CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III

SERVICE TAX APPEAL NO. 51270 OF 2023

[Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-61-2021-22 dated 07.02.2022 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore (M.P.)]

M/s. Vinayak Tour & Travels ....**APPELLANT**
04, Shri Nagar,
Maxi Road,
Ujjain (M.P.)

VERSUS

COMMISSIONER OF
Central Goods & Service Tax & Central ....**RESPONDENT**
Excise, Manik Bagh Palace, Post Box No.10,
Indore (M.P.)

APPEARANCE:
Ms. Pankhuri Srivastava, Mr. Mukul and Ms. Neelam Sharma, Advocates for the appellant
Shri Rajeev Kapoor, Authorised Representative for the respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51354/2026

Date of Hearing: 28.07.2026
Date of Decision:20.08.2026

BINU TAMTA:

1. M/s Vinayak Tour and Travels[1] engaged in providing "tour operator services" have challenged the impugned order[2] affirming the rejection of the refund claim both on the ground of limitation as well as on the principle of unjust enrichment in terms of Section 11B of Central Excise Act, 1944[3] as made applicable to the provisions of the Finance Act, 1994 by virtue of Section 83.

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[1] Appellant
[2] Order-in-Appeal No.IND-EXCUS-000-APP-61-2021-22 dated 07.02.2022
[3] CEA

2. The case of the appellant is that due to ignorance of law, they were not aware that they were entitled to abatement of service tax and, therefore, paid the service tax on the entire gross amount. For the FY 2016–17, they had mistakenly paid excess service tax amounting to Rs.1,12,77,924/-, whereas their liability was only Rs.34,21,301.95 and, therefore, paid excess of Rs.78,01,682/-. Similarly, they paid service tax for FY 2017–18 to the tune of Rs.4,77,594/-whereas the assessee was liable to pay service tax of Rs.6,01,186.88/- as the service tax was charged on 60% of the gross amount for any “tour operator service” and abatement has been amended to 40% of gross amount in terms of Notification No.26/2012–ST dated 26.06.2012 and Notification No.04/2017–ST dated 12.01.2017 w.e.f. 22.01.2017. The appellant, therefore, filed refund claim on 23.11.2020, however, show cause notice dated 11.01.2021 was issued as to why the refund should not be disallowed on the ground that it is hit by limitation as per the provisions of Section 11B of CEA having been filed beyond the period of one year from the relevant date and also that the appellant has failed to establish that the amount claimed is not collected from their customers and incidence of service tax has not been passed on by them to any other person. The show cause notice was affirmed by the Adjudicating Authority by the Order-in-Original dated 19.02.2021 and the same has been followed by the Commissioner (Appeals) dismissing the appeal filed by the appellant. Hence the present appeal.

3. The submission of the learned Counsel for the appellant is that the amount deposited under mistake of law was not in the nature of service tax, but it was a deposit, which the Government had no authority to retain,

particularly in view of the provisions of Article 265 of the Constitution of India. Since the issue is towards refund of the amount, which was in the nature of deposit, the period of limitation would not apply. In support of his contentions, the learned Counsel has referred to series of decisions rendered by the Division Benches of various High Courts and also by the Tribunal.

4. The learned Authorised Representative for the Revenue reiterated the findings of the Authorities below and prayed that the appeal be dismissed on that ground. The learned Authorised Representative has also relied on the decisions of the Apex Court in **Union of India Vs. ITC Limited**[4] as well as in the case of **BT (India) Ltd.** [5] by **Delhi High Court** observing that provisions of refund being in the nature of execution proceedings and, therefore, it is not open to the Authority, which processes refund to make fresh assessment on merits and to correct assessment on the basis of mistake or otherwise, and therefore, the refund claim cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings.

5. The issue to be considered is whether the refund claim is barred by time and on unjust enrichment in terms of Section 11B of CEA.

6. To appreciate the issue, the provisions of Section 11B are quoted below:

> "**Section 11B of the Central Excise Act, 1944 Claim for refund of duty and interest, if any, paid on such duty-**

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[4] 1993 Supplement IV SCC 326/1993 (67) ELT 3 (SC)
[5] 2021 SCC Online Del 5423

> **(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 ad 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……..**"**

7. The provisions of Section 11B categorically speaks of claiming refund of any duty of excise and since the excess amount paid has been treated in the realm of a deposit and for seeking refund of the same, the limitation prescribed therein cannot be imposed. Such view has been expressed by various High Courts and followed by the Tribunal. Without multiplying too many decisions on the point, we would refer to the recent decision of the Tribunal in the case of **McCann Erickson (India) Pvt. Ltd**. **Versus Commissioner of CGST & CX GST, Delhi**[6]**,** where taking note of the decision of the Division Bench of the Gujarat High Court in **Swastik Sanitary Wares Ltd. & Anr. versus UOI & Ors.**[7] and Karnataka High Court in **Commissioner of Central Excise (Appeals), Bangalore versus KVR Construction**[8], the Bench held that excess payment of service tax is an admitted fact and this amount deposited in excess by inadvertent error, which the government cannot retain or with hold would not fall within the legal parameters of Section 11B of the Act. It was also concluded that the question of applying limitation under Section 11B of the Act would not arise since the retention of such amount would be without any authority of law. The relevant paragraph is quoted below: –

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[6] 2026 SCC Online CESTAT 775 (Service Tax Appeal No.52352 of 2024) dated 20.03.2026
[7] 2013 (296) ELT 321 (Guj.)
[8] 2012 (26) STR 195 (Kar)

> **"6.1** Plain reading of the above legal provisions, makes it clear that the scope of Section 11B ibid, deals with refund of duty/tax and duty/tax refers to the duty/tax leviable as per the provisions of the Central Excise/ Service Tax statute. If there are certain taxable services provided over a period for which the service tax payable is "X" and when the same has been paid firstly as per law, and excess amount inadvertently, it is obvious that the excess amount paid in the context of service tax has no legal basis, either for levy or for payment as service tax, in as much as there is no taxable event for which the levy and payment would apply. The above issue has been dealt with in detail by the Co-ordinate Bench of the Tribunal in the case of M/s. Bansal Biscuits P Ltd., vide Final order no. 77489/2023 dated 17.11.2023 wherein it was held that the limitation of time prescribed under Section 11B ibid is not applicable. The relevant paragraphs of the said order are extracted and given below:
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> > **"13**. Based on the decision of Third Member Reference Bench, the CESTAT, Hyderabad vide its Final Order No. A/30082/2022 dated 05/09/2022 in the Credible Engg. Construction Vs. CCE, Hyderabad, has held as under:-
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> > > **"46.** In view of the difference of opinion, the following questions arise for consideration by learned 3rd Member: (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)STR J17. The reference is accordingly, answered in the following manner:
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> > > > "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."

The Gujarat High Court in the case of **Comsol Energy Private Ltd versus State of Gujarat**[9] considered the issue of refund in the GST regime by referring to the provisions of Article 265 of the Constitution of India, which

[9] 2020 SCC Online Guj.3601 : (2021) 55 GSTL 390

provides that no tax shall be levied or collected except by authority of law, observed that since the amount of IGST collected by the government is without authority of law, the Revenue is obliged to refund the amount collected. Reference was invited to the decision of the Apex Court in **State of Madhya Pradesh versus Bhailal Bhai**[10] where the Constitution Bench held that where the tax assessed and paid by the dealer is declared by the competent court to be invalid in law, the payment of tax already made is one under a mistake of law within the meaning of section 72 of the Contract Act, and therefore, the government to whom the payment was made by mistake must be repaid. The High Court noticed that the issue is squarely covered by the decision in the case of **Gokul Agro Resources Limited versus Union of India**[11] decided on 26.02.2020, wherein the department was directed to pass an appropriate order on the refund application preferred by the assessee without raising any technical issue. In that view, the Division Bench directed the respondent to process the refund claim.

8. On the reliance placed by the Revenue on the decisions of the Apex Court in the case of **ITC Limited** and by the Delhi High Court in the case of **BT (India)**, we are of the opinion that same are not applicable since the present case is not related to refund of service tax rather refund of deposit and therefore, the principles laid down therein would not apply.

9. Now coming to the rejection of the refund claim on the ground of unjust enrichment, we find that the claimed amount was not collected by the appellant from the customers, and as a result, incidence of such service tax had not been passed on by them to their customers. In support, the

[10] AIR 1964 SC 1006
[11] Special Civil Application No.1758 of 2020

appellant has submitted random invoices raised to various parties during FY 2016–17 and 2017–18. Also the Certificate dated 11.06.2018 of the Superintendent, District Ujjain, it is evident that the appellant did not recover the service tax amount from the service recipient. The appellant has, therefore, discharged the burden of proving that the refund claim is not hit by unjust enrichment.

10. We, therefore, conclude that the impugned order holding the refund claim to be time barred is not sustainable being contrary to the settled principle that such amount paid by the assessee is in the nature of deposit and also the refund claim cannot be denied on the ground of unjust enrichment. We, therefore, do not find any merit in the order and the same is hereby set aside. The appeal is, accordingly allowed, with consequential relief, if any.

[Order pronounced on 20th August, 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Ckp.