CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70508 of 2022

(Arising out of Order-in-Appeal No.165/CE/ALLD/2022 dated 01.08.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s Parul Homoeo Laboratories Pvt. Ltd., ...Appellant
(B-29, Road No.11, Panki Industrial Area,
Site-V, Dada Nagar, Kanpur-208022)

VERSUS

Commissioner of Central Excise &
CGST, Kanpur ....Respondent
(117/7, Sarvodaya Nagar, Kanpur-208005)

APPEARANCE:

Shri Ashish Kumar Shukla, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70480/2025

DATE OF HEARING : 28.03.2025
DATE OF PRONOUNCEMENT : 11.07.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.165/CE/ALLD/2022 dated 01.08.2022 passed by the Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad whereby the appeal filed before him was rejected.

2. The facts of the case in brief are that the Appellant is registered with the Central Excise Department during the period i.e. Financial Year 2011-12 to 2015-16 and was availing the benefit of SSI Exemption in terms of Notification No.08/2003-CE dated 01.03.2003. The Appellant after crossing the clearance of Rs.1.5 crores, discharged the duty on the product *inter alia* containing Alcohol.

3. Since the alcoholic preparation is liable to State Excise, as such, amount discharged by the Appellant towards Central Excise duty on the product containing Alcohol, after excluding the clearance of Alcoholic product, which is purely a subject matter of State Excise, and not includable in aggregate clearance of Rs.1.5 crore. The liability towards duty on the Appellant was NIL inasmuch as after excluding value of alcoholic products the clearances of the Appellant was under the SSI Exemption during the Financial Year 2011-12 to 2015-16, the Appellant had never crossed the clearance of Rs.1.5 crore, as such an amount of Rs.1,03,396/- paid towards duty of excisable goods has been made under mistake of law. Similarly, an amount of Rs.5,46,772/- deposited during the abovementioned period on Alcoholic products has also been paid under mistake of law. Accordingly, the Appellant filed refund application on 07.12.2020, date wise chronology of events is reproduced for better appreciation of facts:-

18.12.2016 and 03.03.3017	: Date of Audit for the period from April, 2012 to March, 2016.
28.12.2016	: Letter filed by the Appellant to the Audit Officer regarding stop payment of Duty payable on Ethyl Alcohol Products.
01.05.2017	: Audit Report issued by the Department.
07.12.2020	: Refund Application filed for refund of an Amount discharged under mistake of law.
06.01.2021	: Letter issued by the Department regarding Provisions of law for filing refund Application and regarding evidence of non-passing of tax component on buyers.
18.01.2021	:Clarification filed by the

	Appellant along with CA Certificate.
15.02.2021	:Letter issued by the Department regarding Submission of citations Relied Upon by the Appellant.
25.02.2021	: Submission of Citation by the Appellant.
26.03.2021	:SCN issued to the Appellant.
05.06.2021	:Reply filed by the Appellant.
29.12.2021	: Order-In-Original has been passed without considering the Dictum of Higher Forum and CA Certificate filed by the Appellant.
07.04.2022	: First Appeal filed by the Appellant before Learned Commissioner (Appeals), Alld.
08.08.2022	: Impugned OIA has been passed upholding the Order of Learned Adjudicating Authority on limitation under Section 11B of CEA, 1944 as well as considering the goods as excisable goods.

4. Consequently, a Show Cause Notice[1] dated 26.03.2021 was issued which resulted in the impugned Order-in-Original dated 29.12.2021 by which the learned Assistant Commissioner Division-I, Kanpur rejected the refund claim of the assessee amounting to Rs.6,50,168/- on the ground of limitation. On appeal, the learned Commissioner (Appeals) upheld the Order-in-Original and rejected the appeal filed before him. Hence, the present appeal before the Tribunal.

5. Heard both the sides and perused the appeal records.

6. I find that Chapter note 5 of Chapter 30 of the Central Excise Tariff Act, 1985 relating to pharmaceutical products, read as under:-

[1] SCN

"This Chapter note does not cover pharmaceutical products and medicaments containing alcohol, opium, Indian hemp or other narcotic drugs. For the purpose of this note, "alcohol", "opium", Indian hemp", "narcotic drugs" and "narcotics" have the meanings assigned to them in section 2 of the Medical and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955)."

The above provisions make it clear that the products against which the instant refund claim has been filed do not fall under the preview of Central Excise net. As such provisions of Rule 3(a) of the General Rule of Interpretation are not applicable on the products of the Appellant for which refund claim has been filed. The Appellant draws attention on the provision of Section 2(a) of the Medical and Toilet Preparations (Excise Duties) Act, 1955, which defines that "Alcohol means ethyl alcohol of any strength and purity having the chemical composition C2H5OH".

