CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85110 of 2020

(Arising out of Order-in-Appeal No. NA/CGST/A-I/MUM/156/2019-20 dated 30.08.2019 passed by the Commissioner (Appeals-I), CGST & Central Excise, Mumbai)

Karanja Terminal & Logistics Pvt. Ltd. **.... Appellant**
3rd Floor, 13/14, Khetan Bhavan,
Flat No. 198, Jamshedji Tata Road,
Churchgate, Mumbai- 400 020.

VERSUS

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai South
13th Floor, Air India Building,
Nariman Point, Mumbai- 400 021.

WITH

Service Tax Appeal No. 85457 of 2020

(Arising out of Order-in-Appeal No. NA/CGST/A-I/MUM/156/2019-20 dated 30.08.2019 passed by the Commissioner (Appeals-I), CGST & Central Excise, Mumbai)

Assistant Commissioner of CGST & **....Appellant**
Central Excise, Mumbai South
13th Floor, Air India Building,
Nariman Point, Mumbai- 400 021.

Versus

Karanja Terminal & Logistics Pvt. Ltd. **.... Respondent**
3rd Floor, 13/14, Khetan Bhavan,
Flat No. 198, Jamshedji Tata Road,
Churchgate, Mumbai- 400 020.

AND

Service Tax Appeal No. 86961 of 2021

(Arising out of Order-in-Appeal No. SM-GST-A-1-MUM-123-20-21 dated 08.03.2021 passed by the Assistant Commissioner, CGST & CX, Mumbai South)

Karanja Terminal & Logistics Pvt. Ltd. **.... Appellant**
3rd Floor, 13/14, Khetan Bhavan,
Flat No. 198, Jamshedji Tata Road,
Churchgate, Mumbai- 400 020.

Versus

Commissioner of CGST & Central Excise, Mumbai South .... **Respondent**
13th Floor, Air India Building,
Nariman Point, Mumbai- 400 021.

AND

Service Tax Appeal No. 86290 of 2022

(Arising out of Order-in-Original No. MUM.SOUTH/CGST/Pr.Commr- 39/21-22 dated 30.11.2021 passed by the Principal Commissioner, CGST & CX, Mumbai South Commissionerate, Mumbai)

Karanja Terminal & Logistics Pvt. Ltd. .... **Appellant**
3rd Floor, 13/14, Khetan Bhavan,
Flat No. 198, Jamshedji Tata Road,
Churchgate, Mumbai- 400 020.

VERSUS

Commissioner of CGST & Central Excise, Mumbai South .... **Respondent**
13th Floor, Air India Building,
Nariman Point, Mumbai- 400 021.

APPEARANCE:

Shri Prasannan Namboodiri, Advocate for the assessee-appellant/respondent
Shri P.K. Maurya, Authorized Representative for the Revenue

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85902-85905/2024

Date of Hearing: 01.03.2024
Date of Decision: 30.08.2024

Per: S.K. MOHANTY

The facts involved in the present appeals, in brief, are as under:

1.2 The assessee-appellants M/s Karanja Terminal & Logistics Pvt. Ltd., are engaged, *inter alia*, in the business of developing and operating Ports and Terminals. In the course of their said business activity, during the period to which these appeals relate, they had entered into a Deed of Confirmation dated 28.09.2010 (agreement) with Maharashtra Maritime

Broad for development of a port near Karanja Creek, Uran, in the district of Raigad. The terms of the agreement were that the land and infrastructural facility provided on lease shall be for a period of 30 years on Build, Own, Operate and Transfer basis (BOOT). For development of the said Port, the assessee-appellants had availed the services of the service providers viz., M/s ITD Cementation India Ltd. and M/s Sahara Dredging Ltd., and for that purpose, had entered into the agreements on 30.10.2013 and 21.11.2014, respectively with those service providers.

