CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

E-Hearing
REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70141 of 2022

(Arising out of Order-in-Appeal No.MRT-EXCUS-000-APP-91-21-22 dated 23.12.2021 passed by Commissioner (Appeals) CGST & Customs, Meerut)

M/s U.P. Purva Sainik Kalyan Nigam Ltd., ...Appellant
(B-357, Defence Enclave, Kankar Khera,
Meerut)

VERSUS

Commissioner of Customs &
CGST, Meerut ....Respondent
(Mangal Pandey Nagar, Opp. CCS University,
Meerut)

APPEARANCE:

Shri Arun Srivastava, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70494/2025

DATE OF HEARING : 03.04.2025
DATE OF PRONOUNCEMENT : 17.07.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.MRT-EXCUS-000-APP-91-21-22 dated 23.12.2021 passed by Commissioner (Appeals) Customs & CGST, Meerut.

2. The facts of the case in brief are that M/s U.P. Purva Sainik Kalyan Nigam Ltd., is an undertaking of Uttar Pradesh Government with corporate office located at Lucknow and regional offices located at several cities in U.P. The Appellant held a valid Service Tax Registration No.AAACU3354LSD017 and are engaged in providing the Manpower Supply Services. During the filing of ST-3 returns of F.Y. 2017-18 (April – June) the accountant of the Appellant deposited an amount of Rs.20,00,000/- against which the challan was not generated by

internet banking. As the online payment challan could not be generated, the accountant acting under bona fide mistake that service tax was not deposited, again deposited the amount of Rs.20,00,000/-. As a result, the Appellant has deposited service tax two times inadvertently by mistake, vide challan numbers '00068' and '03149' dated both 03.07.2017 i.e. on same day. That on 03.08.2017 the Appellant after realizing the above mistake filed GST TRAN-1 form for taking the credit of excess amount deposited. However, on 03.02.2019, the Deputy Commissioner CGST & Central Excise Division-I, Lucknow vide its letter has informed that the credit of excess payment made by the Appellant is not eligible as transitional credit as per Section 140 to 142 of CGST Act, 2017 and rules made there under. The Appellant was asked to deposit an amount equivalent of credit so availed. Acting upon such instructions, the Appellant deposited the amount in cash to the exchequer on 09.09.2019. On 04.10.2019 the Appellant submitted a refund claim in Form-R for refund of the excess payment made. The same was returned to the Appellant vide deficiency memo dated 26.11.2020. On 24.12.2020 the Appellant resubmitted the refund claim in Form-R in triplicate. The application was accompanied by documentary evidences to establish the fact that the amount claimed as refund is the amount paid by the Appellant in excess of the service tax due and the incidence of such tax has not been passed on to any other person. On 27.01.2021 a Show Cause Notice[1] has been issued to the Appellant as to why the refund claim should not be rejected as it has been filed beyond the period of limitation as prescribed under Section 11B of the Central Excise Act. Detailed reply to the SCN has been submitted with the Department however the Assistant Commissioner vide its Order-in-Original dated 19.03.2021 rejected the refund claim on the ground that it has been filed beyond the period of limitation. That against the rejection of the refund claim, the Appellant preferred an appeal before the Commissioner (Appeals). That not being satisfied with the submission made by

[1] SCN

the Appellant the Commissioner (Appeals) passed an order dated 23.12.2021 rejecting the refund claim of the Appellant on the ground that it has been filed after the expiry of period stipulated in Section 11B of the Central Excise Act and hence time barred.

3. Learned Authorized Representative appearing for the Revenue filed written submission stating as under:-

> *"1. It is submitted that the Appellant filed a refund application on 04.10.2019 for Rs.20,00,357/- claimed to be deposited by them in excess in June, 2017. The refund claim submitted was returned back with deficiency memo on 26.11.2020. The appellant submitted fresh refund application along with request for Condonation of delay on 24.12.2020.*
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> *2. The appellant has themselves submitted that they had carried forward the excess amount of service tax so deposited through TRAN-1 as ITC after GST regime was introduced w.e.f. 01.07.2017. Further, they had stated that the same amount was deposited by them through Challan dated 06.09.2019 being inadmissible credit under the provisions of the CGST Act, 2017.*
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> *3. While filing appeal before First Appellate Authority, the appellant has stated that the refund application has been filed after denial of the excess paid service tax as credit in GST.*
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> *4. From the above stated facts it is evident that the appellant had already taken the credit of excess tax, as claimed, as ITC and the appellant has not shown any proof that the same has been reversed at any time. It implies that the said credit is available with them in their ITC. In view of the above, case of refund claim does not arise as the credit is available with them since the time it was taken as ITC after implementation of GST, Act. The appellant cannot claim refund of any credit which is available with them. Allowing, refund in cash of a credit available with the appellant will amount to double payment to the appellant and will be loss to Government Exchequer.*

5. In view of the above, it is humbly prayed that the present appeal may be dismissed."

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

5. I find that by inadvertent mistake of the Accountant an amount of Rs.20,00,000/- was deposited twice vide Challan Nos.'00068' and '03149' and both dated 03.07.2017 i.e. on the same day. Since the amount was paid by mistake by the Appellant, thus, it will be treated as deposit, ***ipso facto*** are entitled for refund. Further limitation under Section 11B will not be applicable as the amount deposited is not tax and, at best, revenue deposit. I find support from the judgement of the Hon'ble High Court of Madras in the case of M/s 3E Infotech vs. CCE, (Appeals-I) Madurai 2018-TIOL-1268-HC-MAD-ST. Relevant paragraphs are reproduced as under:-

> ***"8.*** *The present appeal lies from the order of the Appellate Tribunal. We have heard the Learned Counsel for the Assessee and the State. The issue, which arises for consideration in this case, whether the provisions of Section 11B of the Central Excise Act would be applicable to claim of refund made by an Assessee when the tax has been paid under mistake of law. In this case, indisputably, there was no liability on the petitioner to pay service tax. The Supreme Court of India, in the case of Union of India v. ITC Ltd. reported in (1993) Supp. IV SCC 326=1993 (67) E.L.T. 3 (S.C.) while dealing with the question of refund of excess excise paid held :-*
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> > *8. In Shri Vallabh Glass Works Ltd. v. Union of India, this Court, while examining the question as to what is the point of time from which the limitation should be deemed to commence observed that relief in respect of payments made beyond the period of three years may not be granted from the date of filing of the petition, taking into consideration the date when the mistake came to be known to the party concerned. Just as an assessee cannot be permitted to evade payment of rightful tax, the authority which recovers tax without any authority of law cannot be permitted to retain the amount, merely because the tax payer was not aware at that time that the recovery being made was without any authority of law. In such cases, there is an obligation*

on the part of the authority to refund the excess tax recovered to the party, subject of course to the statutory provisions dealing with the refund.

9. We are, therefore, of the opinion that the High Court, while disposing of the writ petition under Article 226 of the Constitution of India, was perfectly justified in holding that the bar of limitation which had been put against the respondent by the Collector of Central Excise (Appeals) to deny them the refund for the period September 1, 1970 to May 28,1971, and June 1, 1971 to February 19, 1972 was not proper as admittedly the respondent had approached the Assistant Collector Excise soon after coming to know of the judgment in Voltas case and the assessee was not guilty of any laches to claim refund.

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."*

6. The only moot controversy to be decided herein therefore is:

Whether the statutory time prescribed under section 118 shall be applicable to the amount erroneously deposited by the appellant despite having no liability to deposit the same.

7. For the purpose it is necessary to look into the provisions of Section 11B reads as follows:-

"Section 11B: Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the relevant date in such form 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 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: Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub- section as amended by the said Act and the same shall be dealt with in accordance with the provisions of subsection (2) as substituted by that Act]: Provided further that] the limitation of six months shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Collector of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund: Provided that the amount of duty of excise as determined by the Assistant Collector of Central Excise under the foregoing provisions of this sub- section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is, relatable to--

(a) rebate of duty of excise on excisable goods exported out of India or, on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant' s account current maintained with the Collector of Central Excise;

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

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

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

(f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify: Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made there under or any other law for the time being in force, no refund shall be made except as provided in sub- section (2).

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

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

(A)" refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B)" relevant date" means,-

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

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

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

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

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

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

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

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

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

8. From the bare reading of the above section, it is clear that the provision refers to the claim of refund of duty of excise only, it does not refer to any other amount collected without authority of law. In the case in hand, admittedly, the amount sought for as refund was the amount paid under mistaken notion which even according to the Department / Adjudicating Authority was not the liability of the Appellant.

9. In the given circumstances, it would not give the Department an authority to retain the amount paid which otherwise was not payable by the Appellant. Nothing may act as an embark on the right of the Appellant to demand refund of payment made by them under the mistaken notion. The issue has been dealt by Hon'ble Supreme Court in the case of Mafatlal Industries vs. CCE reported as 1997 (89) E.L.T. 247 SC. It has been held that one has to see whether the amount claimed is unconstitutional and outside the provisions of Section 11B of the Act. In paragraph 113 of the said judgment My Lords have classified various refund claims into three groups or categories as follows:-

i. *The levy is unconstitutional-outside the provisions of the (1) Act or not contemplated by the Act.*

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

iii. *Mistake of law the levy or Imposition was (III) unconstitutional or illegal or not exigible in law (without jurisdiction) and, so found in a proceeding Initiated not by the particular assessee, but in a proceeding Initiated by some other assessee either by the High Court or the Supreme Court, and as*

soon as the assessee came to know of the judgment (within the period of limitation), he initiated action for refund of the tax paid by him, due to mistake of law.