7. I find that the Appellant vide letter dated 28.12.2016, has also apprised the said fact and also the fact that excess duty has been deposited by the Appellant to the Superintendent (Field Audit Group-1), Central Excise, Audit Circle-Kanpur with a copy to the Superintendent, Central Excise Range-III, Division-I, Kanpur, but neither any heed has been given nor adjustment of excess duty paid by the Appellant has been allowed. I find that the Appellant has deposited an amount of Rs.5,46,772/- during the Financial Year 2011-12 to 2015-16 under mistake of law as such the same is liable to be refunded being outside the purview of the enactment and cannot be equated with Central Excise duty and is simply a deposit made under mistake of law. Since Alcoholic preparation is liable to State Excise, as such amount discharged by the Appellant towards Central Excise duty on the product containing alcohol cannot in any manner be said to be a duty of excise inasmuch as what was paid by the Appellant was not a duty of excise calculated on the aggregate of all the duties of excise as envisaged under the provisions of Central Excise Act, 1944 or Rules made there under. Thus, the amount paid by the Appellant could not take the character of Excise duty but is

simply an amount paid under a mistake of law. I find that after excluding the clearance of Alcoholic Product, which is purely a subject matter of State Excise, and not includable in aggregate clearance of Rs.1.5 crore. The liability towards duty on the Appellant was NIL inasmuch as after excluding the value of Alcoholic products the clearances of the Appellant was under SSI Exemption and during the Financial Year 2011-12 to 2015-16, the Appellant has never crossed the clearance of Rs.1.5 crore, as such amount of Rs.1,03,396/- discharged towards duty on excisable goods is also refundable to the Appellant as the same was made under mistake of law. I find that the amount of Rs.6,50,168/- [Rs.5,46,772/- (paid on Alcoholic Product) + Rs.1,03,396/- (paid on Excisable products)] claimed by the Appellant had not been charged from the buyers and was borne by the Appellant from their own pocket. In support of this the Appellant has already submitted certain invoices along with certificate of Chartered Accountant. That the amount paid by the Appellant was under a mistake of law and could not take the character of Excise duty, as such the provisions of Section 11B of the Central Excise Act, 1944 and limitation envisaged in it is not applicable to the facts of the present case and on seeking refund thereof.

8. I find that since it was never liable to discharge Central Excise to begin with, the amount paid by it under mistake of law, was never a 'tax'. That being so, all trappings that apply to a 'tax', including that of limitation under Section 11B, were not applicable to the Appellant's refund claim and thus the Appellant's claim ought not have been rejected. He relied on several judgments including those of Parijat Construction vs. CCE, Nashik [2018 (9) G.S.T.L. 8 (Bom.)], KVR Constructions vs. CCE, Bangalore [2010 (17) S.T.R. 6 (Kar.)], M/s. Credible Engineering Construction Projects Limited vs. Commissioner of Central Excise, Hyderabad-GST [Service Tax Appeal No. ST/30781/2081] [2020 (43) G.S.T.L. J129 (Tri.-Hyd.) and *Oriental Insurance Company Limited* vs. *Commissioner of Central Excise & Service Tax* [Service Tax Appeal No.51609 of

2016]. It was also contended that the bar of unjust enrichment was inapplicable in the present case.

9. Both sides have relied on a plethora of judgments on the issue of the applicability of the limitation provided under Section 11B to amounts paid under mistake of law. The tenor of the jurisprudence on the subject indicates that the limitation prescribed under Section 11B is not applicable to a refund claim in a situation where the concerned tax was never payable by the assessee. In other words, had the Department raised a demand of such an amount, the assessee could have successfully challenged the constitutionality of the same.

10. This principle was laid down by the Hon'ble Karnataka High Court in *KVR Constructions* vs. *CCE, Bangalore* [2010 (17) S.T.R. 6 (Kar.)], the relevant portions of which have been extracted below :-

> *"17. If this Court ultimately concludes that Section 11B of the Act is applicable to the facts of the present case, then, the argument of the Learned Counsel for the appellant that Writ Petition was not maintainable would merit consideration. Therefore, at this stage, we will not consider the matter regarding maintainability of the Writ Petition, as first we have to look to the provisions of Section 11B of the Act and then decide whether Section 11B is applicable to the facts of the case as finding thereon would have bearing for considering the issue of maintainability of Writ Petition. Section 11B of the Central Excise Act reads as under :*
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> > *"**11B. Claims for refund of duty. -** (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the document referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of*

such duty had not been passed on by him to any other person."