1.3 Construction services pertaining to a port was exempted from payment of service tax in terms of Sr. No.14(a) of the Notification No. 25/2012 dated 20.06.2012. However, w.e.f. 01.03.2015, vide Notification No. 6/2015-ST dated 01.03.2015, the said exemption provided under the earlier notification dated 20.06.2012 was withdrawn, by omitting the words *"an airport, port or…"*. Owing to the reason of withdrawal of the exemption, the service providers M/s. M/s ITD Cementation India Ltd. and Sahara Dredging Ltd. had started collecting service tax from the appellants and paid the same into the Government exchequer. The Finance Act, 2016 through Section 159 therein, has inserted Section 103 in the Finance Act, 1994. The effect of addition of the said Section 103 in the Act of 1994, is that exemption from payment of service tax, earlier provided under the Notification dated 20.06.2012, was restored in respect of services provided by way of construction, pertaining to the port for the period from 01.04.2015 to 29.02.2016 (both days inclusive). The said section also provided that, service tax which has been collected, but which would not have been so collected, had the said retrospective restoration of the exemption been in force, during all material times, shall be refunded.

1.4 During the period of withdrawal of the exemption notification as stated above, the service providers had charged service tax in the invoices issued by them, which was availed as CENVAT credit by the appellants. In view of grant of retrospective exemption benefit provided for the period 01.04.2015 to 29.02.2016, the assessee-appellants, being the recipient of original works contract for development of port, had filed the application dated 27.10.2017, claiming refund of service tax of Rs.9,45,69,194/- paid by them to the above service providers. The said application was filed on the ground that as per Section 103 of the Finance Act, 1994, original works pertaining to port was retrospectively exempted with effect from 01.03.2015, and as a result, the service tax paid by them was not required to be paid, for the reason of such exemption. The assessee-appellants had also filed another refund application dated 22.12.2017, claiming refund of service tax, amounting to Rs.2,59,07,576/- on the balance input tax credit available in their books of accounts. The refund applications were adjudicated by the original authority vide the Order-in-Original No. CGST/Mum-South/Refunds/ RKS/189-190/2018-19 dated 31.03.2019, in rejecting the claims on various grounds.

1.5 Being dissatisfied with the adjudication order dated 31.03.2009, the assessee-appellants had preferred appeal before the learned Commissioner (Appeals-I), GST & CX., Mumbai, which was disposed of vide Order-in-Appeal No. NA/CGST/A-I/MUM/156/2019-20 dated 30.08.2019. In the said order, out of the refund claim amount of Rs.12,04,76,770/- rejected by the adjudicating authority, the learned Commissioner (Appeals) has allowed the claim for an amount of Rs.5,90,99,124/- in favour of the assessee-appellants and upheld rejection of refund claim amount of Rs. 6,13,77,646/-.

1.6 To the extent, the impugned order has allowed the refund claim amounting to Rs.5,90,99,124/-, Revenue has preferred appeal before the Tribunal, which was numbered as ST/85457/2020. The assessee-appellants have also assailed the impugned order, to the extent it has denied the refund benefit of Rs. 6,13,77,646/-. The said appeal of the assessee-appellant was numbered as ST/85110/2020.

1.7 Both the above appeals filed by the assessee-appellant as well as the Revenue were disposed of by the Tribunal vide Final Order No. A/85081-85082 dated 13.01.2021, holding that refund claims are not maintainable and had also held that the original authority should look into the matter of allowance for re-credit of the amount of ITC debited by the assessee-appellants, if permissible under the GST law. Accordingly, for the said limited purpose, the matter was remanded by the Tribunal to the original authority.

1.8 The order dated 13.01.2021 passed by the Tribunal was assailed by the assessee-appellant by way of filing an appeal before the Hon'ble Bombay High Court. The appeal was disposed of by the Hon'ble Court vide judgement dated 13.01.2023, in quashing and setting aside the order dated 13.01.2021 passed by the Tribunal. The appeal of the assessee-appellant was allowed by way of remand to the Tribunal, for a decision on merits, as per law.

