

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 89871 of 2018

(Arising out of Order-in-Appeal No. NSK-EXCUSS-000-APPL/2017-18 dated 23.08.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Nashik.)

Raymond Limited

Textile Division
Pokhran Road No.1
Thane (West),
Maharashtra – 400 606.

... Appellants

VERSUS

Commissioner of CGST & Central Excise

Nashik Commissionerate
Plot No.155, Sector-34, NH
Jaishtha & Vaishakh, CIDCO
Nashik – 422 008.

.... Respondent

APPEARANCE:

Shri Gopal Mundra, Advocate for the Appellants

Ms. Prakriti Nigam, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85031/2026

Date of Hearing: 17.10.2025

Date of Decision: 20.01.2026

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Raymond Limited, Thane (herein after referred to, as 'the appellants', for short) assailing the Order-in-Appeal No. PUN-EXCUSS-000-APPL/2017-18 dated 23.08.2018 (referred to, as 'the impugned order') passed by the Commissioner (Appeals), CGST & Central Excise, Nashik.

2.1 Briefly stated, the facts of the case are that the appellants' factory situated at E-1, MIDC, Ajanta Road, Jalgaon are registered with jurisdictional Central Excise department for manufacture of 'textile fabrics and textile articles' falling under Chapter Nos. 51, 55, 62 and 63 of the First Schedule to the Central Excise Tariff Act, 1985, by holding Central Excise

Registration No. AAACRG4896AXM003. The appellants avail CENVAT credit of duty paid on inputs, capital goods and input services used for manufacture of final products and utilize the said credit for payment of duty on their final products.

2.2 The Central Government had introduced a completely revised Central Excise duty structure in the Union Budget 2004, wherein manmade fibres alone was subject to mandatory duty viz., 24% on polyester filament yarn (including textured yarn) and 16% on all other filament yarns and man-made fibres. Except for these duties, all Textile goods viz., yarn, fabrics, garments, articles of chapter 50 to 63 were made fully exempt, if no CENVAT credit of duties is taken under the CENVAT Credit Rules, 2002/2004. Further, CENVAT credit scheme for textiles was made optional. For those units/ manufacturers opting to pay Central Excise duty, and thereby avail of CENVAT duty credit, the applicable rates of duty for all other goods of chapter 50 to 63 was prescribed at 4% for pure cotton textiles including yarn, fabrics, garments, made ups and articles; and 8% for other textiles including yarn, fabrics, garments, made ups and articles. All textiles and textile articles falling under chapter 50 to 63 have been fully exempt from duties under Additional Excise Duty (Goods of Special Importance) Act and Additional Excise Duty (Textiles and Textile Articles) Act, where ever applicable.

2.3 The appellants had opted for full exemption from payment of Central Excise duty by availing Notification No.30/2004-C.E. dated 09.07.2004, since all the final products manufactured by the appellants covered under the aforesaid notification benefit. As the pre-requisite condition to avail the said notification benefit being non-availment of CENVAT credit on inputs the appellants reversed CENVAT credit taken by them, based on the clarification issued by Tax Research Unit (TRU) of the Ministry of Finance vide Circular No. 795/ 28/2004-CX., dated 28-7-2004 issued from file F. No. 345/2/2004-TRU. In the said circular it was clarified clarifying that for manufacturers who had pre-budget stock of inputs (or stock of semi-finished or finished goods which contained inputs) on which credit had already been availed, they can reverse the CENVAT credit amount and avail of full exemption from payment of Central Excise duty. Accordingly, the appellants had reversed the CENVAT credit of Rs.1,46,26,733/-.

2.4 The appellants had found that in two cases, which were relied upon by them, the Tribunal have held that amendment to Rule 11(3) *ibid* which

was brought into effect from 01.03.2007, by way of Notification No. 10/2007-C.E. (N.T.) dated 01.03.2007 is prospective and not retrospective in operation. Such referred cases are (i) *Commissioner of Central Excise, Nagpur Vs. Suryalaxshmi Cotton Mills* 2016-TIOL-3336 and (ii) *Madhu Industries Limited Vs. Commissioner of Central Excise, Ahmedabad* – 2017 (2) TMI 837. Accordingly, on the basis of such orders, the appellants had filed a refund application in the prescribed form under Form-R in claiming refund of Rs.1,46,26,733/- by submitting it before the Assistant Commissioner of Jalgaon Division on 02.06.2017, stating the grounds mentioned therein, which have been held by the Tribunal in such relied upon cases.

3.1 Upon scrutiny of the refund claim filed by the appellants on 02.06.2017, the Deputy Commissioner of Jalgaon Division had found that the refund claim is required to be filed under Section 11B of the Central Excise Act, 1944 within one year from the date of payment of Central Excise duty. Whereas the appellants have filed the refund claim for the duty paid on 17.07.2004, after a lapse of nearly thirteen years, on 02.06.2017, which is not proper in law. Therefore, he had issued Show Cause Notice (SCN) dated 20.07.2017 seeking reply of the appellants as to why the refund claim filed by them should not be rejected under Section 11B ibid read with Section 142(3) of the CGST Act, 2017.

3.2 In adjudication of the said SCN dated 02.06.2017, the Deputy Commissioner, CGST & Central Excise, Jalgaon Division vide Order-in-Original dated 19.09.2017 had rejected the refund claim. Being aggrieved with the said order of the original authority, the appellants had filed an appeal before the Commissioner (Appeals). In deciding the case, by relying on the decision of the Hon'ble Supreme Court in the case of *M.P. Steel Corporation Vs. Commissioner of Central Excise* – 2015 (319) E.L.T. 373 (S.C.) and the fact that the refund claim had been filed almost after a lapse of 13 years, he rejected the appeal on merits as well as on maintainability in upholding the order of the original authority. Feeling aggrieved with the above order of the learned Commissioner (Appeals), which is impugned herein, the appellants have filed this appeal before the Tribunal.

4.1 Learned Counsel appearing for the appellants had submitted that the refund claim filed by the appellants is not hit by the bar of limitation period prescribed under Section 11B of the Central Excise Act, 1944, since the reversal of CENVAT credit made on 17.07.2004 was without any authority

of law, as the amended provision of Rule 11(3) of CENVAT Credit Rules, 2004 (CCR of 2004) came into force w.e.f. 01.03.2007 vide Notification No.10/2007-C.E. (N.T.) dated 01.03.2007. He further submitted that the payment of input credit duty on inputs contained in the final products for which exemption from payment of central excise duty was claimed, in terms of the CBEC Circular dated 28.07.2004 does not have any legal authority, as it was held by the Tribunal that amendment to Rule 11(3) *ibid* cannot be applied retrospectively in the case of *Suryalaxmi Cotton Mills* (*supra*). Therefore, he claimed that the time limit of one year prescribed under Section 11B *ibid* would not apply to their case. He stated that the time limit as prescribed under Section 17 of Limitation Act, 1963, in case of duty paid under 'mistake of law' providing for refund within three years from the date of discovery of such mistake alone is not applicable in their case, by relying on the decision of the Hon'ble Bombay High Court in the case of *Hindustan Cocoa Products Vs. Union of India* – 1994 (74) E.L.T. 525 (Bom.).

4.2 In support of their case, the learned Advocate relied upon a number of cases as submitted in his written submission including the following case laws decided by the Tribunal and the High Courts/Supreme Court:

- (i) *Chandrapur Magnet Wires (P) Ltd. Vs. Collector of Central Excise, Nagpur* – 1996 (81) E.L.T. 3 (S.C.);
- (ii) *Mafatlal Industries Ltd. Vs. Union of India* – 1997 (89) E.L.T. 247 (S.C.);
- (iii) *Diamond Shamrock India Ltd. Vs. Union of India* - 1988 (36) E.L.T. 393 (Bom.)
- (iv) *Ponni Sugars (Erode) Ltd. Vs. Commissioner of GST & Central Excise* - 2022 (11) TMI 337 - CESTAT Chennai
- (v) *Parijat Construction Vs. Commissioner of Central Excise, Nashik* - 2018 (359) E.L.T. 113 (Bom.),
- (vi) *Hindustan Cocoa Products Vs. Union of India* - 1994 (74) E.L.T. 525 (Bom.)
- (vii) *Collector of Central Excise, Chandigarh Vs. M/s. Doaba Co-operative Sugar Mills Ltd.,* - 1988 (37) E.L.T. 478 Jalandhar
- (viii) *KVR Construction Vs. CCE* - 2012 (26) S.T.R. 195 (Kar.)
- (ix) *ASL Builders Private Limited Vs. Commissioner of Central GST & CX.* - 2020 (1) TMI 431 - CESTAT Kolkata

5.1 On the other hand, the learned Authorized Representative (AR) had vehemently argued the case by reiterating the impugned order and stating

that the learned Commissioner (Appeals) had thoroughly examined the grounds submitted by the appellants in their refund claim and had ultimately rejected the appeal on merits, limitation and maintainability. By relying on the following binding precedents of Hon'ble Supreme Court, she stated that the refund claim filed beyond the prescribed statutory time limit cannot be entertained and the impugned order rejecting such refund claim is sustainable.

(i) *Mafatlal Industries Ltd. Vs. Union of India* – 1997 (89) E.L.T. 247 (S.C.);

(ii) *ITC Limited Vs. Commissioner of Central Excise, Kolkata-IV* – 2019 (368) E.L.T. 216 (S.C.);

(iii) *Assistant Commissioner (CT) LTU, Kakinada & Ors. Vs. Glaxo Smith Kline Consumer Health Care Limited* – 2020 (36) G.S.T.L. (305) 305;

(iv) *Pfizer Ltd. Vs. Union of India* – 1996 (65) ECR 155 (Bombay)

5.2 Learned AR further submitted that amendment to Rule 11(3) ibid merely introduced an express mechanism for reversal of credit involved in inputs under the Rules of CCR, 2004, whereas the principle of reversal of Cenvat/Modvat credit existed prior to it as held in the case of Chandrapur Magnet Wires Pvt. Ltd. (supra). Further, such payment of duty by reversal was done by the appellants as a self-motivated, unconditional action to comply with the condition precedent to availing duty exemption under Notification No.30/2004-C.E. dated 09.07.2004. Therefore, she claimed that as held in the case of Mafatlal Industries (supra) by the Hon'ble Supreme Court, the theory of mistake of law and consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by the appellants taking advantage of the decision in another assessee's case. Thus, she submitted that the appeal filed by the applicants is liable to be dismissed.

6. The issues relevant for consideration before the Tribunal, are as follows:

(i) Whether the appellants are eligible to claim refund of Central Excise duty paid through reversal of CENVAT credit, for compliance with the Notification No. 30/2004-Central Excise dated 09.07.2004 in availing central excise duty exemption on final products cleared under such notification, later on 02.06.2017 on the basis of the relief got by some other appellants in certain cases before the Tribunal? ;

(ii) Does the impugned order dated 23.08.2018 in rejecting the refund claim filed by the appellants towards central excise duty paid by them is legally sustainable in terms of Section 11B of the Central Excise Act, 1944?

7. In order to appreciate the issues under dispute, we would like to refer to the provisions of Rule 11B of the Central Excise Act, 1944 and the relevant notification No. 30/2004-C.E. dated 09.07.2004 which provided for duty exemption on the final products cleared by the appellants on fulfilling the condition precedent that credit of duty on inputs have not been taken under the provisions of CENVAT Credit Rules, 2002/2004. The relevant provisions are extracted herein below:

Central Excise Act, 1944

"Claim for refund of duty and interest, if any, paid on such duty.

Section 11B. (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 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 documents referred to in section 12A) as the applicant may furnish to establish that the amount of 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 duty and interest, if any, paid on such duty had not been passed on by him to any other person :.....

xxx

xxx

xxx

xxx

Provided further that the limitation of ⁵[one year] shall not apply where any duty and interest, if any, paid on such duty] has been paid under protest.

xxx

xxx

xxx

xxx

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)

(b)

(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."

Notification No. 30/2004-C.E. dated 09.07.2004

Textiles and Textile Articles — Effective rate of duty to specified goods of Chapters 50 to 63

"In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 7/2003-Central Excise dated the 1st March 2003, published in the Gazette of India vide number G.S.R. 137(E), dated 1st March 2003, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table, from whole of the duty of excise leviable thereon under the said Central Excise Act :

Provided that **nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2002, -**

TABLE

S. No.	Chapter or heading No. or sub-heading No.	Description of goods
(1)	(2)	(3)
1.	50.04, 50.05	All goods
2.	51.05, 5106.11, 5106.12, 5106.13, 5107.11, 5107.12, 51.08, 51.09, 51.10, 51.11, 51.12	All goods
XXX	XXX	XXX
8.	55.05	All goods, except such goods which arises during the course of manufacture of filament yarns, monofilaments, filament tows or staple fibres or manufacture of textured yarn (including draw twisted and draw wound yarn) of heading Nos. 54.02, 54.03, 55.01, 55.02, 55.03 or 55.04. Explanation. - For the purposes of this exemption, "manufacture of filament yarns, monofilaments, filament tows or staple fibres" means manufacture of filaments or staple fibres of organic polymers produced by processes, either : (a) by polymerization of organic monomers, such as polyamides, polyesters, polyurethanes, or polyvinyl derivatives; or

S. No.	Chapter or heading No. or sub-heading No.	Description of goods
		<i>(b) by chemical transformation of natural organic polymers (for example cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates.</i>
9.	55.08, 55.09, 55.10, 55.11, 55.12, 55.13, 55.14	All goods
10.	55.06, 55.07	Staple fibres procured from outside and subjected to carding, combing or any other process required for spinning, by a manufacturer who does not have the facilities in his factory (including plant and equipment) for producing goods of heading Nos. 55.01, 55.02, 55.03 and 55.04.
xxx	xxx	xxx
16.	61, 62, 63 (except 6307.10)	All goods

8.1 On plain reading of the legal provisions contained under Section 11B of the Act of 1944, it transpires that any person claiming refund of any duty of excise paid shall file a refund claim in the prescribed form within one year from the relevant date i.e., date of payment of duty in this case. It is not in dispute that the appellants had paid the central excise duty by reversal of CENVAT credit by debiting the CENVAT account for an amount of Rs.1,46,26,733/- on 17.07.2004, and the refund application in Form-R was submitted before the proper officer on 02.06.2017. On preliminary examination of the above facts, it clearly comes out from the refund application and the case records, that refund claim was filed by the appellants on 02.06.2017, which is beyond the prescribed time of one year from the date of payment of duty on 17.07.2004. In other words, the last date for filing the refund claim in this case is 16.07.2005, and hence the refund application filed by the appellants on 02.06.2017 cannot be entertained in terms of Section 11B of the Act of 1944.

8.2 In this regard, the appellants have claimed that 'payment of central excise duty by reversal of CENVAT credit by them is payment of central excise duty by mistake of law', as it was made only to comply with the department's interpretation prevailing at that time in terms of CBIC instructions dated 28.07.2004. It was further contended that such requirement of reversal of CENVAT credit of inputs contained in the exempted goods or in the inputs, which were lying as such, for the reason that credit was availed prior to the issuance of exemption notification for clearance of final products on fulfilling the conditions of not taking CENVAT credit, came into effect by issue of Notification No.10/2007-C.E. (N.T.)

dated 01.03.2007 amending the Rule 11(3) of CCR of 2004 for providing such conditions therein. Since such provisions requiring reversal of CENVAT credit apply post amendment after 01.03.2007, the payment of duty by reversal of CENVAT credit made by them on 28.07.2004 is without authority of law. Therefore, the appellants claimed that the refund of CENVAT credit paid under mistake of law shall be eligible to them, without regard to the time limit prescribed under Section 11B *ibid*.

8.3 In this regard, on plain reading of the Notification No. 30/2004-C.E. dated 09.07.2004, it clearly transpires that in order to avail central excise duty exemption on final products specified therein, the essential condition is that no credit of duty on inputs or capital goods has been taken by the person claiming exemption under the provisions of the CENVAT Credit Rules, 2002. From the facts of the case and on perusal of the refund application filed by the appellants, it is specifically stated therein that all the final products manufactured by them are eligible for the aforesaid central excise duty exemption, and therefore the appellants have decided to avail such exemption, by reversal of duty involved in respect of inputs, dyes & chemicals, furnace oil, packing materials contained in their work in progress and lying as such as on 08.07.2004 and had also informed the same to the jurisdictional Central Excise Superintendent vide their letter Ref. EX/JAL/2004-05/206 dated 19.07.2004 hand delivered and acknowledged by the office of the Assistant Commissioner of Central Excise, Jalgaon Division for having received on 21.07.2004. On such background of the facts, it cannot be said that the payment of duty by reversal of CENVAT credit is 'by mistake of law'.

8.4 The relevant extract of instructions issued by CBIC dated 28.07.2004 is given below:

"Circular No. 795/28/2004-CX., dated 28-7-2004

F. No. 345/2/2004-TRU

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Excise & Customs,

New Delhi

Subject : Issues relating to changes in the excise duty structure on textiles and textile articles, as pointed out by the trade and the field formations - Regarding.

The undersigned is directed to state that subsequent to Budget 2004 announcements, a number of representations/references have been received from the trade as well as from the field formations pertaining

to the changes made in the excise duty structure on Textiles and Textile Articles. The point raised and the clarifications thereon are as follows.

Issue No. (1) :

Can a manufacturer of textiles or textile articles avail full exemption under Notification No. 30/2004-C.E. as well as clear similar or dissimilar goods on payment of duty under Notification No. 29/2004-C.E. simultaneously?

Clarification :

Notification No. 29/2004-C.E. (prescribing optional duty at the rates of 4% for pure cotton goods and 8% for other goods) and No. 30/2004-C.E. (prescribing full exemption) are independent notifications and there is no restriction on availing both simultaneously. However, the manufacturer should maintain separate books of account for goods availing of Notification No. 29/2004-C.E. and for goods availing of Notification No. 30/2004-C.E.

Issue No. (2) :

A manufacturer had stock of inputs as on 8-7-2004 (or stock of finished goods which contained inputs) on which he had availed credit. Can he avail full exemption under Notification No. 30/2004-C.E. on finished goods which was in stock or are manufactured subsequently from such inputs?