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

19. According to the appellant, the very fact that said amounts are paid as service tax under Finance Act, 1994 and also filing of an application in Form-R of the Central Excise Act would indicate that the applicant was intending to claim refund of the duty with reference to Section 11B, therefore, now it is not open to him to go back and say that it was not refund of duty. No doubt in the present case, Form-R was used by the applicant to claim refund. It is the very case of the petitioner that they were exempted from payment of such service tax by virtue of circular dated 17-9-2004 and this is not denied by the Department and it is not even denying the nature of construction/services rendered by the petitioner was exempted from to payment of Service Tax. What one has to see is whether the amount paid by petitioner under mistaken notion was payable by the petitioner. Though under Finance Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was exemption to pay such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority lacked authority to levy and collect such service tax. In case, the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. If we look at the converse, we find mere payment of amount, would not authorize the department to regularise such payment. When once the department had no authority to demand service tax from the respondent because of its circular dated 17-9-2004, the payment made by the respondent company would not partake the character of "service tax" liable to be paid by them. Therefore, mere payment made by the respondent will neither validate the nature of payment nor the nature of transaction. In other words,

mere payment of amount would not make it a "service tax" payable by them. When once there is lack of authority to demand "service tax" from the respondent company, the department lacks authority to levy and collect such amount. Therefore, it would go beyond their purview to collect such amount. When once there is lack of authority to collect such service tax by the appellant, it would not give them the authority to retain the amount paid by the petitioner, which was initially not payable by them. Therefore, mere nomenclature will not be an embargo on the right of the petitioner to demand refund of payment made by them under mistaken notion...."

11. Reliance is also placed on the following judgments : -

(i) *M/s. ASL Builders Private Limited* vs. *Commissioner of Central GST & CX, Jamshedpur* [2020 (1) TMI 431 – CESTAT-Kolkata]

> *"13. The aforesaid propositions reveal that what one has to see is whether the amount paid by the assessee under a mistaken notion was payable or not. In other words, if the assessee had not paid those amounts, the authority could not have demanded from the assessee to make such payment. In other words, the department lacked authority to levy and collect such tax. In case, the department was to demand such payment, the assessee could have challenged it as unconstitutional and without authority of law. When once there is lack of authority to demand service tax or excise duty from the assessee, the department lacks authority to levy and collect such amount and the said amount is not "Service Tax" or "Excise duty" and Section 11B of the Act has no application in such cases.*
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> *xx xx xx*
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> *19. In view of the above discussion and by respectfully following the judgments of the superior Courts, cited supra, the impugned orders cannot be sustained and are set aside. The appeal filed by the appellant is allowed with consequential relief."*

(ii) *M/s. Techno Power Enterprises Private Limited* [Service Tax Appeal No.75972 of 2021]

> *"16. I also find that the Hon'ble Karnataka High Court, while considering the issue at hand, had laid down a test in such cases. The Hon'ble High Court had held that what needs to be ascertained is whether the Revenue could have recovered the amount had the assessee not paid it. In the present case, since the Appellant was not required to pay the amount so paid by them, such amount could not have been recovered by the Revenue and therefore, such amount cannot now be retained by the Revenue.*
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> *17. I find that the refund claim filed by the Appellant was filed within the limitation period prescribed under the Article 113 of the Limitation Act, 1963 and since, the amount was not payable by the Appellant under the provisions of the Finance Act, 1994 or the Central Excise Act, 1944, the provisions under the Limitation Act, 1963 would apply."*

12. The High Courts of Bombay, Madras, Telangana and Calcutta have similarly held that refunds of amounts paid under mistake of law would not be hit by the statutory limitation periods, in the following judgments:-

(i) *Parijat Construction* vs. *CCE, Nashik* [2018 (9) G.S.T.L. 8 (Bom.)]

> *"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 vs. 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 vs. 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 were 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.

7. We accordingly allow the present appeals and quash and set aside the impugned order, insofar as it is against the appellant in both appeals. We fully allow refund of Rs.8,99,962/- preferred by the appellant. We direct that the respondent shall refund the amount of Rs.8,99,962/- to the appellant within a period of three months. There shall be no order as to costs."

(ii) *3E Infotech* vs. *CESTAT* [2018 (18) G.S.T.L. 410 (Mad.)]

"9. In the above cited case, the Supreme Court stated that the Assessee's claim to refund would not be disallowed solely because it seemed barred by limitation. Since the Assessee in that case made the claim for refund shortly after learning about their entitlement for the same, it would not be just to hold that such claim is hit by laches.

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12. Further, the claim of the respondent in refusing to return the amount would go against the mandate of Article

265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law.

13. On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court, and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs.4,39,683/- cannot be barred by limitation, and ought to be refunded.

14. There is no doubt in our minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper, and against the tenets of Article 265 of the Constitution of India. On the facts and circumstances of this case, we deem it appropriate to pass the following directions :- (a) The Application under section 11B cannot be rejected on the ground that is barred by limitation, provided for under Section."

(iii) *Vasudha Bomireddy* vs. *Assistant Commissioner of Service Tax* [2020 (35) G.S.T.L. 52 (Telangana)].

"18. Having regard to these decisions, we are of the opinion that if the petitioners were not liable to pay "service tax" on the transaction of the purchase of the constructed area along with goods apart from undivided share of land at all, the payment which was made by the petitioners would not be a payment of service tax at all; that the department also could not have demanded payment of the same from the petitioners; and merely because the petitioners made the payment, it would not partake the character of "service tax" and the department cannot retain the amount paid by the petitioners which was in fact not payable by them."

(iv) *Parimal Ray* vs. *Commissioner of Customs (Port)* [2015 (318) E.L.T. 379 (Cal.)]

> *"17. Now I will consider the point of limitation. A person to whom money has been paid by mistake by another person, becomes at common law a trustee for that other person with an obligation to repay the sum received. This is the equitable principle on which Section 72 of the Contract Act, 1872 has been enacted. Therefore, the person who is entitled to the money is the beneficiary or cesti qui trust. When the said sum of Rs.360.46 lakhs was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner. The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it. (See Section 22 of the Limitation Act, 1963). The Supreme Court through Mr. Justice Krishna Iyer opined in Shiv Shankar Dal Mills v. State of Haryana reported in AIR 1980 Supreme Court 1037 as follows :-*
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> > *(1) Where public bodies, under colour of public laws, recover people's money, later discovered to be erroneous levies, the Dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Now is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of 'alternative remedy' since the root principle of law married to justice, is ubi jus ibiremedium.*
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> > *(2) Another point, in our jurisdiction social justice is a pervasive presence; and so, save in special situations it is fair to be guided by the strategy of equity by asking those who claim the service of the judicial process to embrace the basic rule of*

> *distributive justice, while moulding the relief, by consenting to restore little sums, taken in little transactions, from little persons, to whom they belong."*

13. The judgment of *Mafatlal Industries* vs. *UOI* [1997 (89) E.L.T. 247 (S.C.)] has been considered and interpreted by several judgments including the Karnataka High Court in *KVR Construction* (supra), by this Tribunal in the case of *ASL Builders* (supra), by CESTAT Delhi in *Credible Engineering* (supra). The said judgments have concluded that statutory limitation periods are not applicable to amounts paid under mistake of law.

14. Finally, in the case of *Credible Engineering Construction Projects Ltd.* vs. *Commissioner of Central Tax, Hyderabad GST* - Service Tax Appeal No.30781 of 2018 - Order dated 25.09.2020, there was a dissent between the members and the matter was referred to a Third Member. Relevant portions of the order are extracted below :-

> *"(1) Whether the limitation prescribed under section 11B of the Central Excise Act will not be applicable as the tax was paid erroneously though eligible to exemption and as such is in the nature of deposit and hence limitation is not attracted as held by Member (Judicial) following the ruling of Hon'ble Karnataka High Court in KVR Construction affirmed by Hon'ble Supreme Court - 2018 (14) S.T.R. 117.*
>
> *OR*
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> *Limitation prescribed under section 11B is applicable as held by Member (Technical) in view of the ruling of Hon'ble Supreme Court in Mafatlal Industries v. Union of India - 1997 (89) E.L.T. 247.*
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> *Registry is directed to put up the appeal record before Hon'ble President for nomination of 3rd member to*

consider the aforesaid questions and difference of opinion for his opinion."

15. In reference, the Third Member *vide* Order dated 8.02.2022 passed a detailed judgment answering the reference and held that amounts paid under mistaken notions would not be hit by the statutory limitation period. This was noted by the referral Bench and ultimately the appeal was decided in favour of the assessee. Relevant portions of the said order have been extracted below :-

"The Third Member has expressed his opinion as follows :

39. The reference is accordingly, answered in the following manner:

"The limitation prescribed under section 11B of the Excise Act would not be applicable if an amount is paid under a mistaken notion as it was not required to be paid towards any duty/tax"

In terms of the opinion expressed by the Learned Third Member, this appeal stands allowed in favour of the appellant assessee. The appellant assessee shall be allowed grant of refund along with interest, as per rules. Appeal allowed. Impugned order is set aside."

16. In view of the aforesaid analysis, it is concluded that the statutory limitation period prescribed under Section 11B is not applicable to the refund claimed by the Appellant since the amount paid by the Appellant is not a tax.

17. Examining the question of unjust enrichment, I find that the Appellant in its ledger accounts first discharged the Central Excise and thereafter appended certain notings in front of the said amounts stating "on hold". It is also clear that the amounts have not been expensed out as the Appellant is awaiting the outcome of the litigation. Hence the amount of Central Excise paid cannot be said to have been passed on to anyone.

18. In view of the above discussions, the present appeal is allowed. The Appellant shall be entitled to the refund amount along with interest.

(Order pronounced in open court on - **11.07.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS