

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 76510 of 2025**

(Arising out of Order-in-Appeal No.183/JSR/2025 dated 14.08.2025 passed by
Commissioner of CGST & C.Ex, Jamshedpur)

Munna Construction Pvt. Ltd.

Shree Balajee Bhawan, Hill View Colony, P.O.M.G.M,
Mango, Jamshedpur, East Singhbhum.
Jharkhand-831018.

**:
Appellant**

VERSUS

Commissioner of CGST & Central Excise, Jamshedpur

2nd and 3rd Floor, Grand Emerald Building, Ashok Nagar, Ranchi-834 002.

: Respondent

With

Service Tax Appeal No. 76511 of 2025

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Commissioner of CGST & C.Ex, Jamshedpur)

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VERSUS

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Jamshedpur**

2nd and 3rd Floor, Grand Emerald Building, Ashok Nagar,
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: Respondent

APPEARANCE:

Shri Aditya Dutta, Advocate for the Appellant

Ms. Suman, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 77734-77735/ 2025

DATE OF HEARING :13.11.2025

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Order : [Per Shri Ashok Jindal]

Both the appeals are having common issue therefore, both are disposed by a common order.

2. The facts of the case are that in appeal No. ST/D/77776/2025 the appellant has paid excess Service Tax during the period 2006-7 to 2011-12 and claimed refund thereof. The refund claimed was finally sanctioned to the appellant and interest @6% was also given to the appellant. In second appeal No. ST/D/77777/2025 the appeal paid an amount during the course of investigation which was later found to be refunded to the appellant being held that the said deposit was not payable by the appellant was also refunded to the appellant with 6% per annum interest.

3. The grievance of the appellant before me is that in these two cases, they are entitled for interest @ 12% per annum as these are not covered under Section 11B of C.E. Act. Therefore, the provisions of Section 11BB of the Central Excise Act is not applicable to the facts of these cases.

4. On the other hand the submission of the Ld. Authorized Representative is that it is not a case of making payment by way of mistake and amount has been deposited by the appellant during the course of investigation. In that circumstances, the authorities below has rightly paid interest @6% in terms of Section 11BB of the C.E. Act, 1944. Therefore, appeals are required to be dismissed.

5. Heard the parties. Considered the submissions.

6. It is an admitted fact that in these cases the either appellant paid excess tax or tax paid during the course of investigation which could not form the shape of Service Tax. In that circumstances, relying

on the decisions of this Tribunal in the case of Meenu Builders Versus Commissioner of Central Excise, Central Goods and Service Tax, Jaipur, (2025) 31 Centax 356 (Tri.-Del) wherein this Tribunal observed as under:

"12. Heard the parties, I find that the appellant produced the work orders showing that the service tax inclusive of the payment of service rendered by the appellant and the service recipient had deducted 50% of the service tax which is payable by the service recipient under reverse charge mechanism from the running bill of the appellant and it is a fact on record that the activity undertaken by the appellant is not liable to service tax and service tax paid by the appellant by mistake of law, therefore, time limit prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to the facts of the case as held by the Hon'ble Karnataka High Court in the case of Commissioner of Central Excise versus KVR Construction reported as 2012 (26) S.T.R. 195 (Kar). In that circumstances, the Cross Objections filed by Revenue are contrary to the law, therefore, the said are not acceptable. Now issue arises as appellant has paid service tax by mistake of law. In that circumstances on the refund claim sanctioned to the appellant whether the appellant are entitled to with interest or not, if yes then at what rate.

13. The said issue has examined by the Tribunal in the case of Gajendra Singh Sankhla versus Commissioner of CGST, Jodhpur (Raj.) vide Final Order No. 50597-50599 of 2025 dated 06.05.2025. In view of the decision of this Tribunal in the case of

Gajendra Singh Sankhla (supra), wherein this Tribunal observed as under:

"6. On hearing the arguments advanced by both the sides, the sole issue arises is that in the case where service tax is paid by mistake of law, whether the provision of Section 11B was not applicable for grant of refund or not and what should be rate of interest applicable 6% or 12%.

7. Revenue has relied on the decision of this Tribunal in the case of Triumph International (India) Pvt. Ltd. (supra). In the said case although this Tribunal has referred the decision of Hon'ble Karnataka High Court in the case of KVR Constructions, but no findings are recorded how the said decision is not applicable, but relied on decision of Mafatial Industries Ltd. (supra). But the Hon'ble Karnataka High Court in the case of KVR Constructions Ltd. has taken case of the decision of the Hon'ble apex Court in the case of Mafatial Industries Ltd. (supra), which has been affirmed by the Hon'ble Apex Court. I am bound by the latest decision of the Hon'ble Apex Court in the case of KVR Constructions Ltd. (supra). Therefore, the said decision of Mafatial Industries Ltd. (supra) is not applicable to the facts of this case and moreover in the said case, the issue was whether exemption was available to the assessee or not and initially it was held that the said exemption is not available to the assessee and the appellant initially claimed for exemption and the said claim was not ineligible to the appellant and thereafter the appellant paid the duty along with interest. Later on, by the decision of

the Hon'ble Apex Court in the case of SRF Ltd. it was found that appellant was entitled for exemption under Notification No. 30/2004-CE dated 01.03.2004. Consequently, they filed refund claim of duty paid. In the said case, it was held that interest is payable @ 6% and refund claim under Section 11B of the Act which is not the case in hand. In this case, appellant paid the service tax by mistake and which was not payable by the appellant. Therefore, the decision in the case of Triumph International (India) Pvt. Ltd. (supra) is not applicable to the facts of this case. Further, in the case of Dinesh Tobacco Industries Ltd. (supra), it is the case that the assessee claim refund of the central excise duty paid under compounded levy scheme on the goods which were exported and they were entitled for rebate of duty paid on goods exported which is not the case in hand. Further, Revenue is relied on the decision of the Hon'ble High Court of Delhi in the case of S.S. Automotive Ltd. (supra), in the said case the respondent themselves has conceded the claim of said interest. Further, in the case of D.D. International Pvt. Ltd. (supra), a refund claim was sanctioned under Section 129EE of the Customs Act. In that circumstances, the Hon'ble High Court held that the interest is payable @ 6%, I find that whether the provision of Section 11B of the Act are examined by the Hon'ble Karnataka High Court. In the case of KVR Constructions Ltd. (supra) wherein the Hon'ble High Court recorded as under :-

"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 (1) Act or not contemplated by the Act.

(b) The levy is based on misconstruction of wrong or erroneous (11) 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 Section 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 118 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) M/s. Doaba Co-operative Sugar Mills Ltd., Jalandhar [1988 (37) [E.L.T.](#) 487 (S.C.) 1988 Supp. SCC 683]; Escorts Ltd. v. Union of India & Ors. [1994 Supp (3) SCC 86) Rule 11 before and after amendment, or Section 118 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 (1)

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.

(Dulabhal's case (supro)- para 32-clauses (3) and (4)."

17. If this Court ultimately concludes that Section 11B of the Act is applicable to the facts of the present case, then, the argument of the learned Counsel for the appellant that Writ Petition was not maintainable would merit consideration. Therefore, at this stage, we will not consider the matter regarding maintainability of the Writ Petition, as first we have to look to the provisions of 11B of the Act and then decide whether Section 11B is applicable to the facts of the case as finding thereon would have bearing for considering the issue of maintainability of Writ Petition. Section 11B of the Central Excise Act reads as under:

"11B. Claims for refund of duty (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the document referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person."

18. From the reading of the above Section, it refers to claim for refund of duty of excise only, it does not refer to any other amounts collected without authority of law. In the case on hand, admittedly, the amount sought for as refund was the amount paid under mistaken notion which even according to the department was not liable to be paid.

19. According to the appellant, the very fact that said amounts are paid as service tax under Finance Act, 1994 and also filing of an application in Form-R of the Central Excise Act would indicate that the applicant was intending to claim refund of the duty with reference to Section 11B, therefore, now it is not open to him to go back and say that it was not refund of duty. No doubt in the present case, Form-R was used by the applicant to claim refund. It is the very case of the petitioner that they were exempted from payment of such service tax by virtue of circular dated 17-9-2004 and this is not denied by the Department and it is not even denying the nature of construction/services rendered by the petitioner was exempted from to payment of Service Tax. What one has to see is whether the amount paid by petitioner under mistaken notion was payable by the petitioner. Though under Finance Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was exemption to pay such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority

lacked authority to levy and collect such service tax. In case, the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. If we look at the converse, we find mere payment of amount, would not authorize the department to regularise such payment. When once the department had no authority to demand service tax from the respondent

because of its circular dated 17-9-2004, the payment made by the respondent company would not partake the character of "service tax liable to be paid by them. Therefore, mere payment made by the respondent will neither validate the nature of payment nor the nature of transaction. In other words, mere payment of amount would not make it a "service tax payable by them. When once there is lack of authority to demand "service tax from the respondent company, the department lacks authority to levy and collect such amount. Therefore, it would go beyond their purview to collect such amount. When once there is lack of authority to collect such service tax by the appellant, it would not give them the authority to retain the amount paid by the petitioner, which was initially not payable by them. Therefore, mere nomenclature will not be an embargo on the right of the petitioner to demand refund of payment made by them under mistaken notion.

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".

and the said decision has been upheld by the Hon'ble Apex Court. Further, the Hon'ble High Court of Tripura in the case of Tripura Cricket Association (supra) Hon'ble High Court observed as under:-

"4. Learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble Karnataka High Court in case of CCE (Appeals) v. KVR Construction [2012] 22 taxmann.com 408/12012] 36 STT 33 (Karnataka) In the said judgment, the Hon'ble Karnataka High Court came to the conclusion that section 11B of the Central Excise Act was not applicable to a refund application filed by the petitioner based on mistake of law. The Hon'ble Karnataka High Court fairly held that section 35B(1)(b) was inapplicable. Learned counsel for the petitioner further relied upon the challenge to the said order of the Hon'ble Karnataka High Court before the Hon'ble Supreme Court in case of Commissioner v. KVR Construction 2018 (14) G.STL

170 (SC). The Hon'ble Supreme Court dismissed the challenge to the order passed by the Karnataka High Court referred hereinabove and came to hold that the Karnataka High Court had held that the provision of limitation under section 11B of the Central Excise Act, 1944 would not apply for refund of service tax paid by mistake on exempted services even though the assessee had filed claim under Form-R which shows that they had treated such payment as duty but later on claimed it as not a duty. Mere payment of an amount by the assessee and acceptance by the Department would not regularize such an amount as duty if it was not actually payable and paid by mistake. It was further held that writ petition against the order of Commissioner (Appeals) rejecting refund of Service tax paid on exempted services as time-barred, is maintainable and cannot be rejected on the ground of availability of alternate appellate remedy particularly when payment of Service Tax exempted services held not be Tax/duty so as to attract the provisions of section 11B of Central Excise Act, 1944 and also the provision of Section 35B of the said Act relating to appeal to Appellate Tribunal is not applicable.

6. The issue framed hereinabove is answered in the positive in favour of the petitioner and the appellate authority ie. the Commissioner of Central Tax (Appeals) is directed to take up the appeal and dispose of the same within a period of 2(two) months from the date of communication of the copy of this order to the authorities concerned. It is further clarified that pendency of the Vidarbha Cricket Association case before the Hon'ble Supreme

Court may or may not be of relevance that the law as it stands as on date and the issue having been confirmed by the Hon'ble Supreme Court in the KVR Construction (supra) vis-a-vis the issue of limitation, we find no justifiable ground for the Commissioner of Central Tax (Appeals) to remit the case to the 'Call Book'. Hence, necessary immediate direction be given to return the file from the Call Book' and take up the matter immediately and dispose of the same within the time as directed hereinabove"

8. On going through the above judicial pronouncement of the case laws relied upon by both the sides, I am of the considered view that it is admitted fact that appellant had paid service tax by mistake which is not payable at all and same shall be treated as Revenue deposit not service tax paid by the appellant. Therefore, the provision of Section 11B of the Act is not applicable. The same view has been affirmed by the Hon'ble Apex court in the case of KVR Constructions Ltd. (supra). As provision of Section 11B are not applicable to the facts of the present case, in that circumstances, determining the rate of interest under Section 11BB of the Act is not applicable. Therefore, the Notification No. 67/2003 - CE (NT) dated 12.09.2003 also not applicable to the facts of the case.

9. In that circumstances, relying on the decision of further in the case of Indus Towers Limited vide Final Order No. 60101 of 2025 dated 24.01.2025, wherein the interest @ 12% has been granted to the appellant. Therefore, following the judicial

pronouncement, I hold that the appellant are entitled interest @ 12% on delayed refunds. Accordingly, the Revenue is directed to pay interest @ 12% per annum to the appellant. All appeals are allowed by modifying the impugned orders granting refund along with interest @ 12%".

14. In view of this, I hold that the appellants are entitled for refund of service tax paid by them was under mistake of law, therefore, the appellants are entitled for refund claim along with interest @ 12% as provisions of Section 11B and 11BB of the Act are not applicable.

15. In view of this, I hold that the appellants are entitled for refund claim of the amount paid by the appellants and service recipient along with interest @12%.

16. Accordingly, the appeals are allowed. Cross Objections filed by the Revenue are also disposed of in the above terms."

I hold that the decision of this Tribunal, the applicable to the facts of the cases before me.

7. As admittedly the tax deposited by the appellant could not form the part of Service Tax. In that circumstances, the provision of Section 11B of the Act are not applicable to the facts of these case as held by this Tribunal in the case of Meenu Builders

(Supra). Consequently, provision of Section 11BB of the Act are not applicable.

8. In that circumstances relying on the decision of Meenu Builders (Supra) I hold that appellant is entitled to claim interest @12% per annum. In view of this appeals are disposed off.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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