Clarification :

*If the manufacturer had **not** taken any credit on his pre-budget stock of inputs, he can clear the finished products without payment of duty under Notification No. 30/2004-C.E., dated 9-7-2004. However, for manufacturers who had pre-budget stock of inputs (or stock of semi-finished or finished goods which contained inputs) on which credit had already been availed, there are two options. He can continue to pay duty on the finished goods made therefrom, at post budget rates i.e. 4% for cotton and 8% for others. Alternatively, he can reverse the credit amount and avail of full exemption on the finished goods."*

On careful reading of the above clarification issued by CBIC, it transpires that the circular had tried to address the problems faced by the industry and field formations with respect to changes made in the excise duty structure on Textiles and Textile Articles. In fact, the clarification issued by CBIC dated 28.07.2004 provided for two options for the manufacturer who intend to avail the exemption on final products. These are viz.,

(i) option one, by paying the applicable duty of 4%/8% on the final products, in cases where input credit has been taken and CENVAT facility is desired to be continued; and

(ii) option two, by reversal of credit amount in respect of inputs contained in final products or inputs which are proposed to be used in final products,

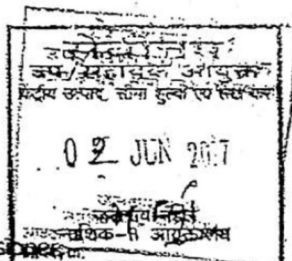
for availing full exemption from central excise duty on final products by availing the notification dated 09.07.2004.

Therefore, the appellants always had the option to either continue to avail CENVAT credit facility by paying applicable central excise duty or to reverse the credit, in case of availing full exemption from payment of duty on clearance of final products. The above facts clearly brings out that it is a conscious decision taken by the appellants to avail central excise duty exemption for clearance of final products by availing Notification No. 30/2004-C.E. dated 09.07.2004 and there is no iota of doubt in the written letter of the appellants submitted to the department for claiming that such payment of duty by reversal of CENVAT credit was by mistake of law. Therefore, we are unable to find any supporting evidence for entertaining the claim of the appellants that the payment of duty was made by mistake of law.

8.5 We had also examined the decisions of the Tribunal relied upon by the appellants in the case of *Suryalaxshmi Cotton Mills* (supra) and *Madhu Industries Limited* (supra). In those relied upon cases, the Tribunal has held that there was no provision for reversal of CENVAT credit in respect of inputs contained in the exempted goods or inputs lying as such, to be used in manufacture of such exempted goods, for which the credit was taken prior to the issue of notification No. 30/2004-C.E. dated 09.07.2004, providing the sub-rule (3) in Rule 11 of the CCR of 2004. It has been held in a number of cases by the Tribunal, that reversal of CENVAT credit taken on inputs can be taken in effect as payment of duty on inputs. The undisputed facts of the case are that the inputs as well as the final products cleared by the appellants are excisable goods on which there is a proper levy of central excise duty, in terms of the Central Excise Act, 1944 read with Central Excise Tariff Act, 1985. Further, in order to claim the full duty exemption from payment of central excise duty on final products, as provided in the Notification No.30/2004-C.E. dated 09.07.2004 issued under Section 5A of the Act of 1944, the appellants had reversed the CENVAT credit taken on inputs in order to fulfil the condition that no credit of duty on inputs has been taken under CCR of 2002/2004. All the aforesaid requirements are properly laid down in the Central Excise statute, and there is no issue of any illegal levy or payment of duty under mistake of law. Therefore, there is no conclusion provided either in the relied upon case law or in the legal provision of Central Excise statute, for substantiating that such payment of duty by reversal of CENVAT credit made by the

appellants, prior to amendment in Rule 11(3) of CCR of 2004, tantamount to 'mistake of law'.

9.1 We have also carefully examined the refund application dated 02.06.2017 filed by the appellants before the Assistant Commissioner of Central Excise, Jalgaon Division claiming refund of an amount of Rs.1,46,26,733/-. The extract of the same is given below:



Raymond
LIMITED

Hand Delivery

Date: 01.06.2017

Ref.: RL/EXC/JAL/2017-18

The Assistant Commissioner,
Central Excise & Customs,
Jalgaon Division,
Bendre Towers, Near Ichhadevi,
N.H.6,
Jalgaon (M.S.).

Dear Sir,

Sub: Application for Refund of CENVAT Credit wrongly reversed of Rs. 1,46,26,733/-.

Raymond Limited is a Company registered under the Companies Act, inter alia, engaged in the manufacture of textile fabrics and articles of textiles falling under Chapter Nos. 51, 55, 62 and 63 of Central Excise Tariff Act, 1985. We are registered under Central Excise regulations holding Registration Certificate No. AAACR4896AXM003 issued by the Divisional Deputy/Assistant Commissioner of Central Excise, Jalgaon.

As per the Government's policy on textile and textile articles declared during Union Budget 2004-05, we opted for exemption from payment of duty as provided under Notification No.30/2004-CE dated 09/07/2004 with effect from 09/07/2004.

Prior to the period 09/07/2004, we were paying excise duty on final products manufactured and removed from the factory premises. We were also availing CENVAT credit against the inputs and capital goods received in the factory and used for manufacture of exisable goods.

In the Budget 2004-05, Government had issued Notification No.30/2004-CE dated 09/07/2004, which exempts specified Textiles and Textile articles from whole of the Excise Duty provided CENVAT credit is not claimed on the inputs. The requirement of non availment of CENVAT credit under CENVAT Credit Rules was provided in Circular D.O.F. No.334/3/2004-TRU dated 08/07/2004 issued by Ministry of Finance.

All the products manufactured during that time were covered under the said Notification. We therefore opted for this exemption in respect of our products for the said purpose and accordingly reversed CENVAT credit of Rs.1,46,26,733/- (Basic Excise Duty- Rs.1,29,78,216/- and AED (T&TA) of Rs.16,48,517/-) vide CENVAT account Part-II Entry No.394 dated 17/07/2004. The details of reversal of CENVAT credit was intimated to the Superintendent, Central Excise & Customs, Jalgaon-III Range by our letter reference No.EX/JAL/2004-05/206 dated 19/07/2004. Subsequently, Ministry of Finance also clarified for reversal of credit for availing full exemption under said Notification by their Circular No.795/28/2004-CX dated 28/07/2004.

Cont'dP/2

TEXTILE DIVISION

E-1, MIDC, AZANTA ROAD
JALGAON
MAHARASHTRA 425 003
PHONE (0257) 6602200
FAX (0257) 2210408

CORPORATE OFFICE

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PANDURANG BUDHKAR MARG,
WORLI,
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FAX 24939036, 24925084

REGISTERED OFFICE

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FAX (02352) 22985
CIN: L17117MH1925P_C001208



Raymond
LIMITED

(2)

In this connection, we wish to inform that the requirement of reversal of CENVAT credit under inputs contained the stock of semi finished goods and finished goods upon opting exemption notification issued under Section 5A of the Central Excise Act, has been brought into the statute by inserting Sub Rule (3) in Rule 11 of Cenvat Credit Rules, 2004 vide Notification No.10/2007-CE(NT) w.e.f. 01/03/2007. Therefore, the subject amendment will have retrospective effect and same cannot be applied for earlier period.

Recently, in Hon'ble CESTAT, in following cases has held that the amendment to Rule 11(3) which was brought into effect from 01/03/2007, by virtue of Notification No.10/2007-CE(N.T.) dated 01/03/2007 being prospective and not retrospective operation:

- (1) Commissioner of Central Excise, Nagpur -vs- Suryalaxmi Cotton Mills - reported in 2016-TIOL-3336-CESTAT-Mum;
- (2) Madhu Industries Limited -vs- C.C.E. Ahmedabad - reported in 2017(2) TMI 837 - CESTAT Ahmedabad.

A copy of each citation mentioned above, attached for your ready reference.

As the amendment requiring to reverse the CENVAT credit on inputs, inputs contained in the semi finished goods and finished goods came into effect from 01/03/2007, therefore, the reversal of CENVAT which has been made during July 2004 was not required to be done.

As the reversal of the CENVAT credit was made as per the Budget instruction which is without authority of law, therefore the same is liable for refund.

We are therefore enclosing herewith our Refund Application in duplicate along with the documents as mentioned therein.

In view of above, we would request to grant the refund of Rs. 1,46,25,733/- at the earliest.

Thanking you,

Yours faithfully

Authorised Signatory

End.: As above.

c.c. to: Superintendent of Central Excise & Customs,
Range: Jalgaon-III

Received

[Signature]
VIRESH PATIL
निरीक्षक केन्द्रीय उत्पाद सीमा शुल्क
रेंज - IV जलगांव
Inspr. Central Excise & Customs
Range-IV Jalgaon

9.2 On reading of the above two page letter of the appellants, it clearly reveals that they had reversed the CENVAT credit for the purpose of availing the excise duty exemption in clearance of the final products manufactured by them and specifically for complying with the condition attached to such exemption, and not under any mistake of law. Further, on the basis of the orders passed by the Tribunal in the relied upon cases, they interpreted that such condition requiring reversal of credit is effective from 01.03.2007, and thus claimed refund of CENVAT duty credit reversed by them earlier on 17.07.2004. This has also been reiterated in the Refund application in the prescribed Form-R, the extract of which is given below:

ANNEXURE – 67
FORM – R
Application for refund of excise duty
[[Rule 173-S]]

The Deputy Commissioner,
Central Excise,
Division Jalgaon,
Commissionerate – Nashik-1,

1. I/We claim refund of Rs.1,46,26,733/- (Rupees One Crore Forty Six Lacs Twenty Six Thousand Seven Hundred Thirty Three Only) on the grounds mentioned thereunder :-

- (a) Prior to 9/07/2004 we were paying excise duty on final products manufactured and removed from the factory premises and we were also availing cenvat credit against the inputs and capital goods received in the factory and used for manufacture of excisable goods.
- (b) Subsequently, as per Government's policy on textile and textile articles declared during Union Budget 2004-05, we opted for exemption from payment of duty as provided under Notification No.30/2004-CE dated 09/07/2004 with effect from 09/07/2004 issued under Section 5A of the Act.
- (c) In view of opting such exemption scheme, cenvat credit under inputs, inputs contained in the stock of semi finished and finished goods as on 8/07/2004 of Rs.1,46,26,733/- (Basic Excise Duty – Rs.1,29,78,216/-, & AED(T&TA) Rs. 16,48,517/-) was reversed 19/07/2004 vide cenvat account Part-II Entry No.394 dated 17/07/2004 as per the requirement of circular dated 08/07/2004 and details of such reversal was intimated to the Superintendent, Central Excise & Customs, Jalgaon III Range by our letter reference No.EX/JAL/2004-05/206 dated 19/07/2004.
- (d) The requirement of reversal of cenvat credit under inputs, inputs contained in the stock of semi finished goods and finished goods upon opting exemption notification issued under Section 5A of the Central Excise Act, has been brought into the statute by inserting Sub Rule (3) in Rule 11 of Cenvat Credit Rules, 2004 vide Notification No.10/2007-CE(NT) w.e.f. 01/03/2007. Therefore, such amendment will have retrospective effect and cannot be applied for earlier period.
- (e) As the amendment in the Cenvat credit rules requiring reversal of credit came into force w.e.f. 01/03/2007, therefore the circular dated 08/07/2004 has no legal force. Since the reversal of Cenvat has been made as per such Circular, therefore the reversal has been made without authority of law.
- (f) As the cenvat reversal was made without authority of law, therefore the same is refundable to us.

2. I/We enclose the following documents in support of the claim.

1. Copy of Notification No.30/2004-CE dated 09/07/2004.
2. Copy of Circular D.O.F. No.334/3/2004-TRU dated 08/07/2004 issued by Ministry of Finance.
3. Copy of CENVAT account Part-II Entry No.394 dated 17/07/2004

9.3 On careful reading of the details given by the appellants in the refund application vis-à-vis the legal provisions under Notification No.30/2004-C.E. dated 09.07.2004, as explained at paragraph 8.4 above, it could be concluded that for compliance with the condition of the notification, the appellants had reversed the CENVAT credit. Otherwise, the appellants could not have *ab initio* cleared their final products duty free, by availing the

benefit of central excise duty exemption under Notification No.30/2004-C.E. dated 09.07.2004. Even if the ground claimed by the appellants that the requirement of reversal of input duty credit came into effect from a subsequent date i.e., 01.03.2007, then the only option available to them was to continue to avail CENVAT benefit without reversal of credit of inputs, and start paying applicable central excise duty of 4%/8%, as may be applicable vide Notification No.29/2004-C.E. dated 09.07.2004, which they did not prefer to do.

9.4 In this regard, the instructions issued by the Tax Research Unit (TRU) of the Ministry of Finance, in explaining the budgetary changes in the form of instructions to the field formations vide D.O.F. No.334/3/2004-TRU dated 08.07.2004 explains the position discussed in the above paragraph at 9.3 above. The relevant extract of the same is quoted below:

"....These salient features of the proposals in respect of excise, customs and service tax are indicated below:

4.8 Textiles

4.8.1 The duty structure has been completely revised. There will be mandatory duty only on man-made fibres. The mandatory duty will be as under:

(a) 24% on polyester filament yarn (including textured yarn)

(b) 16% on all other filament yarns (including textured yarn) and man-made fibres

However, when these duty paid fibres and filament yarns are subjected to any processing in a unit which has not made the basic filament yarn (including textured yarn) or the fibre, there will be an optional exemption. The existing duty of 16% on polyester filament above 750 deniers will also continue.

4.8.2 The Cenvat scheme for textiles has been made optional. There will be a mandatory duty only on man-made fibres (artificial and synthetic staple fibres and filament yarns). Except for these duties, textile goods (yarn, fabrics, garments, articles of chapter 50 to 63) will be fully exempt if no credit of duties is taken under the Cenvat Credit Rules.

4.8.3 For those opting to pay duty, and thereby avail of duty credit, the applicable rates of duty for all other goods of chapter 50 to 63 will be:

(a) 4% for pure cotton textiles including yarn, fabrics, garments, made ups and articles

(b) 8% for other textiles including yarn, fabrics, garments, made ups and articles.

4.8.4 It may be noted that no intimation is needed by any unit either for availing of the exemption or for payment of duty at the above rates. The optional route is open for all sectors i.e. handloom, power looms, independent processors, stand-alone units as well as composite mills."

On perusal of the above, it further transpires that both the options i.e., payment of duty on final products at the rate of 4%/8% by availing the

input duty credit; or not availing CENVAT benefit of input duty credit for availing full duty exemption for clearance of final products, were available to the manufacturers of textile and textile articles. Such options have also been made voluntary, without involving even a simple intimation to the Department. Therefore, it could be concluded that payment of input duty credit on inputs contained in the final products, inputs lying as such for using the manufacture of final products, whereby the final products are proposed to be cleared by availing full duty exemption by a manufacturer at the time of its clearance, had no option except to reverse the CENVAT credit, in order to fulfil the conditions of availing complete central excise duty exemption. In view of the above, we are of the considered view that payment of central excise duty by the appellants by reversal of CENVAT credit by debiting the CENVAT account for an amount of Rs.1,46,26,733/- on 17.07.2004, is proper in terms of the strict compliance required for availing the duty exemption benefit under Notification No.30/2004-C.E. dated 09.07.2004.

10.1 In respect of payment of duty under various situations and the question of eligibility of refund under Section 11 B of the Act of 1944 has been dealt with by the Hon'ble Supreme Court in the case of *Mafatlal Industries* (Supra). The three situations explained there in are viz., (i) tax levied or collected contrary to the law, i.e., a provision of the Act under which taxes levied is struck down as unconstitutional for transgressing the constitutional limitations, for the sake of convenience called as 'unconstitutional levy'; (ii) tax is collected by the authorities under the Act by mis-construction or wrong interpretation of the provisions of the Act, Rules and Notifications or by an erroneous determination of the relevant facts, for the sake of convenience called as 'illegal levy'; and (iii) where a manufacturer pays duty either without protest after registering his protest, disputes the levy and fights it out up to the first Appellate second Appellate/ Revisional level and gives up the fight, being unsuccessful therein, claims the tax paid on the basis of success of another manufacturer, for the sake of convenience called as 'discovery of mistake of law'. It was held by the Hon'ble Supreme Court that the only exception where refund of duty can be considered outside the provisions of Section 11 B *ibid* is in respect of 'unconstitutional levy'; for all other kinds of refund, they're required to file the claim only under and in accordance with Section 11 B *ibid*. In the situation of 'discovery of mistake of law', on the basis of decision given in case of one or a few assessees, the other assessee or manufacturer cannot

take advantage of the decision obtained in persuasion of litigation by such other person, and to claim that consequently limitation of 3 years from the date of discovery of such mistake should be applied for refund of the taxes paid by the claimant-applicant. The relevant paragraphs of the judgement delivered by the Hon'ble Supreme Court in the case of *Mafatlal Industries* (Supra) is quoted below:

"7. *We must, however, pause here and explain the various situations in which claims for refund may arise. They may arise in more than one situation. One is where a provision of the Act under which tax is levied is struck down as unconstitutional for transgressing the constitutional limitations. This class of cases, we may call, for the sake of convenience, as cases of "unconstitutional levy". In this class of cases, the claim for refund arises outside the provisions of the Act, for this is not a situation contemplated by the Act.*

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18. *Second situation is where the tax is collected by the authorities under the Act by mis-construction or wrong interpretation of the provisions of the Act, Rules and Notifications or by an erroneous determination of the relevant facts, i.e., an erroneous finding of fact. This class of cases may be called, for the sake of convenience, as illegal levy. In this class of cases, the claim for refund arises under the provisions of the Act. In other words, these are situations contemplated by, and provided for by, the Act and the Rules.*

19. *The above distinction is not only accepted in all jurisdictions but is also not disputed before us.*

20. *So far as the first category (unconstitutional levy) is concerned, there is no dispute before us that it is open to the person claiming refund to either file a suit for recovery of the tax collected from him or to file a writ petition under Article 226 of the Constitution for an appropriate direction of refund. The only controversy on this score is whether the manufacturer/payer is entitled to such refund where he has already passed on the burden of the duty to others.*

21. *With respect to the second category of cases, there is a good amount of controversy. While the Union of India says that such claims of refund should be put forward and determined only under and in accordance with the provisions of the Act and the Rules, the contention of the appellants-petitioners is that even in such cases a suit or writ is maintainable on the ground that the tax has been collected without the authority of law, i.e., contrary to Article 265 of the Constitution. In other words, while according to the Union of India, such claims of refund should be filed within the time prescribed by the Act and the Rules and should and can be dealt with only under the provisions of the Act and the Rules, the appellants-petitioners say that such claims can be made in suits and writ petitions as well and that too without reference to the period of limitation prescribed in Rule 11 or Section 11B, as the case may be.*

22. *There is as yet a third and an equally important category. It is this : a manufacturer (let us call him "X") pays duty either without protest or after registering his protest. It may also be a case where he disputes the levy and fights it out up to first Appellate or second Appellate/Revisional level and gives up the fight, being unsuccessful therein. It may also be a case where he approaches the High Court too, remains unsuccessful and gives up the fight. He pays the duty demanded or it is recovered from him, as the case may be. In other words, so far as 'X' is concerned, the levy of duty becomes final and his claim that the duty is not leviable is finally rejected. But it so happens that sometime later - may be one year, five years, ten years, twenty years or even fifty years - the Supreme Court holds, in the case of some other manufacturer that the levy of that kind is not exigible in law. (We must reiterate - we are not speaking of a case where a provision of the Act whereunder the duty is struck down as unconstitutional. We are speaking of a case involving interpretation of the provisions of the Act, Rules and Notification.) The question is whether 'X' can claim refund of the duty paid by him on the ground that he has discovered the mistake of law when the Supreme Court has declared the law in the case of another manufacturer and whether he can say that he will be entitled to file a suit or a writ petition for refund of the duty paid by him within three years of such discovery of mistake? Instances of this nature can be multiplied. It may not be a decision of the Supreme Court that lead 'X' to discover his mistake; it may be a decision of the High Court. It may also be a case where 'X' fights up to first appellate or second appellate stage, gives up the fight, pays the tax and then pleads that he has discovered the mistake of law when the High Court has declared the law. The fact is that such claims have been entertained both in writ petitions and suits until now, purporting to follow the law declared in Kanhaiyalal, and are being allowed and decreed, sometimes even with interest. The Union of India says that this can never be. It says, a manufacturer must fight his own battle and only if he succeeds therein, can he claim refund. He cannot take advantage of success of another manufacturer and that no suit or writ is maintainable by him for refund on the ground of alleged discovery of mistake of law on the declaration of law by this Court or a High Court (or a Tribunal or any other authority under the Act) in the case of another person. The Union of India denies that such a person can plead payment of duty under a mistake of law within the meaning of Section 72 of the Contract Act. It also denies that such a writ petition or a suit can be filed within three years of such "discovery of mistake of law".*

23. *The Union of India submits that Kanhaiyalal has been wrongly decided. They submit that no suit or a writ petition lies for refund of duty except in the case of "unconstitutional levy" as specified hereinabove and even here, they say, such claim is subject to the proof that burden of the duty has not been passed on to the purchaser. In all other cases, they say, claims of refund can be made, and must be made, only under and in accordance with the provisions of the Act/Rules aforesaid, governing the subject of refund - and in no other manner and in no other forum. It is also suggested that, in any since Kanhaiyalal does not deal with the effect of passing on the duty to a third party - it was neither raised nor considered therein - it is no authority for the proposition that the manufacturer/payer can recover the duty paid in any of the above three categories of cases even if he has passed on the burden to others.*

The petitioners- appellants, on the other hand, support the reasoning of, and the law declared in, Kanhaiyalal and say that it has been the law over the last thirty seven years and has been followed consistently, without a demur, by larger and smaller Benches of this Court and that there are no good or compelling reasons to depart from of over-rule the said decision.

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70. *Re : (II) : 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 is 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, we are dealing with a case where the duty was paid on account of mis-construction, mis-application or wrong interpretation of a provision of law, rule, notification or regulation, as the case may be.) 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? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17(1)(c) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? Kanhaiyalal is understood as saying that such a course is permissible. Later decisions commencing from Bhailal Bhai have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well-accepted concepts of law. One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. 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 entertained. But what is happening now is that the duty which has been paid under a proceeding which has become final long ago - may be an year back, ten years back or even twenty or more years back - is sought to be recovered on the ground of alleged discovery of mistake of law on the basis of a decision of a High Court or the Supreme Court. It is necessary to point out in this behalf that for filing an appeal or for adopting a remedy provided by the Act,*

the limitation generally prescribed is about three months (little more or less does not matter). But according to the present practice, writs and suits are being filed after lapse of a long number of years and the rule of limitation applicable in that behalf is said to be three years from the date of discovery of mistake of law : The incongruity of the situation needs no emphasis. And all this because another manufacturer or assessee has obtained a decision favourable to him. What has indeed been happening all these years is that just because one or a few of the assessees succeed in having their interpretation or contention accepted by a High Court or the Supreme Court, all the manufacturers/Assessees all over the country are filing refund claims within three years of such decision, irrespective of the fact that they may have paid the duty, say thirty years back, under similar provisions - and their claims are being allowed by courts. All this is said to be flowing from Article 265 which basis, as we have explained hereinbefore, is totally unsustainable for the reason that the Central Excise Act and the Rules made thereunder including Section 11B/Rule 11 too constitute "law" within the meaning of Article 265 and that in the face of the said provisions - which are exclusive in their nature - no claim for refund is maintainable except under and in accordance therewith. The second basic concept of law which is violated by permitting the above situation is the sanctity of the provisions of the Central Excises and Salt Act itself. The Act provides for levy, assessment, recovery, refund, appeals and all incidental/ancillary matters. Rule 11 and Section 11B, in particular, provide for refund of taxes which have been collected contrary to law, i.e., on account of a mis-interpretation or mis-construction of a provision of law, rule, notification or regulation. The Act provides for both the situations represented by Sections 11A and 11B. As held by a seven - Judge Bench in Kamala Mills, following the principles enunciated in Firm & Illuri Subbaiya Chetty, the words "any assessment made under this Act" are wide enough to cover all assessments made by the appropriate authorities under the Act whether the assessments are correct or not and that the words "an assessment made" cannot mean an assessment properly and correctly made. It was also pointed out in the said decision that the provisions of the Bombay Sales Tax Act clearly indicate that all questions pertaining to the liability of the dealer to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct and whether a transaction is exigible to tax or not are all matters to be determined by the authorities under the Act. The argument that the finding of the authority that a particular transaction is taxable under the Act is a finding on a collateral fact and, therefore, resort to civil court is open, was expressly rejected and it was affirmed that the whole activity of assessment beginning with the filing of the return and ending with the order of assessment falls within the jurisdiction of the authorities under the Act and no part of it can be said to constitute a collateral activity not specifically or expressly included in the jurisdiction of the authorities under the Act. It was clarified that even if the authority under the Act holds erroneously, while exercising its jurisdiction and powers under the Act that a transaction is taxable, it cannot be said that the decision of the authority is without jurisdiction. We respectfully agree with the above propositions and hold that the said principles apply with equal force in the case of both the Central Excises and Salt Act and the Customs Act. Once this is so, it is un-understandable how an

assessment/adjudication made under the Act levying or affirming the duty can be ignored because some years later another view of law is taken by another court in another person's case. Nor is there any provision in the Act for re-opening the concluded proceedings on the aforesaid basis. We must reiterate that the provisions of the Central Excise Act also constitute "law" within the meaning of Article 265 and any collection or retention of tax in accordance or pursuant to the said provisions is collection or retention under "the authority of law" within the meaning of the said article. **In short, no claim for refund is permissible except under and in accordance with Rule 11 and Section 11B.** An order or decree of a court does not become ineffective or unenforceable simply because at a later point of time, a different view of law is taken. If this theory is applied universally, it will lead to unimaginable chaos. It is, however, suggested that this result follows only in tax matters because of Article 265. The explanation offered is untenable as demonstrated hereinbefore. As a matter of fact, the situation today is chaotic because of the principles supposedly emerging from *Kanhaiyalal* and other decisions following it. Every decision of this Court and of the High Courts on a question of law in favour of the assessee is giving rise to a wave of refund claims all over the country in respect of matters which have become final and are closed long number of years ago. We are not shown that such a thing is happening anywhere else in the world. Article 265 surely could not have been meant to provide for this. **We are, therefore, of the clear and considered opinion that the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, filed only under and in accordance with Rule 11/Section 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.** (See the pertinent observations of Hidayatullah, CJ. in *Tilok chand Motich* and extracted in Para 37). The decisions of this Court saying to the contrary must be held to have been decided wrongly and are accordingly overruled herewith."

(Emphasis supplied)

10.2 We find that the facts of the case dealt with by the Hon'ble Bombay High Court in the case of *Parijat Construction* (supra) are entirely different from the facts of the present case. In the relied upon case, it involved payment of service tax, where such services were held to be not leviable to service tax, and therefore it was considered by the Hon'ble Bombay High Court as payment of tax under 'mistake of law' enabling refund of tax paid by the appellants therein, without application of limitation of time prescribed under Section 11B of the Act of 1994. The relevant paragraphs of the said judgement is extracted and given below:

"5. We are of the view that the issue as to whether limitation prescribed under Section 11B of the said Act applies to a refund claimed in respect of service tax paid under a mistake of law is no longer *res integra*. The two decisions of the Division Bench of this Court in *Hindustan Cocoa (supra)* and *Commissioner of Central Excise, Nagpur v. M/s. SGR Infratech Ltd. (supra)* are squarely applicable to the facts of the present case.

6. Both decisions have held the limitation prescribed under Section 11B of the said Act to be not applicable to refund claims for service tax paid under a mistake of law. The decision of the Supreme Court in the case of *Collector of C.E., Chandigarh v. Doaba Co-Operative Sugar Mills (supra)* relied upon by the Appellate Tribunal has in applying Section 11B, limitation made an exception in case of refund claims where the payment of duty was under a mistake of law. We are of the view that the impugned order is erroneous in that it applies the limitation prescribed under Section 11B of the Act to the present case where admittedly appellant had paid a Service Tax on Commercial or Industrial Construction Service even though such service is not leviable to service tax. We are of the view that the decisions relied upon by the Appellate Tribunal do not support the case of the respondent in rejecting the refund claim on the ground that it was barred by limitation. We are, therefore, of the view that the impugned order is unsustainable."

10.3 In the present case, since the final products are admittedly excisable goods, on which there is a levy of central excise duty payable on its clearance and the reversal/payment of input credit also relates to duty of excise on inputs, there is no case of any levy without authority of law to claim refund by the appellants on the grounds of 'illegal/unconstitutional levy' or payment of duty under 'mistake of law'. Therefore, the various cases cited by the learned Advocate wherein there was no levy of tax is not relevant.

10.4 On the basis of the above judgements of the Hon'ble Supreme Court, and more particularly on the basis of detailed judgement regarding the various situations in which refund arise and the proper legal perspective in handling the refund claims as enunciated in the case of *Mafatlal Industries (supra)*, we have no hesitation in coming to the conclusion that no claim for refund of central excise duty is permissible except under and in accordance with Section 11B of the Central Excise Act, 1944. Further, where the levy of duty itself is considered as 'unconstitutional' implying that such amount was paid without reference to any provisions of the Act of 1944, and therefore in such cases alone the time limit prescribed under Section 11 B would not apply. In all other cases, the refund application is required to be filed within the prescribed time limit of one year from the relevant date in terms of Section 11B *ibid*. Even in the case of 'discovery

of mistake of law', the person claiming the refund has to succeed in his own case of litigation before the Tribunal/Courts in order to be eligible for refund of duty or tax paid by him; and such person cannot claim on the basis of order or decision given in favour of some other person. Therefore, we are of the considered view that the refund claimed by the appellants citing the orders passed by the Tribunal in the case of *Suryalaxshmi Cotton Mills* (supra) cannot stand for scrutiny of law.

11. On the basis of the above discussion and analysis, we are of the considered view that the impugned order dated 23.09.2018 is proper to the extent it had denied refund of Central Excise duty claimed by the appellants beyond the prescribed time limit under Section 11B of the Act of 1944. Therefore, the impugned order dated 23.09.2018 does not require any interference and the appeal filed by the appellants is liable to be dismissed.

12. In the result, the impugned order is upheld and the appeal filed by the appellants is dismissed.

(Order pronounced in the Open Court on 20.01.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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