2. Pursuant to the directions contained in the order dated 13.01.2023 of the Hon'ble Bombay High Court, the Tribunal is taking up the appeals being Nos. ST/85457/2020 and ST/85110/2020 for hearing and disposal. In addition to those appeals, the assessee-appellant has also filed the appeal being No. ST/86961/2021 against the Order-in-Appeal No. SM/GST/A-I/MUM/123/20-21 dated 08.03.2021, wherein the learned Commissioner (Appeals) has rejected the interest claim on the refund amount of Rs.5,90,99,124/-, already sanctioned by the department. In addition to the appeal filed against the order dated 08.03.2021, the assessee-appellant has also filed another appeal, being No. ST/86290/2022, against the Order-in-Original No. MUM.SOUTH/CGST/Pr. Commr.-39/21-22 dated 30.11.2021 wherein, in response to the order dated 13.01.2021 passed by the Tribunal, the original authority had initiated proceedings for recovery of the erroneously sanctioned refund and confirmed the same. For better appreciation, the reference of the appeals and the orders passed by the lower authorities are furnished herein below, in a tabular form:

Sr. No.	**Appeal No.**	**Impugned Order**	**Parties to appeal**
A.	ST/85110/2020	O-I-A No. NA/CGST/A-I/MUM/156/2019-20 dated 30.08.2019	Appeal by assessee-appellant against rejection of refund claim amounting to Rs.6,13,77,646/-
B.	ST/85457/2020	O-I-A No. NA/CGST/A-I/MUM/156/2019-20 dated 30.08.2019	Appeal by Revenue against sanction of refund amount of Rs. 5,90,99,124/- in favour of the assessee-appellant
C.	ST/86961/2021	O-I-A No. SM/GST/A-I/MUM/123/20-21 dated 08.03.2021	Appeal by assessee-appellant on rejection of interest claim on delayed sanction of the refund claim, amounting to Rs. 5,90,99,124/-
D.	ST/86290/2022	O-I-O No. MUM.SOUTH/CGST/Pr.Commr-39/21-22 dated 30.11.2021	Appeal by assessee-appellant on recovery of erroneously sanctioned refund of Rs. 5,90,99,124/-

3. Heard both sides and examined the case records.

4. It is an admitted fact on record that both the refund applications were filed by the assessee-appellants under Section 11B of the Central Excise Act, 1944 (for short, ‘the Act of 1944), made applicable to service tax matter under Section 83 of the Finance Act, 1994 (for short, ‘the Act of 1994). The said statutory provision under the Act of 1944 mandates that any person claiming any refund of duty of excise (service tax herein), may make an application for refund to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, before the expiry of one year from the relevant date. The phrase ‘relevant date’ has also been defined in clause (B) appended to the Explanation to Section 11B of the Act of 1944. In the case of the assessee-appellants, the relevant date has to be construed as per sub-clause (f) of clause (B) to the said Explanation as ‘the date of payment of duty’.

5.1 The assessee-appellants have claimed that they had filed the first refund application through online on 25.09.2017 and thereafter, had furnished the manual refund claim application along with requisite documents on 27.10.2017. Thus, they have submitted that since the initial refund application was filed on 25.09.2017, the claim is within prescribed time limit as per Section 11B of the Act of 1944 and as such, they are entitled for refund of service tax amounting to Rs.6,13,77,646/- paid by them. However, we find that the learned Commissioner (Appeals) has considered the date of filing of refund application as 27.10.2017, and rejected such claim for refund of the amount of service tax paid for the period prior to 27.10.2016. We are in agreement with the observations made by the learned Commissioner (Appeals) that the date of refund claim should be reckoned from the date, when the duly signed-in application form, together with the relevant documents, were filed before the department i.e., on 27.10.2017. Date of filing of refund claim application on 25.09.2016, which has been claimed by the assessee-appellants, cannot be considered as proper or valid ground inasmuch as it is the relevant document(s) accompanying with the refund application, which have to be examined by the officer of Central Excise for consideration of the issue, whether the assessee would be entitled for refund or otherwise. Since, no documents were available with the department on 25.09.2016, mere submission of application in online mode would not meet the requirements of Section 11B of the Act of 1944. The statute, in clear terms, provides that the refund application has to be filed in the form and manner, as prescribed, and it should accompany by such documentary or other evidences. The submissions made by the assessee-appellants that filing of application in non-prescribed form and without supporting documents is a mere formality or a procedural infraction, cannot be considered as valid plea inasmuch as the statute has clearly provides the phrase 'shall' and not as 'may'. Therefore, filing of refund application, complete in all respects, on 27.10.2017 should be considered as the date of filing of refund application and therefore, the lodgment of claim for the period prior to 27.10.2016, is beyond the prescribed time limit of 'one year' provided in Section 11B of the Act of 1944 and as such, is clearly barred by limitation of time.

5.2 The assessee-appellants have claimed that by virtue of Notification No. 09/2016-Service Tax dated 01.03.2016 read with Section 103 of the Finance Act, 1994, the service providers were not required to pay any service tax on construction, erection, commissioning or installation of original works contract of port for the period 01.04.2015 to 29.02.2016. They further submitted that since the service providers have erroneously paid the service tax into the Government exchequer and claimed the same from the assessee-appellants, the application filed for claim of refund, is not barred by limitation of time as per Section 11B of the Act of 1944. In this case, the assessee-appellants have filed the applications on 27.10.2017 and on 22.12.2017, claiming refund of service tax paid by the service providers into the Government exchequer. The said applications were filed pursuant to the Act of 2016, wherein service tax exemption was provided retrospectively for the period from 01.04.2015 to 29.02.2016. Availment of exemption under such enactment is subject to the condition that the refund application shall be filed within a period of 'six months' from the date of assent of the President of India regarding such enactment. The Finance Act, 2016 got the assent of the President of India on 14.05.2016. As per the mandates under the Act of 2016, the refund application was required to be filed by the assessee-appellants within six months from the date of such assent. In this case, the time limit of six months provided under Section 103 of the said Act of 1994 expired on 13.11.2016. Thus, owing to the reason that the refund applications were filed by the assessee-appellants after 13.11.2016, in our considered view, the authorities below have correctly rejected the refund applications, wherever the same were filed beyond the prescribed time frame of six months, by holding the same as barred by limitation of time.

5.3 We find that countering the findings recorded in the impugned order by the learned Commissioner (Appeals), the assessee-appellants have contended that the time consumed in the Ministry of Shipping for obtaining clarification on the issue arising out of the Finance Act, 2016 should be excluded for the purpose of computation of the limitation period for filing of refund application. Further, they have also stated that since the disputed service was exempted from payment of service tax with retrospective effect, payment made out of ignorance by the service provider, should also be considered as erroneous payment; and in such eventuality, the limitation provided under Section 11B of the Act of 1944 shall not have any application. In this context, learned Advocate for the assessee-appellants has relied upon the following judgements delivered by the judicial forum, in the case law compilation filed on 01.03.2024:

(i) Vasudha Bommireddy Vs. Assistant Commissioner of S.T., Hyderabad - 2020 (35) GSTL 52 (Telangana)

(ii) Hind Agro Industries Limited Vs. Commissioner of Customs - 2008 (221) E.L.T. 336 (Del.)

(iii) Commr. of C. Ex. (Appeals), Bangalore Vs. KVR Construction – 2012 (26) S.T.R. 195 (Kar.)

(iv) Credible Engineering Construction Projects Limited Vs. Commissioner of Customs & Central Excise (Appeals), Hyderabad – Interim Order No.1/2022 dated 08.02.2022

(v) Parijat Construction v. Commissioner of Central Excise, Nashik – 2018 (9) G.S.T.L. 8 (Bom.)

(vi) Alar Infrastructures Pvt. Ltd. Vs. Commissioner of C. Ex., Delhi – 2015 (40) S.T.R. 1066 (Del.)

(vii) 3E Infotech v. CESTAT, Chennai– 2018 (18) G.S.T.L. 410 (Mad.)

(viii) Swastik Sanitarywares Ltd. Vs. Union of India – 2013 (296) E.L.T. 321 (Guj.)

(ix) Hindustan Cocoa Products Vs. Union of India – 1994 (74) E.L.T. 525 (Bom.)

