



**आयुक्त(अपील )का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
**केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद**  
**Central GST, Appeal Commissionerate, Ahmedabad**  
**जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.**  
**CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015**  
**☎ 07926305065- टेलीफैक्स 07926305136**



**DIN : 20211264SW0000389383**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1475/2021 / 5251 T o 5255
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-79/2021-22**  
दिनांक Date : **22-12-2021** जारी करने की तारीख Date of Issue 22.12.2021  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. **PLN/AC/S.Tax/Ref/04/2019-20** दिनांक: **26.06.2019** issued  
by Assistant Commissioner, CGST& Central Excise, Division Palanpur, Gandhinagar  
Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Raghuvanshi Engineers  
111, Shivalika Shopping Centre,  
Opp. V.J. Patel Veg. Market,  
Gardan Road, Deesa,  
Banaskantha-385535

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

**भारत सरकार का पुनरीक्षण आवेदन :**

**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(iii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में दित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

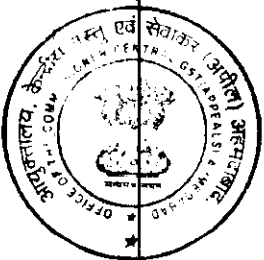
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup>माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (56) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

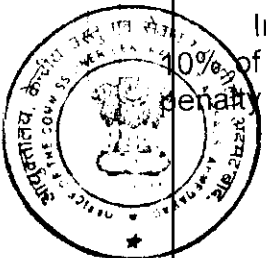
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (cli) amount determined under Section 11 D;
- (clii) amount of erroneous Cenvat Credit taken;
- (cliil) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Raghuvanshi Engineers, 111, Shivalik Shopping Center, Opposite V.J.Patel Vegetable Market, Garden Road, Deesa, District : Banaskantha, Gujarat - 385 535 (hereinafter referred to as the appellant) against Order in Original No. PLN/AC/S.Tax/Ref/04/2019-20 dated 26-06-2019 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST & Central Excise, Division Palanpur, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant had filed refund claim for an amount of Rs.4,30,239/- on 28.03.2019 for service tax paid on Works Contract Service provided to government, which was exempted. The appellant had provided works contract service to Harij Nagarpalika, Deesa Nagarpalika and Thara Nagarpalika. The period for which the refund was claimed was from April, 2015 to March, 2017. The appellant was granted personal hearing by the adjudicating authority in the course of which it was submitted by the appellant that they had wrongly paid service tax and hence they are seeking refund of such wrongly paid service tax. The refund claim of the appellant was rejected vide the impugned order on the grounds of limitation as well as on the grounds of unjust enrichment.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

- i. They had paid the service tax amounting to Rs.4,30,239/- during the F.Y. 2015-16 on providing construction service to government/local authority which was exempted vide Notification No.25/2012-ST dated 20.06.2012. Hence, the payment was made by mistake and therefore, it is to be treated as deposit with the government and not to be treated as payment of tax.
- ii. Before rejecting the claim, no show cause notice, which is mandatory, was issued by the department. The delay in filing refund claim was due to lack of knowledge in the matter. The date of restoration of



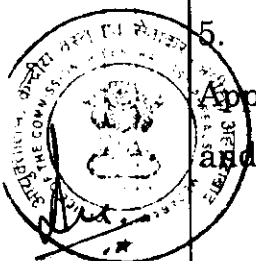
exemption vide Notification No.09/2016 came to their knowledge at a very later stage.

- iii. They had paid tax which was not required to be paid and such payment made by them is treated as payment by mistake. It is settled by various decisions of Hon'ble Supreme Court and High Court that payment of tax by mistake is to be treated as deposit with government and in such case the provisions of Section 11B is not applicable.
- iv. In the case of Parijat Constructions – 2018 (359) ELT 113 (Bom.), the Hon'ble High Court of Bombay had held that limitation under Section 11B is not applicable when tax is paid under mistake of law.
- v. Similarly, in the case of KVR Construction – 2012 (26) STR 195 (Kar.), the Hon'ble High Court of Karnataka had also held that limitation under Section 11B is not applicable when tax is paid under mistake of law. The Hon'ble Supreme Court had upheld this decision – 2018 (14) GSTL J70 (SC).
- vi. They also rely upon the decision in the case of 3E Infotech – 2018 (18) GSTL 410 (Mad.) and Madvi Procon Pvt Ltd.- 2015 (38) STR 74 (Tri.-Ahmd).