After referring several judgments and provisions of Section 11A & 118 of Central Excise Act, at paragraph 137 of the said judgment, their Lordships have concluded as under:

"137. Applying the law laid down in the decisions aforesaid, it is not possible to conclude that any and every claim for refund of illegal/unauthorized levy of tax can be made only in accordance with the provisions of the Act (Rule 11, Section 118 etc. as the case may be), and an action by way of suit or writ petition under Article 226 will not be maintainable under any circumstances. An action by way of suit or a petition under Article 226 of the Constitution is maintainable to assail the levy or order which is illegal, void or unauthorized or without jurisdiction and/or claim refund, in cases covered by propositions No. (1), (3), (4) and (5) in Dulalbhai's case, as explained hereinabove, as one passed outside the Act and ultra vires. Such action will be governed by the general law and the procedure and period of limitation provided by the specific statute will have no application (Collector of Central Excise, Chandigarh) M/s. Doaba Cooperative Sugar Mills Ltd., Jalandhar 1988 (37) ELT 487 (SC). 1988 Supp. SCC 683; Escorts Ltd. v. Union of India [1994] Supp (3) SCC 86 Rule 11 before and after amendment or Section 118 cannot affect Section 72 of the Contract Act or the provisions of Limitation Act in such situations. My answer to the claims for refund broadly falling under the three groups of categories enumerated in paragraph 6 of this judgment is as follows:

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

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

10. The said decision has been followed in the case of Natraj Venkat Associates vs. CCE reported as 2010 (17) S.T.R. 3 Madras. In this case also, the question arose was what is the relevant date of commencement of period of limitation for the purpose of Section 11B and it was held that it could be the date of payment. The decision further clarified that the amounts paid under mistaken notion since cannot be considered as duty of excise, therefore, bar of limitation under Section 11B cannot be applied and the limitation on this provision would not come in way of any person claiming refund of the amount which was not his liability. Similar decision has been given by the Division Bench of this Tribunal in the case of Motorola India Ltd. vs. CCE reported as 2006 (206) E.L.T. 90 Kar. The Principal Bench of this Tribunal also in the case of Oriental Insurance Company Ltd. Vs. CCE reported as 2020 (1) TMI 324 while laying emphasis upon the decision of the Delhi High Court in the case of M/s National Institute of Public Finance and Policy vs. Commissioner of Service Tax 2019 (20) G.S.T.L. 330 (Del.) has held that if service tax was not leviable but it was paid by mistake the amount has to be refunded to the assessee. It was held that the distinguishing feature for attracting the provision under Section 118 is that the levy should have the colour of validity when it was paid and only consequent upon interpretation of law or adjudication the levy is liable to be ordered as refund when

payment was effected if it has no colour of legality Section 11B does not at all gets attracted.

11. I further observe that the issue has repeatedly been clarified about non applicability of Section 11B upon such refunds which pertains to an amount paid under mistake without any liability. The Adjudicating Authorities are observed to have miserably failed to follow the law as got settled by the Hon'ble Supreme Court, by various High Courts and by various Benches of this Tribunal as in the case of M/s Chhattisgarh Civil Supplies Corporation Ltd. vs. Commissioner of Central Excise & Service Tax reported as 2020 (2) TMI 1202-CESTAT New Delhi, in the case of Kerala Ex-serviceman Welfare Association vs. Comm of Service Tax & Central Excise reported as 2022 (3) TMI 985-CESTAT BANGALORE and in the case of Dexterous Products Pvt. Ltd. vs. Comm of C.Ex & S.T. Indore reported as 2019 (28) G.S.T.L. 51 (Tri-Del).

12. Hon'ble High Court of Bangalore in the case of XL Health Corporation India Pvt. Ltd. vs. UOI & Others reported as Writ Petition No.37514/2017 decided on 22.10.2018 has held as follows:-

> *"The adjudicating authorities throwing to the winds the principles of judicial discipline by not following the binding order passed by Higher forum reflects total callous negligent and disrespectful behaviour. The court held that same cannot be tolerated. If this kind of lack of Judicial discipline which if goes unpunished will lead to more litigation and chaos and such public servants are actually threat to the society."*

13. Keeping in view thereof, and the entire above discussion, the findings of Commissioner (Appeals) in the order under challenge are held absolutely in violation of above mentioned decisions rather are held to be in complete disrespect to the judicial precedent already been made by the superior judicial authorities.

14. With these observations, the order under challenge is held not sustainable and the same is hereby set aside. Resultantly, the appeal stands allowed.

(Order pronounced in open court on - **17.07.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS