would nullify the provision to a substantial degree. So far as "lack of incentive" argument is concerned, it has no doubt given us a pause; it is certainly a substantial plea, but there are adequate answers to it. Firstly, the rule means that only the person who has actually suffered loss or prejudice would fight the levy and apply for refund in case of success. Secondly, in a competitive market economy, as the one we have embarked upon since 1991-92, the manufacturer's self interest lies in producing more and selling it at competitive prices - the urge to grow. A favourable decision does not merely mean refund; it has a beneficial effect for the subsequent period as well. It is incorrect to suggest that the disputes regarding classification, valuation and claims for exemptions are fought only for refund; it is for more substantial reasons, though the prospect of refund is certainly an added attraction. It may, therefore, be not entirely right to say that the prospect of not getting the refund would dissuade the manufacturers from agitating the questions of exigibility, classification, approval of price lists or the benefit of exemption

notifications. The disincentive, if any, would not be significant. In this context, it would be relevant to point out that the position was no different under Rule 11, or for that matter Section 11B, prior to its amendment in 1991. Sub-rules (3) and (4) of Rule 11 (as it obtained between 6-8-1977 and 17-11-1980) read together indicate that even a claim for refund arising as a result of an appellate or other order of a superior court/authority was within the purview of the said rule though treated differently. The same position continued under Section 11B, prior to its amendment in 1991. Sub-sections (3) and (4) of this section are in the same terms as sub-rules (3) and (4) of Rule 11; if anything, sub-section (5) was more specific and emphatic. It made the provisions of Section 11B exhaustive on the question of refund and excluded the jurisdiction of the civil court in respect of all refund claims. Sub-rule (3) of Rule 11 or sub-section (3) of Section 11B (prior to 1991) did not say that refund claims arising out of or as a result of the orders of a superior authority or court are outside the purview of Rule 11/Section 11B. They only dispensed with the requirement of an application by the person concerned which consequentially meant non-application of the rule of limitation; otherwise, in all other respects, even such refund claims had to be dealt with under Rule 11/Section 11B alone. That is the plain meaning of sub-rule (3) of Rule 11 and sub-sections (3) and (4) of Section 11B (prior to 1991 Amendment). <u>There is no departure from that position under the amended Section 11B. All claims for refund, arising in whatever situations (except where the provision under which the duty is levied is declared as unconstitutional), has necessarily to be filed, considered and disposed of only under and in accordance with the relevant provisions relating to refund, as they obtained from time to time. We see no unreasonableness in saying so</u>."

21. As far the said principles are concerned, they are binding on us. But the facts in the case at hand are quite different. It is not a case where the assessee is claiming automatic refund. It is a case that pertains to grant of interest where the refund has been granted. The grievance pertains to delineation by the competent authority in a procrastinated manner. In our considered opinion, the principle laid down in Ranbaxy Laboratories Limited (supra) would apply on all fours to the case at hand. It is obligatory on the part of the Revenue to intimate the assessee to remove the

> ***deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in Ranbaxy Laboratories Limited (supra) commends us and we respectfully concur with the same.***
>
> *[Emphasis supplied]*

61. Moreover, the need for a formal application for refund under Section 11B, from the person concerned, cannot be underestimated or undermined. It's very vital for a formal claim of refund to be processed, as a person claiming the refund has to necessarily declare that the incidence of duty or interest thereon, has not been passed on to any other person. Unless it is so declared, the authorities of their own have no mechanism built in law, to ascertain the same.

62. The importance of timely filing of application for refund under Section 11B can be judged from the ruling of the hon'ble Punjab & Haryana High Court in the case of **Sarita Honda Exports (P) Ltd. v. Union of India**[39] wherein the claim for duty paid on exported goods, which was not payable and for which a refund claim was filed beyond the statutorily prescribed period was disallowed by the hon'ble High Court, despite the plea that the denial of refund would be violative of Article 265 of the Constitution of India. The hon'ble High Court held that the said plea was unacceptable in view of the hon'ble apex court's ruling in the case of **Mafatlal Industries Ltd.**[2] holding that refund application

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39 2015 (321) ELT 434 (P & H)

beyond period specified under Section 11B of the Act, could not be entertained, unless refund was a consequence of declaration of a provision as "unconstitutional". Suffice, to leave this aspect at this juncture as the Revenue is not in appeal before me.

63. Unimpressive as it may appear, however it is worth mentioning that the aspect of geographical universality of the interpretation of Sections 11B and 11BB of the Act[1], as rendered by the hon'ble Apex court, can also be gauged by the fact that, apart from the judgements of the Delhi and other High Courts in the north, even the Madras High Court in the South, in the case of **HerrenKnecht India Pvt.Ltd. v. Asstt. Commissioner of GST & CX, Paneri Division**[40] had held to the effect that interest under Section 11BB of the Act would accrue only from the date of expiry of three months from the date of receipt of the refund application and not on expiry of three months from the date of communication of the order of the Appellate Authority/Court. In short to state that interest liability accrues only if the amount ascertained as refundable is not refunded within a period of three months from the date of receipt of application rendered under Section 11B(1) of the Act[1] and is required to be so paid then and at such rates as prescribed by the government. It is thus clear that no artificial timelines like date of deposit/payment, seeking interest accrual therefrom can actually be ploughed into law and any such misadventure is not only treading into preposterous territories but is also extra legal and therefore liable to be quashed.

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40 2023 (12) TMI 251 Madras High Court

64. In the case of **Modi Industries Ltd., & Another Vs. Commissioner of Income Tax & Anr**[41], after aggressively discussing the relevant provisions of the Income Tax (IT) Act, the 3-judge bench of the Hon'ble apex court in the context of a regular assessment having been made under Section 143 of the IT Act, leading to excess payment of tax that was required to be refunded to the assessee and in the event of an appeal having been filed against the said order leading to an increase in the refundable amount, vis-à-vis the question of interest payment under Section 214 of the IT Act, as to on what amount and from which date the interest was accruable, the Hon'ble Court held as under:

> *"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. ………………. 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."***

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41 1995 (6) SCC 396

(Emphasis supplied)

Though the above decision was rendered by the hon'ble Apex court in terms of the provisions of the IT Act, in view of the binding principle laid down by the apex court, the ratio thereof is very much applicable to related matters under the indirect tax laws as well.

65. The question for payment of interest has further been examined by the apex court in the case of **Godavari Sugar Mills Ltd. v. State of Maharashtra[42].** As the stance of the hon'ble apex court has been on the lines of its cases discussed earlier, for records the case of **Godavari Sugar Mills Ltd.[42]** is not being elaborated in extensive details, except to state that the Bench in the said case was seized with the question of award of compensatory interest @ 9% p.a. or 6% p.a., when Section 6 of Maharashtra Agricultural Land (Ceiling of Holdings) Act, 1961 prescribed payment of interest only @ 3% p.a. Elaborately discussing the various provisions of the said Act, the hon'ble Apex court noted that rate of interest if payment is not made even after 20 years, whether it could be at 3% p.a.; pointing out that Section 26 of the said Act (Maharashtra Agricultural Land (Ceiling of Holdings) Act, 1961) being silent about rate of interest payable, when refunds were paid within 20 years, the hon'ble court held the view that for the period beyond 20 years, the said provisions regarding interest will cease to apply and the general equitable principles relating to interest will hold forth. It therefore felt that in the facts and circumstances, for payment of interest to a case beyond 20 years, interest @ 6% would be appropriate and

42 2013 (6) TMI – 23 (SC)

payable on equitable principles. Herein too the interest awarded was compensatory in exercise of Constitutional powers vested in the hon'ble court.

66. The orders of the hon'ble Delhi High Court as well as that of the hon'ble Supreme Court referred earlier, have obligated that it was imperative to conduct a conjoint reading of Sections 11B and 11BB of the Act, which indicated that interest on delayed refund was dependent upon the date of refund application stipulated under Section 11B of the Act. The **Goldy Engineering Works**[34] case discussed in pre paras not only distinguished the **Ebiz Com Pvt.Ltd.'s**[43] case of the Allahabad High Court, widely referenced by adjudicators while allowing interest, and stated in so many words that the decision of the Gujarat High Court in the case of **Sri Jagdamba Polymers v. UOI**[44] cannot be considered *"as an authority for the proposition that a refund must automatically follow de hors the requirements of Section 11B and 11BB."* It is apparently for this reason that the apex court had held that its judgement in the Sandvik Asia[16] case was mis-applied and misconstrued.

67. In support of their proposition, the appellant has relied upon the decision of the Hon'ble Karnataka High Court, decided by a majority decision in the case of **Commissioner of Central Excise** versus **KVR Construction**[9]. However, in view of the aforesaid discussions, the said decision would not have any applicability to the present matter, as it digressed from the majority opinion (8 : 1) of the apex court, in the

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43 2017 (49) STR 389 (All)
44 2013 (289) ELT 429 (Guj.)

Mafatlal Industries Ltd.[2] case. Moreover, in the present matters, no levy for which the tax was paid, has indeed been declared as unconstitutional. It be also noted that the Revenue's appeal in the **KVR Construction**[9] case was dismissed in limine thus without laying down any binding precedent under Article 141 of the Constitution. Further, a decision rendered in case of philanthropic or charitable activity, is far acquiesced from the present factual matrix and cannot be equated with the present matter, thereby rendering it inapplicable to the context herein.

68. Moreover, so far as the appellant's reliance in the case of **Commissioner of Central Excise (Appeals), Bangalore v. KVR Construction**[9], is concerned it may be pointed out that the said case was delivered <u>in the context of applicability of limitation</u> under Section 11B for refund of Service Tax paid by mistake on an exempted service. Even though the appellant had filed the said refund claims in Form R, (thereby treating such payments as duty), the hon'ble Karnataka High Court granted relief to the appellant, in exercise of powers vested in it under Article 226 of the Constitution. It is necessary to point out that the question of limitation as settled by the High Court, does not arise for consideration in the present matters. Moreover, as the revenue has neither filed any appeal, nor any Cross-Objections against the orders of the ld.Commissioner (Appeals) the question of limitation is thus foreclosed in the present matters. Further, it is a given fact that this Tribunal is not vested with the powers of exercising a writ remedy.

69. It may also be added that this decision in the **KVR Construction**[9] case was considered by the hon'ble Bombay High Court in the case of **Andrew Telecom (I) Pvt.Ltd. v. Commissioner of Customs & Central excise, Goa**[45] and distinguished appropriately. The relevant paras of the Andrew Telecom case are reproduced below:

> ***"17.*** *What remains then is the judgment of a Division Bench of the Karnataka High Court in the case of Commissioner of Central Excise (Appeals), Bangalore v. KVR Construction reported in 2012 (26) S.T.R. 195 (Kar.). There, the Division Bench was considering a Writ Appeal. That Writ Appeal was directed against the order of the learned Single Judge in Writ Petition. The Revenue was in Writ Appeal because it was aggrieved by the order of the learned Single Judge. The facts in the said case were that the Service Tax came to be paid in accordance with the Finance Act, 1994 for the services rendered for the Trust by constructing some buildings in May, 2005 to February, 2006 and May, 2006 to February, 2007. Two refund applications filed in the month of March, 2008 and to be precise on 19-3-2008 and which were received by the Department on 28-3-2008 were rejected not on the ground that has been pressed into service by the Revenue before us, but on the ground that the amount paid by the Assessee was not a Service Tax, but it was in the nature of deposit with the Revenue. The amounts collected erroneously need not be refunded to the concerned persons. The Applications for refund were rejected on the ground that they were filed beyond the period of limitation prescribed under Section 11B of the Central Excise Act, 1944. This rejection of claims inter alia on the ground of limitation was questioned by filing an Appeal before the Commissioner (Appeals) and he upheld the original order. The Writ Petition was directed against both the orders and the learned Single Judge set aside the order of the Commissioner (Appeals) and directed refund of Service Tax paid. The learned Single Judge held that Section 11B was not applicable since the amount paid by the Petitioner in that case was not duty. It was held to be a deposit with the Department and not a duty paid. The learned Single Judge held that there was no necessity to*

45 **2014 (4) TMI 507 – BOMBAY HIGH COURT**

invoke Section 11B of the Central Excise Act, 1944. After recording such findings, the learned Single Judge reached a conclusion that the disinclination to entertain the claim for refund is improper and illegal, therefore, proceeded to quash the orders in that behalf. It is in this context that the Division Bench of the Karnataka High Court speaking through Her Ladyship Hon'ble Mrs. Justice Manjula Chellur as Her Ladyship then was, held thus :

"15. We are not concerned with the other conditions of Section 11B of the Act because it is not the case of the appellant Department that the burden of Service Tax was passed on to any other person. As a matter of fact, the controversy in this appeal revolves around the maintainability of the very application filed under Section 11B of the Central Excise Act and whether Sec. 11 applies to the facts of the present case at all. In the case of Mafatlal Industries Ltd. v. Union of India (supra), the question was with regard to the refund of Central Excise and Customs Duties. It was held that all claims except where levy is held to be unconstitutional, is to be preferred and adjudicated upon under Section 11B of the Central Excise Act, 1944 or under Section 27 of the Customs Act, 1962 and subject to claimant establishing that burden of duty has not been passed on to a third party. In such circumstances, it was held, no civil suit for refund of duty is maintainable. It also observes that writ jurisdiction of High Courts under Article 226 and of Supreme Court under Article 32 remains unaffected by the provisions of Section 11B of the Act. It was further held that concerned Court while exercising the jurisdiction under the said articles, will have due regard to the legislative intent manifested by the provisions of the Act and the writ petition would naturally be considered and disposed of in the light of the provisions of Section 11B of the Act. It has been held therein that power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it, as the power under Article 226 is conceived to serve the ends of law and not to transgress them. At paragraph 113 of the said judgment, they classify the various refund claims into three groups or categories :

(a) The levy is unconstitutional outside the provisions of the (I) Act or not contemplated by the Act.

(b) The levy is based on misconstruction or wrong or erroneous (II) Interpretation of the relevant provisions of the Act, Rules or Notifications : or by failure to follow the vital or fundamental provisions of the Act or by acting in violation of the fundamental principles of judicial procedure.

(c) Mistake of law the levy or imposition was (III) unconstitutional or illegal or not exigible in law (without jurisdiction) and, so found in a proceeding initiated not by the particular assessee, but in a proceeding initiated by some other assessee either by the High Court or the Supreme Court, and as soon as the assessee came to know of the judgment (within the period of limitation), he initiated action for refund of the tax paid by him, due to mistake of law.

After referring several judgments and provisions of Sections 11A & 11B of Central Excise Act, at paragraph 137 of the said judgment, their Lordships have concluded as under :

"137. Applying the law laid down in the decisions aforesaid, it is not possible to conclude that any and every claim for refund of illegal/unauthorized levy of tax can be made only in accordance with the provisions of the Act (Rule 11, Section 11B, etc. as the case may be), and an action by way of suit or writ petition under Article 226 will not be maintainable under any circumstances. An action by way of suit or a petition under Article 226 of the Constitution is maintainable to assail the levy or order which is illegal, void or unauthorized or without jurisdiction and/or claim refund, in cases covered by propositions No. (1), (3), (4) and (5) in Dulalbhai's case, as explained hereinabove, as one passed outside the Act and ultra vires. Such action will be governed by the general law and the procedure and period of limitation provided by the specific statute will have no application Collector of Central Excise, Chandigarh v. M/s. Doaba Cooperative Sugar Mills Ltd., Jalandhar - 1988 (37) E.L.T. 487 (SC) = 1988 Supp. SCC 683; Escorts Ltd. v. Union of India [1994 Supp (3) SCC 86] Rule 11 before and after amendment or Section 11B cannot affect Section 72 of the Contract Act or the provisions of Limitation Act in such situations. My answer to the claims for refund broadly falling under the three groups of categories enumerated in paragraph 6 of this judgment is as follows :

Where the levy is unconstitutional outside the category (I) provisions of the Act or not contemplated by the Act

In such cases, the jurisdiction of the civil courts is not barred. The aggrieved party can invoke Section 72 of the Contract Act, file a suit or a petition under Article 226 of the Constitution and pray for appropriate relief inclusive of refund within the period of limitation provided by the appropriate law. Dulabhai's case (supra) para 32 clauses (3) and (4)."

20. In the case of Hind Agro Industries Ltd. v. Commissioner of Customs reported in 2008 (221) E.L.T. 336 (Del.), it was the case where cess amount was paid under protest by the appellants. In that case after referring to Mafatlal Industries case (supra), the lordships of Delhi High Court have held that in Mafatlal Industries Ltd.'s case (supra), Hon'ble Supreme Court was dealing with the case of refund of duty payable within the meaning of either the Central Excises and Salt Act, 1944 or the Customs Act, 1962 as the case may be, wherein they have held that all claims for refund ought to be filed only in accordance with the Customs Act. Therefore, it did not include the payment made under some other enactment, which for some reason had erroneously been made to the Customs authorities. Even otherwise by referring to paragraph 137 of Mafatlal Industries case, one has to see whether the amount claimed is unconstitutional and outside the provisions of Section 11B of the Act.

21. In the case of Nataraj and Venkat Associates (supra), this was pertaining to Service Tax wherein petitioner company was dealing in architectural services and paid Service Tax for the construction of the building carried on at Sri Lanka and contended it would not have attracted levy of Service Tax. In other words, there was an application for refund of said tax and the question that arose therein was what is the relevant date for the commencement of the period of limitation for the purpose of Section 11B and was held that it would be the date of payment of duty. It was held in the said case that amounts paid cannot be taken to be duty of excise, therefore bar of limitation under Section 11B cannot be applied because such limitation would come in the way of any person claiming refund of any duty of excise and interest.

22. In the case of Commissioner of Central Excise, Bangalore v. Motorola India (P.) Ltd. (supra) the Division Bench of this Court considered similar issue. It was a case where excess amount was paid over duty under Central Excise Act on the direction of the Department. There was an application for refund of amount and the same came to be rejected by the Assistant Commissioner on the ground of lapse of time. It was confirmed by both the Appellate Authority and also the Tribunal. Aggrieved by the order of the Tribunal, Revenue came up before the High Court. Their lordships of the Division Bench held that order of the Tribunal to allow the claim on the basis that amount paid by mistake cannot be termed as duty in the said case was justified and therefore applying the law laid down in the decision of Apex Court in the case of India Cements Ltd. v Collector of Central Excise - 1989 (41) E.L.T. 358, dismissed the appeal.

23. Now we are faced with a similar situation where the claim of the respondent/assessee is on the ground that they have paid the amount by mistake and therefore they are entitled for the refund of the said amount. If we consider this payment as Service Tax and duty payable, automatically, Section 11B would be applicable. When once there was no compulsion or duty cast to pay this Service Tax, the amount of Rs. 1,23,96,948/- paid by petitioner under mistaken notion, would not be a duty or "Service Tax" payable in law. Therefore, once it is not payable in law there was no authority for the department to retain such amount. By any stretch of imagination, it will not amount to duty of excise to attract Section 11B. Therefore, it is outside the purview of Section 11B of the Act."

18. These are paragraphs on which Mr. Desai placed heavy reliance. Far from assisting the Assessee before us, they militate against the submissions of Mr. Desai. The last paragraph or some sentences therein cannot be read in isolation. We must, therefore, see all these observations in the context of the facts emerging from the record before the Division Bench. The facts and circumstances peculiar to the case before the Division Bench cannot be ignored, but have to be taken into consideration. The observations, therefore, must be seen in that context and not de hors the same*. We are, therefore, of the view that the Division Bench* *in upholding the learned Single Judge's observations relied upon the principle that when the amount is deposited with the Department and it does not constitute any demand or payment in accordance with law, then, same deserves to be refunded and while granting and awarding such claim a technical plea of limitation cannot be raised. If the matter was outside the purview of Section 11B, then, the rule of limitation prescribed therein could not have been applied. This judgment is, therefore, clearly distinguishable on facts. Equally, the judgment noted by the Division Bench of Karnataka High Court in paragraph 21 must be seen in the context. If the amount paid cannot be taken to be duty of excise, then, the bar of limitation cannot be applied. Even otherwise and with greatest respect, the observations and findings rendered earlier cannot be reconciled with the last few lines of this judgment.* ***Even a writ petition under Article 226 of the Constitution of India cannot be decided by overriding a law or legal regime. There is no warrant or justification for holding that a stale or belated claim can be granted in a Constitutional remedy by ignoring a statutory prescription****.*

19. Before us, the undisputed position is that the amount was paid by the Appellant as Service Tax. That tax was not imposable or leviable on export of services was a clarification made by the Department and relying on that clarification, the refund of duty or Service Tax was claimed. This was squarely a case falling within the provisions of the Central Excise Act, 1944 and therefore, the rule of limitation under Section 11B was applied. That was applied when the application for refund was made invoking Section 11B of the Central Excise Act, 1944. We have no manner of doubt that when this was the provision invoked, same applies with full force including the rule of limitation prescribed therein. For these reasons, we are of the opinion that the decisions relied upon cannot be of any assistance.

20. *As a result of the above discussion and finding that the Appeal does not raise any substantial question of law, we proceed to dismiss it. It is, accordingly, dismissed. No costs."*

[Emphasis supplied]

70. In continuing with the case of **Andrew Telecom (I) Pvt.Ltd.**[45], it be stated that the hon'ble Bombay High Court dismissed the appellants plea where one of the questions raised by the appellant was *"………………….. if a duty is recovered or paid contrary to the provisions of the Central Excise Act, 1944 or that a service tax was not liable to be recovered and paid in accordance with the provisions of the Central Excise Act, 1944, would ordinarily mean that the recovery is illegal."* It was argued that the Tribunal's order in the case made *"an artificial distinction between the constitutionality of the levy and illegality thereof"* and that in case of illegal recovery, revenue was disentitled to retain the benefits and therefore limitation bar under section 11B(1) would not be applicable. Adverting to the decision in the case of **Mafatlal Industries Ltd.**[2] case the hon'ble Bombay High Court held that it did not authorize the courts to abrogate statutory limitations or the statutory regime governing refund claims, i.e. to say that the statutory provision contained in Section 11B would hold fort even though it may be a case of tax recovery that was not payable (i.e. the so called tax payment, as a mistake of law). When a claim for return is brought under Section 11B and as it ought to be, being the singular provision applicable to the facts of the present appeal, it would be required to meet the requirements, both of limitation timelines and evidentiary aspects, as specified in law, as the same would become applicable automatically upon filing of the claim for refund. In the case, the appellant had made a contention, that they "were under bonafide mistake that the subject service activity would not be amounting to export of services as the circular of CBEC

came to be issued." This fact of stating the lapse and trying to cover it as a "mistake of law", is quite akin to a similar plea of "mistake in law" taken by the appellants in the present appeals. Thus going by the High Court's decision in the said case, I am of the view that the appellants arguments lack legal substance. As noted in pre paras, the hon'ble High Court in para 17 of its order had also distinguished the judgement of the Division Bench of the Karnataka High Court in the **KVR Construction**[9] case (also relied upon by the appellants), where the Revenue was in Writ Appeal. However, in the present matters it is amply clear that the amount paid by the appellants was voluntarily paid, of their own free-will as a consequence of self-assessment undertaken by the appellants in normal course; there being no investigations initiated, nor were the appellants tasked by Revenue to pay to the government the said sums for which the impugned refund claims were filed, even well beyond the limitation period prescribed not only under the Central Excise Act, but also the Limitation Act, was well over. In the absence of any direction to the appellants, by the Revenue to make the impugned payments for which the said refund claims, the amounts so paid cannot be construed as a deposit. Indeed, I have not come across a single case as decided by Constitutional Courts, where amounts paid voluntarily and not at the behest of the Revenue, have been held to be "a deposit", which categorization has been broadly earmarked for amounts paid under protest (hence being involuntary) or at the insistence of the tax authorities or during the course of investigation by way of an assumed short levy or it be in the nature of a "pre-deposit", in terms of section 35F of the Act[1]. To follow the ratio of the Karnataka High Court in the case of **KVR Construction**[9] case, therefore does not fit into the jig-saw puzzle of the present appeals. Moreover, for the said judgement of the hon'ble Karnataka High Court, which has been relied upon by the appellants and has been the fountainhead of the decision arrived at by the Tribunal in cases cited by the appellant including that of **Meenu Builders v. Commissioner of Central Excise, Central GST, Jaipur**[46] the hon'ble Bombay High Court in Para 18 of its order in the Andrew Telecom case has noted as under (also extracted earlier in prepara):

> *"Even otherwise and with greatest respect, the observations and findings rendered earlier cannot be reconciled with the last few lines of this judgement. Even a writ petition under Article 226 of the Constitution of India cannot be decided by over-riding a law or a legal regime."*

The same is reiterated only to emphasize the pathbreaking tenet of the aforesaid observation of the hon'ble High Court.

71. In the case of **Transmission Corporation of Telengana Ltd. v. Commissioner of Central Tax, Hyderabad-GST**[47], where the Service Tax was allegedly paid twice, the order records that when the appellant felt that they fell within the ambit of the legal provisions and were laible to tax on RCM basis and hence did pay the same, it could not be considered as a case of mistake of law, but was a case of mistake of fact. It also could not be considered as an interpretational issue. The Tribunal held it to be a case of double payment of tax. It was further held therein that refund of any nature has to be within the four walls of

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46 2025 (31) Centax 356 (T-Del.)
47 2024 (10) TMI – 222 – CESTAT-Hyderabad

the statutory provisions governing a refund claim, be it for whatever reasons including a mistake of law or a mistake of fact.

72. In the case of **HGI Automotives Pvt.Ltd. v. Commissioner of Central Excise, GST, Faridabad**[48] the Tribunal having regard to the judgement of a Division Bench of the Tribunal in the case of **Crystal Crop Protection Ltd. v. Commissioner, CGST, Jammu**[49], dismissed the claim of the appellant-assessee claiming interest from the date of deposit, till the date of refund. The Division Bench of the Tribunal had ordered so in consideration of the judgement of the hon'ble Delhi High Cout in the case of **Goldy Engineering Works**[34] discussed in earlier paras, wherein the High Court had emphatically held that the appellant-assessee was not entitled to interest from the date of deposit but would be eligible thereto only as per the prescriptions prescribed under Section 11BB or Section 35FF.

73. The hon'ble Punjab & Haryana High Court vide its judgement in the case of **Shreewood Products Pvt.Ltd. v. Commissioner of Central Excise**[50], with reference to interest had clarified that the department is liable to make payment of interest after the expiry of three months from the date the refund becomes due.

74. Thus, across the vast spectrum of jurisprudence on the subject the various High Courts/as well as the apex Court have repeatedly ordered for payment of interest from the date after three months of the date of an order in favour of the assesses/appellants or as per Section 11BB of

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48 (2025) 6 TMI 439 – CESTAT-Chandigarh
49 2025 (5) TMI-1993-CESTAT-Chandigarh
50 2016 (10) TMI 273-P & H

the Act, and not from the date of deposit made by the assesses/appellants, which exception is only made, not as a norm, but by way of requital. Following cases toe the aforesaid analogy and are quoted for records :

(i) Bata India Ltd. v. Commissioner of Central Excise, Delhi-IV[51]

(ii) e-Biz.com Pvt.Ltd. v. Commissioner of Central Excise, Customs, Service Tax[43]

(iii) Estee Auto Pressings Pvt.Ltd. v. Commissioner of Central Excise[52]

(v) Afsons Infrastructure Ltd. v. UOI[53]

vi) CCE, Hyderabad v. ITC Ltd.[54]

(vii) Union of India v. Tata SSL Ltd.[55]

All the aforesaid cases, though rendered in context of pre-deposit followed the Apex Court's-3 Member Bench judgement in the case of **Commissioner of Central Excise, Hyderabad v. ITC**[54] that affirmed the CBEC's Circular No.802/35/2004/CX dt.08.12.2004, mandating refund of pre-deposit amount within 3 months from the date of the order in favour of the assessee. In these cases the rate of interest was considered as per the draft Circular submitted. The underlying principle therefore being the supremacy of law and that the prescriptions of Section 11BB of the Act that are inviolable.

75. The Tribunal being a court of law and not a court of equity, is therefore, rather resolutely bound by the provisions of the Statute –

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51 2023 (8) Centax 65 (P&H)
52 2017 (346) ELT 72 (Mad.)
53 2006 (193) ELT 278 (AP)
54 2005 (179) ELT 15 (SC)
55 2007 (218) ELT 493 (SC)

stricto senso. The ld.brother hon'ble Member(Judicial) Sri Ashok Jindal speaking for the Division Bench of this Tribunal in the case of **Bombay Dyeing & Manufacturing Company Ltd. v. Commissioner of Central Excise, Raigad**[56] categorically noted in its order that the Tribunal is *"set up to do justice with the litigants within the framework of law*". Thus when interest @12% is not prescribed in law (Section 11BB of the Act[1]), there can be no contest that the same can not be granted to the appellants. The Tribunal itself being a product of the statute cannot rewrite the statute and enlarge the laid down conditions for claim of refund, nor can it direct interest payments at enhanced or diminished rates, then what is prescribed statutorily. Moreover, the hon'ble Guwahati High Court in the case of **Assam Cigarette Company Pvt.Ltd. v. Union of India**[57] had held that in matters concerning application of statutory provisions and of a direct impact even a court of equity is as much bound by the statutory provisions as a Court of Law.

76. In this realm of discussions, it would be worthwhile to point out, that in the context of a key question of limitation in law, the hon'ble Calcutta High Court in the case of **Dayapara Tea Co. Ltd. v. Asstt. Collector of Central Excise & Ors.**[58], with reference to the Tribunal, had held that it being a "Creature of the Statute", would have no option but to reject the claim as time barred," however genuine the claim may be, and it was only the Writ Courts, who as a Court of Equity could come to the aid and rescue of the party. It thus follows that any decision rendered by the Equity Courts (read Constitutional Courts) on

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56 2011 (268) ELT 401 T-Mumbai
57 2015 (328) ELT 85 (Gau)
58 1988 (35) ELT 298 (Cal.)

considerations of equity/parity/fairness could not form the basis of the Tribunal, passing orders on equitable and even handed considerations. Any such orders would be *extra jurisdictionem* and will therefore be without a precedent value.

77. The Tribunal thus cannot assume a wider jurisdiction and weild powers in excess of that, vested with, under the statute-**Supreme Washers Pvt.Ltd. v. Collector of Central Excise, Pune**[59], in order to ensure its order is *legis virtute*.

78. In the case of **S. Parameswaran v. Secretary Ministry of Finance**[60], despite a tortuous and lengthy litigation, where the claim of the assessee was in seeking interest from the date of seizure, the hon'ble High Court refused so to do and stated that the litigant was entitled to interest only from the date, the appeal came to be decided in favour of the party and not any date in time prior to the said date of the decision.

79. The question that the award of interest under Section 11BB of the Act is automatic and the same would be computable after the expiry of three months from the date of filing of a complete refund claim is thus no more res integra and has since been settled by a series of judgements of various judicial and quasi-judicial bodies. Thus apart from the cases of **Ranbaxy Laboratory Ltd.**[12] or that of **Manisha Pharmo**

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59 1994 (73) ELT 430 (T)
60 2006 (4) STR 406 (Mad.)

Plast Pvt.Ltd.[13], discussed in earlier paras, it was similarly so held in many many more cases; for records, thus the following are indexed :

- **Kamakshi Tradexim (India) Pvt.Ltd. v. Union of India**[61]
- **UP Twiga Fiber Glass Ltd. vs. Union of India**[62]
- **J.K. Cement Works v. Asstt. Commr. of Central Excise & Cus.**[63]
- **Indian Oil Corporation Ltd. v. Commissioner of Central Excise, Patna**[64]

amongst many more.

80. As was held by the Hon'ble apex court in the case of **L. Chandra Kumar Vs UOI & Ors**[65]; that a Tribunal is but a creature of the statute and therefore was incapacitated to entertain any question relating to the vires of its parent statute. Following the said principle it can safely be concluded that the Tribunal cannot go beyond what is expressly mandated in law, as it would tantamount to questioning the vires of the provision and reduce its enforceability to dead lumber. Thus, at best and wherever otherwise applicable, the Tribunal is not empowered to allow interest beyond the notified rate of 6 %. Likewise, it cannot go beyond the express provisions for consideration of the relevant date, wherefrom the interest payment clock ticks in.

81. In the case of **Continental Engines Pvt. Ltd., Vs Commissioner (A) GST &C.Ex., Jaipur**[66]**,** even for a case of pre deposit refund, on a question relating to compensatory interest payment, where interest attributable to the delayed refund was paid upto the date of refund of

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61 2017 (351) ELT 102 (Guj)
62 2008 (229) ELT 205 (All.)
63 2004 (2) TMI –Raj.H.C.
64 2024 (24) Centax Tri.-Cal.
65 AIR-1997 SC – 1125
66 2026 (4) TMI – 793 CESTAT

the pre-deposit amount, it was held that the statutory requirement was met with. The Tribunal distinguished the much abused Hon'ble Apex court's decision in Sandvik Asia Ltd.[16] case and held that the same operated on a different footing and relied on the Hon'ble Apex court's Larger Bench clarification/ruling in the case of **Gujarat Fluoro Chemicals[24]**. The claim for compensatory interest was rejected by the Tribunal, as there was no statutory basis thereto, and interest only upto the date of refund of pre-deposit was upheld, for reasons of delay in releasing the said amounts to the assessee.

82. While doing so the Tribunal did not accept the appellant's reliance on Sandvik Asia[16] case and cited the hon'ble Apex Court's decision in the case of **Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals[24]**, wherein it was pointed out by the hon'ble Supreme Court that the award of interest in the Sandvik Asia[16] case was essentially of a compensatory nature for the prejudice that had been caused to the party on account of inordinate delay in making payment by the revenue authorities. It was further held by the apex court that it was because of the mis-interpretation of this case that revenue was obliged to pay interest on interest on its failure to refund interest payable within the statutory period. Paras 6,7 & 8 of the hon'ble Apex court's order, in the Gujarat Fluoro Chemicals[24] case, that clarify the entire position, need to be placed on record and are extracted below :

> *"6. In our considered view, the <u>aforesaid judgment has been misquoted and misinterpreted by the assesses and also by the Revenue</u>. They are of the view that in Sandvik case (supra) 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.

7. As we have already noticed, in Sandvik case (supra) this Cout 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 certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest.

8. Further it is brought to our notice that the Legislature by the Act No.4 of 1988 (w.e.f. 1-4-1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest."

[Emphasis supplied]

83. As can be seen from the aforesaid order of the hon'ble apex court, it is only the interest provided under the statute that can be claimed by the assessee from the revenue authorities and no other interest. Dwelling on the judgement of the hon'ble Apex court in the Sandvik Asia[16] case, it noted that in the said case the only issue that arose for consideration before the hon'ble Apex court was with regard to the entitlement for compensation from the authorities for delay (which the hon'ble court had noticed ranged from 12-17), years in making of such payment by the revenue (Para 4 of the order).

84. The decision of the hon'ble apex court in the case of **Gujarat Fluoro Chemicals[24]** has been relied upon by the hon'ble Bombay High

Court in the case of **Rohan Lobo v. State of Goa[67]** and in Para 85 of its judgement in the Rohan Lobo[67] case, the hon'ble Bombay High Court took note of that both Sandvik Asia[16] and Godavari Sugar Mills[42] cases of the hon'ble Apex court, pointing out that there was no conflict between the two, as was stated by the hon'ble Apex court in the case of **UOI v. Willowood Chemicals Pvt.Ltd.[68]**.

85. It may be noteworthy to mention that in the Willowood Chemicals[68] case, dealing with a case of refund under Section 54(5) of the IGST Act, it was held by the hon'ble apex court that interest at the given rate was payable, only if refund claim arising from an order of adjudicating authority, appellate authority, tribunal, court was not refunded within the prescribed 60 days from the date of receipt of application filed consequent to such orders. <u>It was held by the hon'ble apex court that the case in hand would have to be decided purely in the light of the concerned statutory provisions and ordered for payment of interest only @ 6% p.a. to the appellants</u>. While doing so the hon'ble Apex court set aside the order of the hon'ble High Cout that had awarded interest @9%, adopting the underlying principle of Sandvik Asia case because of the delay of 94 to 290 days in granting refund. Distinguishing the same the Apex Cout pointed out that a delay of 177 case in Sandvik Asia case was nowhere comparable to time delay of a maximum of 290 days aforesaid.

86. The claim of the appellants that Section 11B of the Act would apply to cases of duty alone and what is not liable to be paid under the Statute cannot be duty and hence the inapplicability of Section 11B of the Act to

67 2023 (10) Centax 347 (Bom.)
68 2022 (60) GSTL 3 (SC)

such cases is indeed far from being the correct position in law. Though this has been extensively discussed in pre paras, yet it need be stated that this argument is quite easily demolished by a two-fold premise viz.

(a) The apex court's ruling in **Mafatlal Ltd.**[2] case, wherein the apex court had held that any and all cases of refund would automatically lie within the domain of Section 11B and

(ii) The legal provisions as concern transitional arrangements under Section 142 of the CGST Act, 2017. Sub-section (3) thereof in fact, in no uncertain terms, brings about a direct connection between a refund claim of all sorts with section 11B of the Act. Sub-section 3 of Section 142 of CGST Act, 2017 reads as under :

142 – Miscellaneous Transitional provisions

(1) …………….

(2) …………….

(3) Every claim for refund filed by any person before, on or after the appointed day, ***for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid*** *under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) :*

Provided *that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse :*

Provided *further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.*

87. In view of the specific language made use of for purpose of refund under the CGST law on various counts like Cenvat Credit, Duty, Tax, Interest or any other amount paid, there is nothing left for imagination or interpretation. It is thus clear that any refund in law whatever be its nomenclature or by whatever name called, is required to be tended to in accordance with the legal stipulations wherein provisions of Section 11B(2) are also a must look into. It would thus be inappropriate to hold that Section 11B would not come into play for any payment made under an alleged mistaken belief in law.

Case Law Support Drawn by the Appellants

88. In the perspective of aforesaid discussions, it is pertinent that the law as evolved on the subject matter, decisions rendered by various superior judicial authorities are delved into the matter and respected, unmindful of the facts that the appellants' claim is for seeking 12% interest that too from the deposit date, on grounds of payment of duty allegedly made under a mistaken belief of law (which amount has since been refunded to the appellants) (though erroneously admitted, "to be paid within three months from the date of filing of the refund application"). The basis, however. for the appellant making the said plea are certain precedent decisions passed by the Tribunal. The same are as listed and discussed hereinbelow.

(1) Raj Construction Company v. Commissioner of Central Excise & GST
[F.O. 51743-51764/2025 dated 11.11.2025]

(2) Meenu Builders v. Commissioner of Central Excise & CGST
[2025 (31) Centax 356 (Tri.-Del.)]

(3) Commissioner of Central Excise v. Team Technology India Pvt.Ltd.
[2026 (4) TMI – 1011 CESTAT-Chennai]

(4) Neha Power Tech (I) Pvt.Ltd. v.Commissioner of Customs, Kandla
[2026 (3) TMI 139 CESTAT-KOLKATA]

(5) Harisons Industries v. Commissioner, CGST & CX, Kolkata (North)
[2025 (9) TMI 220-CESTAT-KOLKATA]

(6) KLJ Plasticizers Ltd. v. Commissioner of Customs, Kandla
[2025 (11) TMI 1459 CESTAT-AHMEDABAD]

(7) Quality Builders AND Contractor v. Commissioner, CGST, Jodhpur
[2025 (7) TMI 1454-CESTAT-New Delhi]

(8) Alliance International v. Commissioner of Customs (Port), Kol
[2025 (7) TMI 1214 CESTAT-KOLKATA]

(9) Gajender Singh Sankhla & Others v. Commissioner, CGST, Jodhpur
[2025 (5) TMI 482-CESTAT, New Delhi]

(10) Indus Towers Ltd. v. Commissioner of Central Excise & CGST, Gurugram
[2025 (1) TMI 1261-CESTAT, Chandigarh]

(11) Shree Inderjit Matta v. Commissioner, CGST, Faridabad
[2025 (1) TMI 1149-CESTAT-Chandigarh]

(12) Alliance Francaise De Delhi v. Commissioner, CGST, Delhi East Commissionerate
[2025 (1) TMI-1442-CESTAT-New Delhi]

(13) Commissioner, CGST, Noida v. Parle Agro Pvt.Ltd.
[2021-TIOL-306-CESTAT-ALL]

(14) Fujikawa Power v. Commissioner of Central Excise & Service Tax, Chandigarh-I
[2024 (16) Centax 310 (Tri.-Chan.)]

(15) Budania Builders v. Commissioner of Central Excise & CGST, Jaipur
[F.O.50951/2026]

(16) Commissioner of Central Excise (Appeals), Bangalore v. KVR Construction
[2012 (26) STR 195 (Kar.)]

(17) Commissioner v. KVR Construction –
[2018 (14) GSTL-J 70 (SC)]

89. Apart from two cases of KVR Construction, all other cases listed above pertain to the decisions as rendered by the CESTAT. The decisions relied upon by the Ld.Counsel for the appellants follow a set line of

action, laid down by some of the decisions of the Tribunal including that in the case of **Parle Agro Pvt.Ltd.**[15] which in essence relied on the decision of hon'ble apex court in the case of **Sandvik Asia Ltd.**[16] amongst others. The three cases upon which the Tribunal relied upon in the **Parle Agro Ltd.**[15] case are the following :

(i) Pace Marketing Specialities v. Commissioner of Central Excise [2012 (27) STR 420 (All)]

(ii) Riba Textiles Ltd. and Ors., Haryana v. Commissioner of Central Excise & Service Tax, Panch Kula [2010-TIOL-932-CESTAT-CHD.]

(iii) Ebiz Com Pvt.Ltd. v. Commissioner of Central Excise, Customs & Service Tax [2016-TIOL-3240-HC-ALL]

90. It be noted that all these cases directing 12% interest payment to the parties concerned, pertained to where the assesses had deposited various amounts at the time of the investigations being undertaken in the matter or at the instance of the authorities and after a prolonged litigation the amount refundable was held in favour of the assesses as payable to them. The said background was thus also the basis of the directions issued for interest payment @ 12%. Contrast the factual position with the present matters. Herein, no amount was directed by the department to be paid by the assessee, nor was any investigation carried out by the department, nor was there any major litigation prolonged for several years, accrued in the said cases for claim of the refund amount held payable by the Commissioner(Appeals). In fact as informed by the ld. Advocate, at the time of hearing, payments held due in their favour, were made over to them within a three month window as generally understood in terms of Sections 11B & 11BB of the Act[1] and

the various departmental instructions issued from time to time. Obviously therefore the said cases cannot guide the outcome for payment of interest in the present matters, as the present case is neither one of a "Revenue Deposit" nor a case of "Payment under Protest" nor were said amounts sought from the appellants during the course of an investigation.

91. As all these decisions follow a uniform pattern of argument, it may not be necessary to reproduce the reasoning for each and every case relied upon by the appellant. Emphasis, however was laid by ld. Counsel upon the case of Rajasthan Construction Company and Others decided vide Final Order No.A-51743-51764/ST/SM dated 11.11.2025 and therefore it may be apt to dwell upon it at some length. In the said case, the Tribunal decided in all, 21 appeals including that of one of the present appellants also. The facts of this case are on near identical lines, claiming Service Tax refund alleged to be made under a mistaken belief in law - as no tax was leviable prior to 01.07.2012 and subsequently the services rendered were exempted in terms of exemption Notification No.25/2012-ST dated 20.06.2012 [Sl.No.14(b) and (c)]. The grounds of the appellants in the said case were also the same as in the present appeal, as even the ld.Counsel representing the appellants. Though the refund was paid to the parties concerned, interest however was not paid by the authorities, and it was only the Tribunal that later in appeal allowed them the interest paymemt @ 12%. In deciding so, the Tribunal relied upon its earlier decision in the case of **Meenu Builders v. Commissioner of Central Excise & CGST, Jaipur**[46]. Part refund, as

also a question in some of the present appeals, was also allowed by the Tribunal while deciding the bunch of 21 appeals supra. The Revenue authorities had argued before the Tribunal that interest, if any, would be payable only three months from the date of the Tribunal's order for reasons of delay and in support drew reference of the hon'ble Calcutta High Court in the Vedanta Ltd.[32] case. It is noted that while rendering its decision in the said case, the Tribunal summarily dismissed the Revenue's plea pointing out that the facts of these 21 cases were not akin to that of the Vedanta Ltd.'s[32] case and inter alia had drawn reference and support to the pronouncements of the orders in the following cases of :

- **Sandvik Asia Ltd.[16]**
- **Riba Textiles Ltd. v. CCE, Panchkule (FO No.60015/2020 dt 07.01.2020**
- **Pale Agro Pvt.Ltd.[15]**

  amongst others

92. The Tribunal also held the part claims, as admissible, to the appellant stating that as per the terms and conditions of the work order, the Rajasthan Housing Board (RHB) "as (sic) deducted Service Tax from payment made" and "deposited with the same to the Government exchequer fulfilling the tax liability under Reverse Charge Mechanism". However, with utmost respect to the said order, decided by the hon'ble Single Member it may be pointed out that it falls short of the mandate in law, where it is incumbent upon the refund seeker to documentarily establish that such Service Tax was actually paid by the refund-seeker. No authority howsoever high and mighty, is enshrined in law to give a complete go by to the statutory provisions. Any work order issued,

certainly can be no reflection of tax deducted and at best can merely signify the intent. It undoubtedly can be no replacement for the warrant in law to establish actual debit of duty. As stated earlier, the Tribunal therein had relied upon its earlier decision in the case of Meenu Builders[46] to award interest @ 12% to the appellants in these appeals. The case of Meenu Builders[46] is however separately dwelt upon in the following paras to clearly bring out the factual narrations and as to how the said case alongwith other cases relied upon by the appellants, do not come to the aid of the appellants, as the said cases are fact specific and therefore clearly distinguishable.

Meenu Builders vs. Commissioner of Central Excise, CGST, Jaipur[46]

93. As many as seven cases were decided by a common order in the above case. Duty herein was alleged to be paid under a mistake of law. While the Commissioner(Appeals) had allowed the refund claims in part with interest at 6%, awarded for delay in making payment beyond the three months timeframe, the Tribunal vide its order allowed (i) the balance amount of refund in the said cases, even where documentary evidence indicating duty payment was not furnished and (ii) further enhanced the rate of interest awarded from 6% to 12%. The Tribunal had held that Service Tax paid on exempted service would constitute a mistake of law and would not constitute "duty" within the framework of Section 11B of the Act[1]; as such payment, cannot be regularized as "duty". It was therefore held by the Tribunal that for the reason Section 11B and 11BB would not be applicable and that interest @ 12% was

required to be paid to the parties concerned. While arriving at this conclusion, the Tribunal also relied upon the decision of hon'ble Karnataka High Court's in the case of **KVR Constructions[9].** It may be noted that the said case of KVR Construction was delivered in the context of limitation for refund under section 11B of the Act. It also need to be noted that the judgement rendered by the hon'ble Karnataka High Court in the case of KVR Construction was an outcome of the powers vested in the hon'ble High Court in terms of Article 226 of the Constitution, which powers unfortunately are not vested in the Tribunal, being a creature of the Statute. The said case has been comprehensively considered and commented upon in earlier paras. The Tribunal therefore would not only be impeded and inhibited in exercise of such Constitutional Powers, but also the fact of questioning "limitation" was nowhere an issue either in the Meenu Builders case (supra) or the Rajasthan Construction case (supra) or even the present matters. Thus relying on the said cases to determine the outcome of the present matter is like comparing apples to oranges, that is comparing the uncomparables and is certainly out of context. Moreover the KVR Construction case has been distinguished and extensively commented upon by the Division Bench of the hon'ble Bombay High Court in the Andrew Telecom case[46].

94. Another case relied upon heavily by the ld.Counsel was the Tribunal's decision in the case of **Parle Agro Pvt.Ltd. v. Commissioner of CGST,** NOIDA[15]. Though I have dwelt upon this case law, earlier in the order, however in keeping with the cliché that it is important that

justice is not only done but also shown to be done, it may be worthwhile to reproduce the following paras of the order for a greater appreciation of the decision and background of the Parle Agro Pvt.Ltd. case. Thus to place them on record:

> ***"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.*

………………….

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 No. 6/2011-C.E. (N.T.), dated 1-3-2011

Notification Under Section 11AB ……………….

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"*

95. In respectful disagreement, when offering a comparison of the present matters to that of the Parle Agro Pvt.Ltd.[15] case, it be pointed out that the present appeals are indeed not a case of "Payment Under Protest" nor that of a "Revenue Deposit", as was the status in the Parle Agro Pvt.Ltd.[15] case. The observation of the Tribunal in Para 33 of its order in the Parle Agro Pvt.Ltd.[15] case constitutes the basis for the Tribunal to delve into Sections 11AA, 11AB, 11DD etc. of the Act, and to conclude its findings, as arrived at in that matter.

96. The present appeals are indeed nowhere akin to the said circumstances and indeed are a case of self-assessment and voluntary payment and not of any coerced "Revenue Deposit", sought from the appellants. I therefore hold that the facts of the present cases are clearly distinguishable and cited cases offer no help in determining the two vexed questions arising in the present appeals regarding (i) eligibility for payment of interest under Section11BB of the Act and (ii) if so, at what rate and from when.

97. The situation in other cases referenced by the ld.Counsel in support, is not far from different. Thus be it case of **Gajendra Singh Sankhla & Ors. v. Commissioner of CGST, Jodhpur** [Final Order No.50597-50599 of 2025 dated 06.05.2025], which relied upon the decision in the case of **Indus Towers Limited** [Final Order No.60101 of 2025 [2025 (1) TMI – 1261 CESTAT Chandigarh] amongst others, for a 12% interest claim and so awarded were, as well, cases of amounts deposited during investigation, at the behest of the revenue, and were indeed not voluntarily made payments, unlike the present matters. Reliance thereon is thus completely misplaced and out of context.

98. In this regard at this juncture it also needs to be noted that in so far as the Tribunals like the CESTAT are concerned, they being creatures of statutes, are <u>not a court of equity.</u> The law on equity powers, in respect of the Tribunal is settled in dime a dozen cases and even so held by the Tribunal itself. For reference the case of **Creative Industries Pvt.Ltd. v. Commissioner of Customs, Central Excise & Service**

Tax, Hyderabad-II[69] may be quoted, wherein it was held that *"therefore granting of interest based on equity ………………… is beyond the powers of this Tribunal".* Thus the Tribunal would have to work out its powers in terms of those specifically vested in it under the statute.

99. The pith and substance of the aforesaid extensive deliberations brings us back to the case of **Ranbaxy Laboratories Ltd.**[12] where the court lucidly laid out the legal position and held that interest is payable only after three months from the date of refund application so made. The rate of interest, wherever payable for reasons of delay beyond the said stipulated time period, was determined @6% as fixed by the notification (67/2003-CE(NT) dated 12.09.2003) issued in this regard. The application for refund is required to be tendered in terms of Section 11B of the Act while the interest liability arises in terms of Section 11BB of the Act. The aforesaid position has been reaffirmed in the **Nino Chaks**[19] case and **Goldy Engineering**[34] cases as well, both decided by Hon'ble Delhi High Court and the jurisdictional High Court for this Bench of the Tribunal. It therefore is also bewildering that in certain cases (some of which were cited by the ld.advocate) and in utmost respect to those citations, this Tribunal has ordered for interest payment from the date of deposit at a rate much higher than the notified rate of 6% and overlooking the express provisions of law and the decisions of the superior jurisdictional courts in the matter. Ad Nauseam it be reiterated that merely because a Constitutional Court in a given context had ordered payment of interest @ 12%, it does not mandate the Tribunal to

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go beyond the statutory contours in arriving at such a decision and so ordering. Such artificial justification, as cases pertaining to deposit of tax/duty, payments made under protest or during the course of investigations, or beset with prolonged delay etc., would not fit into the category of cases, as could influence the present appeal.

100. Following the aforesaid discussions and the judgements of the hon'ble apex court and the hon'ble High Courts as adverted/referred to in this order, I have no hesitation to hold that under the given circumstances, the appellants are liable to be paid interest by the Revenue in terms of Section 11BB of the act and as per settled law. The interest would be accruable and payable to the appellants only in terms of Section 11BB of the Act for the delay in grant of refund beyond three months from the date of refund application. I am of the considered view and with utmost respect to the decisions cited by the appellant, that given the aforesaid discussions and law as settled by the Constitutional courts any claim of interest @12% is contrary to the extent provisions of Section 11BB of the Act and therefore *contra legem* the authority of this Tribunal – it not being in accordance with the prescribed statutory provisions. However, in view of the aforesaid discussions, the rate of interest @ 6% in terms of Notification No.67/2003-CE(NT) dated 12.09.2003 is *ex lege* to which the appellant would lawfully be entitled to.

101. In conclusion to state –

(i) The appellants are not entitled to refund amounts withheld by the authorities and

(ii) The appellants are entitled to interest @6%, three months beyond the date of refund claim filed as indicated in the table below, till the date of the said payments made:

Sr. No.	Appeal	Name of the Party	Date of Application
1.	ST/51300/2025	KBS Enterprises	26.11.2024
2.	ST/51304/2025	KBS Enterprises	26.11.2024
3.	ST/51758/2025	KBS Enterprises	06.01.2025
4.	ST/51759/2025	Ladu Ram Babulal	07.02.2025
5.	ST/51760/2025	Ladu Ram Babulal	03.02.2025

The appeals are thus disposed of in the aforesaid terms.

(Order pronounced in the open court on 14 July 2026.)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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