3.1 In their additional written submissions filed on 28.10.2021, the appellant reiterated the submissions made in their appeal memorandum. They further submitted that there is no unjust enrichment as there is a practice that the service provider has not raised the invoice, but the service recipient prepare the invoices according to the measurement and makes payment of amount wherein no service tax is paid by recipient but it is borne by the appellant. Hence, clause of unjust enrichment applied by the adjudicating authority is without any authority and evidence.

4. Personal Hearing in the case was held on 28.10.2021 through virtual mode. Shri M.H. Raval, Consultant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and their additional written submissions.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and material available on records. I find that the issue before me for decision



is whether the refund claim filed by the appellant is covered by the provision of Section 11B of the Central Excise Act, 1944 or otherwise.

5.1 Before dealing with the merits of the instant appeal, I deal with the issue as to whether the appeal has been filed within the stipulated time period for appeals to be filed before the Commissioner (Appeals) in terms of Section 85 of the Finance Act, 1994. I find that the present appeal has been filed on 12.03.2021 against the impugned order dated 26.06.2019, which is shown to have been issued on 26.06.2019. The appellant have claimed that the impugned order was received by them on 25.01.2021 i.e. after almost 18 months of the issue of the impugned order. The appellant have submitted a copy of their letter dated 16.01.2021 addressed to the Assistant Commissioner, CGST, Division : Palanpur, requesting for sanction of their refund claim. The appellant have also submitted a copy of letter dated 25.01.2021 of the Assistant Commissioner, CGST, Division : Palanpur addressed to the appellant wherein, with reference to the above said letter dated 16.01.2021 of the appellant, it is stated that after the personal hearing held on 25.06.2019, the impugned order was passed and that a copy of the same was enclosed. To ascertain the actual date of issue of the impugned order, the Assistant Commissioner, CGST, Division : Palanpur was asked vide letters F.No. GAPPL/COM/STP/1475/2021 dated 23.07.2021 and 20.10.2021. However, no communication in this regard has been forthcoming from CGST, Division : Palanpur. I am, therefore, constrained to accept the date of communication of the impugned order as claimed by the appellant and consequently, the appeal has been filed within the stipulated time period.

6. Coming to the issue involved in the present appeal, I find that the refund claim was filed on 28.03.2019 for the service tax paid during the period from April, 2015 to March, 2017. I find that the exemption to works contract service, under a contract entered into before 01.03.2015, provided to government, local authority or a governmental authority was restored from 01.03.2016 vide Notification No. 09/2016-ST dated 01.02.2016. For the period from 01.04.2015 to 29.02.2016, Section 102 of the Finance Act, 1994 provided that no service tax shall be levied or collected subject to the condition that the contract was entered into before 01.03.2015. Further, Section 102 (2) of the



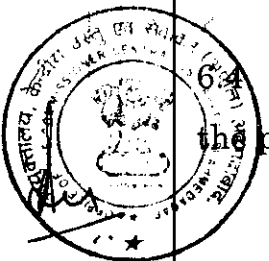
Finance Act, 1994 provided for refund of service tax already collected and Section 102 (3) of the Finance Act, 1994 stipulated that the refund claim shall be filed within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

6.1 The Finance Bill, 2016 received the assent of the President on 14.05.2016 and therefore, the appellant was required to file claim for refund of the service tax paid within six months from such date i.e. on or before 14.11.2016.

6.2 The appellant has submitted a worksheet showing the details of the service tax paid by them during the period from April, 2015 to March, 2017. On examining the same, I find that the appellant have paid service tax amounting to Rs.1,13,176/- during the period from October, 2015 to February, 2016. I further find that they had paid service tax amounting to Rs.3,17,063/- during the period from June, 2016 to January, 2017. Therefore, the claim for the service tax amounting to Rs.1,13,176/- is required to be considered in terms of Section 102 (2) & (3) of the Finance Act, 1994.