5.4 Section 103 of the Act of 1994 has provided exemption from payment of service tax in respect of various services provided pertaining to a port, subject to fulfillment of the condition that the Line Ministry in the Government of India certifies that the original works contract had been entered into between the parties before 01.03.2015. In sub-section (3) of Section 103 of the Act of 1994, it has been mandated that an application for the claim of refund of service tax shall be made within a period of six months from the date on which, the Finance Bill, 2016 receives the assent of the President. On reading of the said statutory provision, it transpires that time taken for pursuing the matter with the Line Ministry cannot be considered as a defensible ground for exclusion of such time for computation of the normal period of six months for filing of the refund application. Further, the said statutory provision has mandated that the refund application 'shall be made' within such prescribed time frame. The use of the phrase 'shall' in sub-section (3) of Section 103 of the Act of 1994 makes the position abundantly clear that the condition is neither directory in nature, nor any discretion has been vested with the authorities to condone the delay in filing of the refund application. In other words, filing of refund application within a prescribed period of six months is the mandatory requirement and such provisions cannot be interpreted by any authority(ies) differently, in order to grant refund of service tax claimed beyond such time limit. The law is well settled that if the legislative intent is to prescribe a time limit for doing a particular task in a particular manner, then the authorities functioning under the respective legislation cannot interpret the mandate in a different manner, in order to prescribe a different time frame for completing the task or assignment. In this context, while interpreting the provisions of Section 35 of the Central Excise Act, 1944, wherein a time limit has been prescribed for filing of appeal and for condonation of the delay in filing of such appeal, the Hon'ble Supreme Court, in the case of *Singh Enterprises Vs. Commissioner of C. Ex. Jamshedpur* - 2008 (221) E.L.T. 163 (S.C.), have held as under:

> **"***8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order.*

However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

5.5 On reading of both Section 11B of the Act of 1944 and Section 103 of the Act of 1994, it transpires that the time line has been prescribed therein for consideration of the refund application filed by the assessee. Where the statute has prescribed a particular time limit, then the authorities functioning under such statute cannot alter such time line, in order to adopt some other time frame for consideration of the refund application. In this regard, the Hon'ble Supreme Court, in the case of *Collector of C.E., Chandigarh Vs. Doaba Co-operative Sugar Mills* - 1988 (37) E.L.T. 478 (S.C.) have dealt with and determined the issue in the following manner:

"6. It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail. It may, however, be open to the department to initiate proceedings in the Civil Court for recovery of the amount due to the department in case when such a remedy is open on the ground that the money received by the assessee was not in the nature of refund. This was the view taken by the Tribunal in a previous decision in the case of Miles India Ltd. v. The Assistant Collector of Customs but it was assailed before this Court. The appeal was withdrawn. This Court observed that the Customs Authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefor in the relevant provisions of the Customs Act, 1962. If really the payment of the duty

was under a mistake of law, the party might seek recourse to such alternative remedy as it might be advised…."

5.6 Various aspects for claim of refund under the indirect tax statutes have been elaborately discussed by the Constitutional Bench of the Hon'ble Supreme Court in the case of *Mafatlal Industries Ltd. and Others Vs. Union of India and Others* – 1997 (89) E.L.T. 247 (S.C.). The Hon'ble Apex Court have categorized the claim of refund broadly into three heads i.e., (i) unconstitutional levy; (ii) illegal levy; and (iii) tax paid under mistake of law. Under the first category, taxes collected without authority or declaration made under Article 265 of the Constitution of India are considered as 'unconstitutional levy' and in such an eventuality, the payment of taxes made cannot be considered as payment made under the statute and thus, the provisions of relevant statute, especially the limitation aspect provided therein shall not be applicable, and for claiming refund of the tax amount, the provisions of other statute(s) can be reckoned to. In other words, for claiming refund of the tax amount, the limitation provided in the concerned Act (in the present case, Section 11B of the Act of 1944) shall have no application. Under the second category, if the tax amount has been paid by the assessee, owing to the reason of mis-interpretation/ mis-application / erroneous interpretation of either of the Act of 1944, or the Act of 1994, or the rules framed thereunder, then in such case, the provisions of the statute including the prescribed time limit shall be followed for claiming refund of the tax amount paid, inasmuch as such erroneous payment was made under the particular statute and also the amount was credited in the appropriate 'heads of account' framed and designed by the Central Government for the such specific head of taxation. In the present case, the prescribed accounting code for collection and retention of 'service tax' in the government exchequer is '0044'. Since, as a result of excess payment, such amount was required to be adjusted in the respective accounting head by way of granting refund; then, the provisions of the concerned statute should be strictly adhered to. The third category of refund mentioned herein above has no application to the facts of the present case. The relevant paragraphs in the case of *Mafatlal Industries* (supra) are quoted herein below:

"137. …………………………………………………………………………….……….. :

Category (I) where the levy is unconstitutional - Outside the 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)].

Category (II) where the levy is based on misconstruction or wrong or erroneous 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 :-

Under this category, every error of fact or law committed by the statutory authority or Tribunal, irrespective of its gravity, or nature of infirmity, will not be covered. It is confined to exceptional cases, "where the provisions of a particular Act have not been complied with or the statutory Tribunal has not acted in conformity with fundamental principles of judicial procedure", as stated in Mask & Co.'s case (supra) and in Dulabhai's case (supra). The scope of the above dicta, should be understood in the background of/in accord with the observations of the earlier Constitution Bench of this Court in Firm of IlluriSubbayya Chetty and Sons v. State of Andhra Pradesh (AIR 1964 SC 322 at page 326), to the following effect :

> *" ..... Non-compliance with the provisions of the statute, to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void ..." [Dulabhai's case (supra) — Para 32 - Clause (1)]. [Emphasis supplied]*

Here also, the appropriate action should be laid within the period of limitation provided by the appropriate law and also can invoke Section 72 of the Contract Act, as the case may be…"

5.7 On careful reading of the constitutional Bench judgment of the Hon'ble Supreme Court (supra), the position of law would be made clear that the time line provided in Section 11B of the Act of 1944 is not an empty formality and the same has to be strictly followed, by the person who seeks refund. Though, recourse can be had to Section 72 of the Contract Act, 1872, but in this case, the appellants had not chosen for seeking remedy under the said provisions. Since, the appellants had filed the refund claim in the form and manner prescribed under Section 11B of the Act of 1944, the provisions contained therein alone have the application and accordingly, the department had acted upon, based on such statutory provision in disposal of such refund applications. Thus, in our considered view, since the appellants had not filed the refund applications within the stipulated time frame of 'one year', rejection of the claim amounting to Rs.6,13,77,646/- by the learned Commissioner (Appeals) is in consonance with such statutory provisions.

5.8 Learned Advocate has relied upon various judgments (supra), delivered by the judicial forums, to canvass the case of the assessee-appellants that the refund claim(s) in question is/are not barred by limitation of time. However, on reading of the judgment delivered by the Hon'ble Apex Court in the case of *Doaba Co-operative Sugar Mills* (supra), it become apparent that if a refund claim is filed under a particular statute (in this case, the Act of 1944), then the authorities functioning under such statute are bound to follow the statutory dictates contained therein. Since, specific time limit of 'one year' has been prescribed in the said statute under Section 11B for consideration of the refund application, the statutory authorities cannot go beyond such dictates and have to strictly observe the said statutory provision for consideration of the refund application. Further, with regard to specific time limit for performing certain acts by the appellate authority is concerned i.e., the Commissioner (Appeals) for entertainment of appeal filed before him, the Hon'ble Supreme Court in the case of *Singh Enterprises* (supra), in clear and unambiguous terms, have ruled that the time limit prescribed under Section 35 of the Act of 1944 should alone be considered for filing of appeal before the Commissioner (Appeal) and that too only by the authority so specified in that statute. Since, the said authority alone has been vested with the power to condone the delay, up to a period of thirty days, beyond the normal period of sixty days, rejection of appeal on such ground by him cannot be questioned by any higher judicial body. In view of the authoritative judgements delivered by the Hon'ble Apex Court, as noted in the paragraphs 5.4 to 5.6 above, on the subject issue, we are of the considered opinion that the ratio of various judgements relied upon by the learned Advocate shall not be considered for determination of the issue, inasmuch as the above referred judgements delivered by the Hon'ble Supreme Court have adequately dealt with the present dispute, concerning condonation of delay in late filing of the refund claim application.

6. We find that the learned Commissioner (Appeals) in the impugned order dated 30.08.2019 has sanctioned an amount of Rs.5,90,99,124/- in favour of the assessee-appellants; and that against such order, Revenue has preferred appeal before the Tribunal, being numbered as ST/85457/2020. We find that the reason behind allowing such refund benefit by the learned Commissioner (Appeals) was that the claimant of refund has complied with the statutory provisions, including the limitation of time prescribed thereunder. Since, the Central Government has specifically issued the notification, in exempting payment of service tax with retrospective effect, on the activities of construction, erection, commissioning or installation of original works pertaining to port, the appellants, as the recipient of such service, having been borne the tax burden, were entitled for grant of refund of such excess payment of service tax made by them. Therefore, we do not find any merits in the appeal filed by Revenue.

7.1 As a consequence of the favorable order dated 30.08.2019 passed by the learned Commissioner (Appeals), in sanctioning refund claim amounting to Rs.5,90,99,124/- in favour of the assessee-appellants, Revenue has preferred appeal before this Tribunal along with application for stay of grant of refund. From the appeal records, we observe that the stay application of Revenue was dismissed by the Tribunal vide Order dated 07.09.2020. Since the stay application was not considered favourably and was dismissed, the department vide original order dated 04.11.2020 had sanctioned the refund claim in favour of the assessee-appellants. However, the original authority had not considered for payment of interest on delayed sanction of the refund claim amount, in terms of Section 11BB of the Act of 1944. Therefore, against such original order dated 04.11.2020, the assessee-appellants had preferred appeal before the learned Commissioner (Appeals-I), Mumbai, which was dismissed vide Order-in-Appeal No. SM/GST/A-I/MUM/123/20-21 dated 08.03.2021. Feeling aggrieved with the said order dated 08.03.2021, the assessee-appellants have filed the appeal, being No. ST/86961/2021 before the Tribunal. We find that in support of dismissal of appeal filed by the assessee-appellants, learned Commissioner (Appeals), by referring to and relying upon the Final Order No. A/85801-85802/2021 dated 13.01.2021 passed by the Tribunal, has held that since, the refund claims were not maintainable, the question of grant of interest under Section 11B of the Act of 1944 does not arise. We find that the Order dated 13.01.2021 passed by the Tribunal was set aside vide judgement dated 13.01.2023 passed by the Hon'ble High Court of Bombay and the appeals were restored to the file of the Tribunal. Pursuant to the said judgement dated 13.01.2023, since the appeals were taken up for hearing afresh and order is being passed in upholding sanction of the refund benefit amounting to Rs.5,90,99,124/- in favour of the assessee-appellants, the issue involved is confined only for determination, whether they are entitled for interest on such delayed grant of refund or otherwise?

7.2 Section 11BB of the Act of 1944, deals with the situation of payment of interest on delayed sanction of the refund claim amount. The said statutory provision is quoted herein below:

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

7.3 On reading of the main part together with the Explanation appended to Section 11BB of the Act of 1944, it transpires that if the duty ordered to be refunded, is not refunded within three months from the date of receipt of refund application, then the applicant shall be paid interest at the prescribed rate. It has further been clarified in the statute that the order passed by the appellate authority in sanctioning the refund should also constitute as an order passed under sub-section (2) of Section 11B of the Act of 1944, for the purpose of grant of interest. In the present case, the refund applications filed by the assessee-appellants way back in the month of October/ December, 2017, were under dispute, which are being resolved by our present order. Since, the refund claim is being favourably considered by us, as per the Explanation appended to Section 11BB of the Act of 1944, this order of the Bench should be considered as an order, as if, passed by the Assistant/Deputy Commissioner of Central Excise under sub-section (2) of Section 11B of the Act of 1944. In view of the fact that the refund application filed by the assessee-appellants in the year 2017 was now being considered for refund, which is much beyond the statutory time frame of three months, in our considered view, the assessee-appellants should be entitled for claim of interest for the period, to be computed from expiry of three months from the date of filing of refund applications, till sanction of the refund amount. Since, the exercise for quantification of interest is required to be done at the original stage, we are of the view that the matter should go back to the original authority, for the limited purpose of such quantification only.

8. The assessee-appellants have filed the appeal against the Order-in-Original No. MUM.SOUTH/CGST/Pr.Commr-39/21-22 dated 30.11.2021, which was numbered as ST/86290/2022. In the said order, the amount of Rs.5,90,99,124/-, which had already been refunded by the department, pursuant to the earlier Order dated 04.11.2020, was confirmed along with interest. The present Original Order dated 30.11.2021 was passed, as a consequence and giving effect to the order dated 13.01.2021 passed by this Tribunal, holding that rejection of refund is proper and justified. However, we find that the Order dated 13.01.2021 of the Tribunal was set aside in the appeal filed by the assessee-appellants, which was allowed vide judgement dated 13.01.2023, delivered by the Hon’ble High Court of Bombay. In the said judgement, while setting aside the order of the Tribunal, the Hon’ble High Court has directed for restoration of the appeal in the file of the Tribunal for a decision on merits, as per law. Pursuant to the judgement dated

13.01.2023, the appeal with regard to the refund claim amounting to Rs.5,90,99,124/- was taken up for hearing by the Tribunal. In the present order (at paragraph 6 above), Revenue's appeal is being dismissed, holding that the Order-in-Appeal dated 30.08.2019 passed by the Commissioner (Appeals), in sanctioning the refund is proper and justified. Since, it has been held that the assessee-appellants should be entitled for refund of an amount of Rs.5,90,99,124/-, the present adjudication order dated 30.11.2021 passed by the learned Principal Commissioner, in confirming such demand along with interest, concerning the same issue, cannot be sustained and accordingly, is liable to be set aside.

9. To sum up, all the four appeals filed by both the assessee-appellants and the Revenue are disposed of in the following manner:

Sr No.	**Appeal Nos.**	**Order**	**Relevant Paragraphs, in support of the present order(s)**
1.	ST/85110/2020	Impugned order dated 30.08.2019 sustains and the appeal filed by the assessee-appellants is dismissed.	4, 5.1 to 5.8
2.	ST/85457/2020	Impugned order dated 30.08.2019 sustains and the appeal filed by the Revenue is dismissed.	6
3.	ST/86961/2021	Impugned order dated 08.03.2021 is set aside and the appeal is allowed by way of remand to the original authority for quantification of the amount of interest.	7.1 to 7.3
4.	ST/86290/2022	Impugned order dated 30.11.2021 is set aside and the appeal is allowed in favour of the assessee-appellants.	8

10. Before parting with the case, we would like to highlight the attitude of the assessee-appellants in pursuing the matter, upon conclusion of hearing by the Bench. The assessee-appellants have filed letter dated 22.03.2024, praying for listing of the matter afresh for submission of final written submission and argument, being fully aware of the fact that the appeals were heard at length on different occasions and finally, got concluded on 01.03.2024 with the record,

"*Heard both sides. Orders reserved*."

Even thereafter and despite finality to the proceedings, awaiting issuance of the order, communicating the decision of the Tribunal, liberty was granted to the learned Advocate for filing of written submissions, if any, which was availed by the learned Advocate, in filing the written submission on 05.03.2024. However, the assessee-appellants sought to insinuate themselves into the proceedings with request for re-listing and fresh hearing. This is not only unconventional, but downright bizarre in approaching a judicial forum, despite having engaged professional counsel, still holding the Vakalatnama. This suffices to discard the communication received from the assessee-appellants.

(Order pronounced in open court on 30.08.2024)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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