6.3 I further find that in respect of the amount of Rs.1,13,176/-, the contention of the appellant that the same was paid by mistake is not tenable as there was no exemption during the said period and the exemption was granted retrospectively only by virtue of Section 102 of the Finance Act, 1994. Since, there is a specific and express provision for refund of the service tax collected during the period from 01.04.2015 to 29.02.2016 under Section 102 (2) of the Finance Act, 1994, these provisions will govern the refund and not the provisions of Section 11B of the Central Excise Act, 1994. Therefore, the limitation of six months in terms of Section 102 (3) of the Finance Act, 1994 shall be applicable for claiming refund of the service tax exempted retrospectively in terms of Section 102 (1) of the Finance Act, 1994. Applying this, I find that the claim for refund amounting to Rs.1,13,176/- filed by the appellant on 28.03.2019 is barred by limitation in terms of Section 102 (3) of the Finance Act, 1994.

6.4 As regards the refund of service tax amounting to Rs.3,17,063/- during the period from June, 2016 to January, 2017, I find merit in the contention of



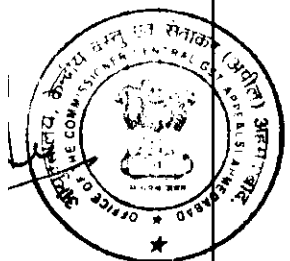
the appellant that the same was paid by mistake. However, as Section 102 (2) of the Finance Act, 1994 is applicable only in respect of the service tax paid during the period from 01.04.2015 to 29.02.2016, the same is not applicable to the refund of service tax paid subsequent to 29.02.2016. It is a settled position of law, in view of the judgment of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd – 1997 (89) E.L.T. 247- that all refunds are governed by the provisions of Section 11B of the Central Excise Act, 1944. Therefore, the limitation of one year as prescribed under Section 11B of the Central Excise Act, 1944 [made applicable to Service Tax by virtue of Section 83 of the Finance Act, 1994] shall be applicable. Applying this period of limitation, I find that the refund claim of service tax amounting to Rs.3,17,063/- paid during June, 2016 to January, 2017 is beyond the period of one year and hence, barred by limitation.

7. I find that the appellant have relied upon the judgments in the case Parijat Constructions, KVR Constructions, 3E Infotech and Madvi Procon Pvt Ltd in support of their contention that the provisions of Section 11B of the Central Excise Act, 1944 are not applicable to duty paid by mistake. With due respect to the decisions in the said case, I find that the judgment of the Hon'ble High Court of Gujarat in Special Civil Application No. 10435 of 2018 in the case of M/s.Ajni Interiors Vs. UOI is relevant to the issue.

“ 17. The Authority relied on the decision in the case of **Mafatlal Industries Ltd. and others (supra)** and considering the same rejected the claim. The Constitution Bench of the Supreme Court, in a binding precedent, summarized the proposition of law in para-108, more particularly at proposition no.(i). It is relevant for our purpose, which reads as under;

“108.....

(i) Where a refund of tax/duty is claimed on the ground that it as been collected from the petitioner/plaintiff- whether before the commencement of the Central Excise and Customs Laws (Amendment) Act, 1991 or thereafter- by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or **by misinterpreting or misapplying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein.** No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226- and of this Court under Article 32- cannot be circumscribed by the provisions of the said enactments, they will certainly have due

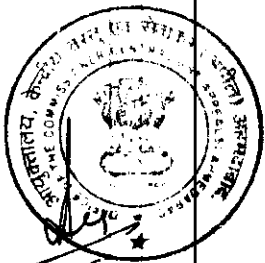


regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it. The said enactments including Section 11-B of the Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are self contained enactments providing for levy, assessment, recovery and refund of duties imposed thereunder. Section 11-B of the Central Excises and Salt Act and Section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a claim of refund and cannot form a basis for maintaining a suit or a writ petition. **All refund claims except those mentioned under Proposition (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be. It is necessary to emphasize in this behalf that Act provides a complete mechanism for correcting any errors whether of fact or law and that not only an appeal is provided to a Tribunal- which is not a department organ – but to this Court which is a civil court...."** (emphasis is ours)

18. Considering the Constitution Bench Judgment, it is clear that when the tax/duty collected by misinterpreting or misapplying the provisions of the Act or rules or regulations or notifications, issued under the said enactment, the claim for refund has to be necessarily preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. Though, the Constitution Bench of the Supreme Court has held that jurisdiction of the High Court under Article 226 of the Constitution of India or of the Supreme Court under Article 32 cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. In view of Constitution Bench decision on the issue, any other view by any Court, Tribunal, etc. is unsustainable. Therefore, the decisions cited by the learned advocate for the petitioner requires no specific considerations thereof.

.....

21. Considering the principle laid down by the Supreme Court in Constitution Bench judgment, it is incumbent upon the person claiming refund of the duty / interest paid, has to claim it in accordance with provisions of the Act. Considering Section 11B of the Act, it is clear that for claiming refund under the Act, a person is to apply for the refund, in a prescribed form, of the duty / interest paid under protest, within a period of one year from the relevant date. Under Explanation below Section 11B of the Act, relevant date is also defined and therefore, it was incumbent upon the petitioner to file refund claim in prescribed form within a period of one year from 7.8.2007 i.e. the order passed by the Tribunal in favour of the petitioner. In our view, the ratio propounded by the Constitution Bench of the Supreme Court, clearly obliges the petitioner to file refund claim in accordance with the Act. Therefore, not



only this petition is not maintainable as equally efficacious remedy is not exhausted but it cannot be entertained under Article 226 of the Constitution of India as petitioner has not fulfilled the requirements to claim refund in accordance with the Act, as also the aforesaid judgments.

22. In our view, the scope for claim of refund is strictly governed by Section 11B of the Act and though in past, there were some judicial pronouncements widening the scope of claim of refund after Supreme Court elaborated reasonings in the case of *Mafatlal (supra)*, there remains hardly any scope for judicial intervention to enlarge it further than what is permissible. The claim of refund and time limit prescribed, therefore, has an avowed aim of attaching finality to the government receipt. Hence, before making any order or direction, affecting it or seeking any writ resulting in refund, the claimant has to make out an extra ordinary case not covered by the decision of the Supreme Court in the case of *Mafatlal (supra)*."

7.1 I further find that in the case of *C.S.T, Ahmedabad Vs. Gujarat State Road Transport Corporation – 2014 (33) STR 283 (Tri.-Ahmd.)*, the Hon'ble Tribunal had held that :

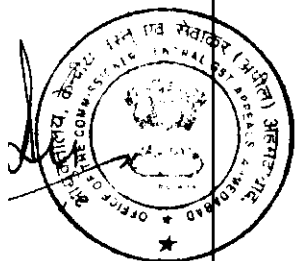
"12. On plain reading of the above reproduced Section, it can be seen that any refund claim has to be filed under the above Section within a period as has been indicated. The abovesaid Section 11B of the Central Excise Act has been adopted by the Finance Act, 1994.

13. In the case in hand before us, we find that respondent has discharged Service Tax liability and filed the refund claim belatedly. The claim of the respondent indicate that the said discharge of Service Tax amount is not required to be paid by them because it is an amount lying with the Government. We find that such claim seems to be inappropriate on the fact that till 2011 the said amount was Service Tax liability and on clarification given by the Board, the said amount was considered by the respondent as not taxable.

14. We find strong force in the contentions raised by the Learned Departmental authorities that even if we consider the said amount paid by the respondent as unconstitutional or non-leviable, the recourse to an assessee/respondent is to file a suit for recovery or file a writ petition, as has been held by the Constitutional Bench of the Apex Court in the case of *Mafatlal Industries*, 1997 (89) E.L.T. 247.

15. We find that in paragraph 99(ii) of the said judgment, the Apex Court has held as under :

"(ii) Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition. This principle is, however, subject to an exception : where a person approaches the High Court or Supreme Court challenging the constitutional validity of a provision, but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on another ground; this is for the reason that so far as he is concerned, the decision has become final and cannot be re-opened on the basis of a decision on another person's case; this is the ratio of the opinion of



Hidayatullah, CJ. in *Tilokchand Motichand* and we respectfully agree with it.”

16. We find that the law on the refund of an amount paid as duty or tax liability is governed by provisions of Section 11B of the Central Excise Act, 1994. In this case, the respondent had filed refund claim belatedly. We are of the view that in the peculiar facts and circumstances of this case, the refund claim was correctly rejected by the lower authorities. Accordingly, we find that the impugned order is not correct and is liable to be set aside and we do so.”

7.2 Further, the Hon'ble Tribunal, Ahmedabad had recently in the case of *Galaxy Transmission Pvt Ltd Vs. C.C.E & S.T., Daman* vide their Final Order No. A/12579/2021 dated 02.12.2021 held that :

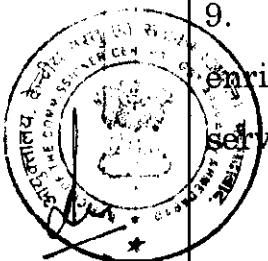
“4. After careful consideration of submission made by Learned AR and perusal the records, I find that the stand of the appellant is that the duty which was paid not actually payable in terms of Notification 108/95-CE therefore, the amount paid is not duty but deposit accordingly, the time limit as provided under Section 11B would not apply. The appellant have relied upon various judgements of Hon'ble High Courts.

5. I find that there is no dispute that at the time of clearance of the goods, the appellant have paid the excise duty subsequently, they realize that duty was not payable in terms of Notification No. 108/05-CE however, the nature of duty so paid would not change and as per my view it is the duty only which was paid by the appellant and when it is so then the limitation provided under Section 11B would clearly apply. As the fact reveals that the refund claim was filed beyond one year from the relevant date, the same is time bar.

6. As regard the various High Court judgments cited by the appellant, I find that this Tribunal being creature under the statute is governed by the same statute wherein statutory time limit has been provided under Section 11(B), therefore, the statutory time limit provided by the act cannot be ignored. Their Lordships in the various High Courts have inherent power to relax the time limit but this Tribunal has no power to do the same. Therefore, the refund being clearly time bar, was rightly rejected by the lower authorities. Accordingly, the impugned order is upheld. Appeal is dismissed.”

8. Following the judgment of the Hon'ble High Court of Gujarat and the Hon'ble Tribunal, Ahmedabad, I hold that the provisions of Section 11B of the Central Excise Act, 1944 are applicable to the claim for refund of service tax amounting to Rs.3,17,063/- paid during the period from June, 2016 to January, 2017. Since the refund claim was filed on 28.03.2019, the same is beyond the period of one year stipulated under Section 11B and is consequently barred by limitation.

9. The appellant have also contended that the doctrine of unjust enrichment is not applicable as they had not raised any invoice and that the service recipient had prepared the invoices according to the measurement

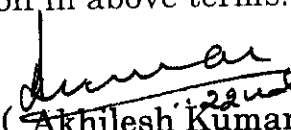


and made payment wherein no service tax is paid by the service recipient. The contention that the service recipient prepares the invoice is beyond belief. I find that the contention of the appellant is not supported by any material evidence or document. Further, the appellant have also not adduced any evidence to indicate that the service tax was not passed on and collected by them from the service recipient. Therefore, I do not find any merit in their contention regarding inapplicability of the doctrine of unjust enrichment.


10. In view of the above, I uphold the impugned order and reject the appeal filed by the appellant.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

  
(Akhilesh Kumar)  
Commissioner (Appeals)  
Date: .12.2021.

Attested:

  
(N.Suryanarayanan. Iyer)  
Superintendent(Appeals),  
CGST, Ahmedabad.



**BY RPAD / SPEED POST**

To

M/s. Raghuvanshi Engineers,  
111, Shivalik Shopping Center,  
Opposite V.J.Patel Vegetable Market,  
Garden Road, Deesa,  
District : Banaskantha,  
Gujarat – 385 535

Appellant

The Assistant Commissioner,  
CGST & Central Excise,  
Division- Palanpur,  
Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.  
(for uploading the OIA)

4. Guard File.
5. P.A. File.