



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 921 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

=====		
Approved for Reporting	Yes	No

=====

MESSRS MACRO POLYMERS PRIVATE LTD. & ANR.
Versus
UNION OF INDIA & ANR.

=====

Appearance:
AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1,2
MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2
PARAM V SHAH(9473) for the Respondent(s) No. 1,2

=====

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 08/08/2025
ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Amal Dave for the petitioners and learned Senior Standing Counsel Mr. Param Shah for the respondents.



2. Rule returnable forthwith. Learned Senior Standing Counsel Mr. Param Shah for the respondents waives service of notice of rule.
3. Having regard to the controversy involved which is in narrow compass, with the consent of the learned advocates for the parties, the matter is taken up for hearing.
4. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the Order-in-Original dated 26.11.2024 passed by respondent No.2- Assistant Commissioner (Refund), Central Excise, Customs House, Kandla, rejecting the claim of the petitioner for refund of the double payment of duty amounting to



Rs. 78,55,766/- deposited through Challan TR-6.

5. Brief facts of the case are that the petitioner, who is engaged in the business of manufacture of goods like Alkyd resin, Acrylic resin, Urea resin, Polyester resin, Epoxy resin, Polyamide resin and other resin etc., since last more than Twenty years, imported various goods at Kandla Port. Such imported goods were allowed to be cleared for home consumption by the Customs Office by finally assessing 11 Bills of Entry filed by the petitioner. The petitioner was also in possession of the valid Advance Authorization. Since the goods were covered under 11 Bills of Entry and were imported against valid Advance Authorization, the Custom Officer assessed



import duty including the integrated tax as 'Nil' thereby allowing the exemption from payment of duties on the imports made against valid Advance Authorization in view of the Notification No. 18/2015-Cus and as amended by Notification No. 79/2017-Cus dated 13.10.2017.

5.1 It is the case of the petitioner that all the imported goods covered under the above Bills of Entry were brought to the factory and utilized for manufacture of final products which have been imported thereby fulfilling condition of Advance Authorization in terms of the exemption notification.

5.2 Subsequently, by Notification No. 79/2017 dated 13.10.2017, the imports



under Advance Authorization were made exempt, for physical export for payment of IGST and Compensation Cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the Custom Tariff Act, 1975, subject to "pre-import condition". However, Clause No. (xii) of pre-import condition of the Notification was subsequently omitted by Notification No. 1/2019-Customs dated 10.01.2019. Thereafter, it appears that the vires of pre-import condition for the period from 13.10.2017 to 09.01.2019 (interim period) was challenged before the Hon'ble Supreme Court in case of **Union of India & Ors vs. Cosmo Films Ltd** reported in 2023 (72) GSTL 417 (SC). The Hon'ble Supreme Court affirmed the demand raised by the Revenue authority resulting into recovery of the



non-payment of IGST in cash at the relevant time. It was also directed by the Hon'ble Apex Court to permit the petitioners to claim refund of Input Tax Credit and to provide the procedure to be followed by issuing the circular in this regard by the Revenue.

5.3 In view of the directions issued by the Hon'ble Apex Court by order dated 20.04.2023, the Circular No. 16/2023 was issued on 07.06.2023 by the Central Board of Indirect Taxes and Customs ['CBIC' for short] prescribing the procedure to pay IGST relating to such type of cases where the importers were directed to pay IGST and compensation Cess along with applicable interest as well. In para 5.2 (c) of the Circular, the CBIC provided



that the payment of tax and Cess, along with applicable interest shall be made against the electronic challan generated in the Customs EDI System upon re-assessment.

5.4 However, the petitioner deposited amount of Rs. 78,55,766/- through Demand Draft dated 07.06.2023 for the aforesaid 11 Bills of Entry under T.R. 6 Challan No. 144 prior to issuance of the circular by CBIC.

5.5 It is also the case of the petitioner that in pursuance of the prescribed procedure as per Circular No. 16/2023 dated 07.06.2023, the petitioner got all the 11 Bills of Entry re-assessed and paid the differential amount of IGST along with interest by electronic challan



generated through Customs EDI System on 29.03.2024 amounting to Rs. 78,55,766.28. According to the petitioner, therefore, double of payment of IGST amount to the tune of Rs.78,55,766.28 was made by the petitioner; one by the Demand Draft dated 07.06.2023 through Challan and, another by electronic challan generated through Customs EDI System on 29.03.2024.

5.6 The petitioner therefore, by letters dated 06.07.2024 and 12.7.2024, raised the refund claim along with relevant documents for refund of the manual Challan filed on 07.06.2023 amounting to Rs. 78,55,766/-.

5.7 It is the case of the petitioner that during the interregnum period, the



petitioner has made various correspondences with the respondent-Department regarding the re-assessment of 11 Bills of Entry generating the Challans for the same amount of duty which were deposited by the petitioner on 07.06.2023 and again automatically calculated on Customs EDI System for payment of such duty.

5.8 On receipt of the refund claim of the petitioner, the Assistant Commissioner of Customs by letter dated 13.09.2024 called upon the petitioner seeking explanation for manually making payment of Rs. 78,55,766/- and also intimated that why section 27 of the Customs Act, 1962 [for short 'the Act'] should not be made applicable in the case of the petitioner.



The petitioner by reply dated 28.09.2024 contended that amount of tax was deposited under manual challan because Circular laying down the procedure for payment of tax and Cess foregone in respect of imports made under Advance Authorization Scheme was not available at the relevant time and that there was double payment of tax for the goods imported under the Advance Authorization Scheme and Customs Department was under obligation to return the amount of tax paid manually. The petitioner also explained that the orders for Out of Charge were made for re-assessed Bills of Entry on 04.06.2024 and 05.06.2024 and that section 27 of the Act would not be applicable because double payment of tax had arisen because of the directions of the Hon'ble Supreme Court



for time limit of six weeks from
28.04.2023.

5.9 The Assistant Commissioner of Customs thereafter called for a report from the Tax Research Cell (TRC), Kandala Customs, about the refund claim made by the petitioner and a report under letter dated 25.06.2024 was received by the Office of the Assistant Commissioner that an adjudication order has been passed against the petitioner for demand of custom duty foregone on the imports made under the Advance Authorization Scheme. The Assistant Commissioner of Customs therefore, called for the copies of adjudication order and show-cause notice which were submitted by the petitioner along with letter dated 23.07.2024.



5.10 It appears that by letter dated 25.10.2024, the Office of the Assistant Commissioner and the Cash Section of the Customs Department verified about the double payment made by the petitioner and further verified that the petitioner has deposited the amount of tax twice which had been credited in the Government Account. Thereafter, the refund claim of the petitioner was referred to Audit Section of the Customs Department with a draft order for allowing the refund. The Audit Commissioner reported that the draft Order-in-Original forwarded to them which justified the claim was not satisfactory because the claim under section 27 of the Act regarding limitation was required to be examined.



5.11 The respondent-Assistant Commissioner, however, by order dated 26.11.2024 rejected the refund claim of the petitioner relying upon the provisions of section 27 of the Act by observing as under:

"11.3 Vide letter F. No. CUS/RFD/Misc/469/2024-Ref dated 24.10.2024, Cash section was requested to verify the said deposit challans and submit its report. The cash section vide letter F. No. 5/3-MISC/2021-22/CASH dated 25.10.20041 certified that the above referred challan is deposited with cash section of the Kandla customs Treasury, simultaneously same has been credited in the Government Account.

11.4 The Superintendent (Recovery), Custom House, Kandla vide letter dated 25.06.2024, reported that;

"As per latest record available with section OIO No. 10/DSR/(10)CC(ADIN)/MUMBAI/2024-25 dated 22.05.2024 has been issued against M/s. Macro Polymers Pvt. Ltd."



Whereas, on perusal of the copy of said OIO viz No. 10/DSR/(10)CC(ADIN)MUMBAI/2024-25 dated 22.05.2024, it is observed that the taxpayer has filed appeal in CESTAT vide appeal No. C/EH/11230/20 dated 24.06.2024 and OIO is still pending in CESTAT.. And after insertion/amending section 126E, the appeals with Pre-Deposit is to be considered as stayed.

12. In view of the above discussion and findings I find that though there is double payment of Duty amounting to Rs. 78,55,766/- i.e. deposited through TR6 challan No. 144 dated 07.06.2023 as well as paid through electronically on dated 29.03.2024 in compliance to the procedure as laid down by the CBIC circular No. 16/2023-Cus dated 07.06.2023 and the Refund Claim submitted by the claimant vide their letter dated 10.06.2024 (Received on 13.06.2024) and as clarified requested for refund of Manual Challan, is beyond the permissible time period as per prevailing provisions of the Customs Act, 1962 as mended from time to time."

Being aggrieved, the petitioner has preferred this petition with the following prayer:

"(A) That Your Lordships may be pleased to issue a Writ of Certiorari or a Writ of Mandamus or any other appropriate writ, order or direction quashing and setting aside order being OIO No. KDL/AC/171/NKC/Ref/2024-25 dated 26.11.2024 (Annexure I) with consequential relief of payment of refund of Rs. 78,55,766/- with interest @6% per annum for the period commencing from two months after the date of refund application till the actual payment of the refund of Rs. 78,55,766/- to the petitioner."

6. Learned advocate Mr. Amal Dave for the petitioner submitted that the impugned order passed by the Assistant Commissioner is without jurisdiction as the claim of refund made by the petitioner was within the statutory time limit and therefore, the provision of section 27 of the Act could not have been pressed into service for rejection of the claim made by the petitioner.



6.1 It was submitted that relevant date for lodging the refund claim was the date of reassessment of the duty whereas, the petitioner has admittedly lodged the refund claim within one month from the date of re-assessment of 11 Bills of Entry and the first issue that arises in the facts of the case is that the decision rendered by the impugned order passed by the Assistant Commissioner of Customs is erroneous and in contradiction with the finding and conclusion about the limitation for rejecting the claim.

6.2 It was further submitted that it is not in dispute that the petitioner has made double payment of tax amounting to Rs. 78,55,766/- and therefore, it is in the facts of the case the respondent-State



has no authority in law to retain the double payment made by the petitioner with all the tax liabilities. It was pointed out that the Adjudicating Authority has admitted that there was double payment of Rs. 78,55,766/- and therefore, out of the two payments made by the petitioner of the same amount, the amount of Rs. 78,55,766/- cannot be said to be a tax and hence, as per the Article 265 of the Constitution of India, the amount is liable to be refunded to the petitioner forthwith.

6.3 It was also submitted that the Hon'ble Supreme Court in para 75 of the Judgement rendered on 28.04.2023 in case of *Cosmo Films Ltd* (supra), the petitioner was directed to approach the jurisdictional Commissioner and apply with



the documentary evidence within six weeks from the date of the Judgement for claiming the refund of Input Tax Credit and therefore, it was incumbent upon the petitioner to deposit the amount of tax within six weeks from 28.04.2023 for submitting claim for refund of the Input Tax Credit with documentary evidence of duty payment. Accordingly, the petitioner deposited the amount on 03.06.2023 through manual Challan T.R.6 as no procedure, circular or tariff advice was issued and circulated by the respondent-Revenue even after five weeks from the date of decision of the Hon'ble Apex Court. It was therefore, submitted that the amount deposited by the petitioner on 03.06.2023 is required to be refunded as the said amount is again deposited pursuant to the



re-assessment order passed by the respondent on 29.03.2024.

6.4 Learned advocate Mr. Dave in support of his submissions referred to and relied upon the following decisions:

- **M/s. Gujarat State Police Housing Corporation Ltd vs. Union of India and anr** reported in 2024 (1) TMI 1409 Guj.;
- **Messrs Aalidhra Texcraft Engineers and anr vs. Union of India and ors** reported in 2025 (1) TMI 50 GJ. [renderred on 12.12.2024 in Special Civil Application NO. 14554 of 2024]
- **Swastik Sanitarywares Ltd vs. Union of India** reported in 2013(296) ELT 321 (Guj.);
- **C.C.Patel & Associates Pvt. Ltd vs. Union of India and ors** renderred on



05.07.2012 in Special Civil
Application No. 1861 of 2005;

- **Indo-Nippon Chemicals Co. Ltd vs. Union of India** reported in 2005 (185) E.L.T. 19 (Guj.)

6.5 Referring to the above decisions it was submitted that the petitioner is entitled to the refund of Rs. 78,55,766/- as admittedly there is double payment made by the petitioner of the same amount.

7. On the other hand, learned Senior Standing Counsel Mr. Param Shah for respondent No.2 submitted that as per the provision of section 27 of the Act, the refund claim made by the petitioner is time barred and therefore, the same is rightly rejected by the respondent. In support of his submissions, learned Senior Standing



Counsel Mr. Shah referred to and relied upon the following averments made in the affidavit-in-reply filed on behalf of respondent No.2:

"7. It is respectfully submitted that as per the standard procedure of the department, a Pre-audit is required to be carried out before the sanctioning of any refund claim. Therefore, reference was made to the Audit Section for the same and vide letter bearing no. S/7-04/KCH/Pre Audit/2021-22 (Pt.I) Dated 12.11.2024 issued by Assistant Commissioner (Audit), Customs, Kandla, it was stated that the refund claims filed by the petitioner are not satisfactory under Section 27 of the Customs act.

8. Before proceeding further, it would be essential to refer period of limitation of one year for filing of refund claim as Mentioned in section 27 of the Customs Act. The same is reproduced herein below:



"27. Claim for refund of duty:

(1)

(1) (A)....

1(B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:-

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgement, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgement, decree, order or direction.

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment,



from the date of such re-assessment."

9. Simultaneously, It would be essential to refer Para 75 of the judgement Dated 28.04.2023, passed by the Hon'ble Supreme Court of India in Cosmo Films (supra):

"75. For the foregoing reasons, this court holds that the Revenue has to succeed. The impugned Judgment and orders of the Gujarat High Court are hereby set aside. However, since the respondents were enjoying interim orders, till the impugned judgments were delivered, the Revenue is directed to permit them to claim refund or input credit (whichever applicable and/or wherever Customs duty was paid). For doing so, the respondents shall approach the jurisdictional commissioner and apply with documentary evidence within six weeks from the date of this judgment. The claim for refund / credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular, in this regard."



10. It is respectfully submitted that the aforesaid Judgement was passed by the Hon'ble Supreme Court on 28.04.2023 and the limit of Six Weeks to approach the jurisdictional Commissioner and to file a refund claim along with documentary evidence would end on 08.06.2023. It seems that in order to keep adherence to the time limit of six weeks, the petitioner made a payment of Rs. 78,55,766 through Manual Challan on 07.06.2023.

11. It is submitted that on the same date I.e. on 07.06.2023, a Circular No.16/2013-Cus was issued by CBIC, describing the procedure to make payment of Tax and cess along with interest as per the judgment of Cosmo Films (supra). Subsequently, all bills of entry got re-assessed and the amount of Rs. 1,47,79,382/-along with interest was paid by the petitioner through Electronic Challan on 29.03.2024.

12. It is respectfully submitted that, despite the requisite amount was paid in the month of March, 2024, the petitioner filed the refund dam on 13.06.2024 for the duty paid through manual challan way back on 07.06.2023, which is beyond the limitation of 1 year as

mentioned in section 27 (1B) of the Customs Act. In other words, the last date of filing a refund claim was on 06.06.2024, however, the petitioner filed its refund claim on 13.06.2024, which was beyond the limitation of 1 year. Hence, the refund claim filed by the petitioner is tightly rejected as being time-barred and OIO dated 26.11.2024 is just and proper.

13. As far as interest on refund is concerned, it is submitted that since the claim of refund is itself a time-barred claim, the question of interest on refund would not arise and the Petitioner is not entitled to interest on such claims."

7.1 Referring to the above averments it was submitted that admittedly, the refund claim made by the petitioner is beyond the limited period of one year as mentioned in section 27(1B) of the Act and the last date of filing of the refund of claim was 06.06.2024. However, the petitioner filed its refund claim on 13.06.2024.



7.2 It was therefore submitted that no interference may be made in the impugned order as the same is passed by exercising the jurisdiction by respondent No.2 and if the petitioner is aggrieved, the petitioner should avail the alternative efficacious remedy by preferring appeal in accordance with law.

8. Having heard learned advocates for the parties and considering the facts of the case, it is not in dispute that the petitioner has deposited Rs. 78,55,766/- twice; once on 07.06.2023 and secondly, on 29.03.2024 after passing of the reassessment orders of the Bills of Entry by the respondent-authority.



9. It is not in dispute that the petitioner is not required to pay amount of duty twice as per the decision of the Hon'ble Apex Court. The petitioner has also explained in detail as to why the petitioner paid Rs. 78,55,766/- through manual challan as the time limit was expiring as directed by the Hon'ble Apex Court.

10. This Court in case of *Messrs Aalidhra Texcraft Engineers and anr.* (supra), wherein, the decision in case of *Gujarat State Police Housing Corporation Ltd* (supra) was referred to and relied upon as under:

"15. Having considered the rival submissions made by both the learned advocates, it is not in dispute that the petitioner deposited amount of Rs.40,00,000/- by mistake on 20.11.2020 voluntarily which was

neither towards any tax, interest or penalty. The similar issue came up for consideration before this Court in case of M/s. Joshi Technologies International (Supra) as well as in case of Gujarat State Police Housing Corporation Ltd. (Supra), wherein it is held by this Court as under :-

"22.Having heard learned advocates for the respective parties and having considered the facts of the case, it is not in dispute that the petitioner is entitled to the exemption under Notification No.32/2017 read with Notification No.12 of 2017 dated 13.10.2017, which reads as under:-

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS
New Delhi: 05.07.2022
Notification No. 13/2022-
Central Tax

G.S.R. 516(E). In exercise of the powers conferred by [section 168A](#) of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with [section 20](#) of



the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and [section 21](#) of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, [Section 3](#), Sub- section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, [Section 3](#), Sub- section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-

(i) extends the time limit specified under sub-section (10) of [section 73](#) for issuance of order under sub-section (9) of [section 73](#) of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;



(ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of [section 73](#) of the said Act for issuance of order under sub-section (9) of [section 73](#) of the said Act, for recovery of erroneous refund;

(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under [section 54](#) or [section 55](#) of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

[F. No. CBIC-
20001/2/2022-\GST]

RAJEEV RANJAN, Under
Secy."

23. The entry no.9(c) of Chapter 99 of GST Tariff-Services, reads as under:-

"Supply of service by a Government Entity to Central Government, State Government,

Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants."

24. [Section 5A\(1A\)](#) of Central Excise Act, 1944 stipulates as under:-

"Section 5A[(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods"

25. [Section 54\(1\)](#) of the CGST Act reads as under:-

"[Section 54\(1\)](#) Refund of tax paid on zero rated supplies of goods or services or both or on "input or input service" (not the

capital goods) used in making such zero rated supplies."

27. Explanation 2(h) of [Section 54](#) of the CGST Act defining the relevant date reads as under:-

"(2) "relevant date" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in 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

(ii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India:

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is



available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment,



decree, order or direction;

2[(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under [section 39](#) for the period in which such claim for refund arises:]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax."

28. Therefore, the contention of the petitioner that the [Section 54\(1\)](#) of the CGST Act is not applicable in the facts of the case is not tenable in view of the fact that the petitioner is liable to pay the GST under the Act. However, in view of the Notification No.32/2017, the petitioner was not granted exemption providing "Nil rate of Tax". Therefore, as per clause(h) explanation 2, refund date would be

the date of payment of tax, which petitioner has failed ignoring the Notification No.32/2017. Therefore, the petitioner is ought to have filed refund claim as per the [Section 54\(1\)](#) of the CGST Act.

29. This Court in the case of Joshi Technologies International (supra) has held that the amount paid by mistake or through ignorance as self assessment of tax cannot be retained by the revenue and revenue is duty bound to refund as its retention is hit by [Article 265](#) of the Constitution of India, which mandates that no tax shall be levied or collected except by authority of law. It was held as under:-

"13. The next question that needs to be addressed is the aspect of limitation. The refund application has been made in July 2014 seeking refund of the amount paid for the period July, 2004 to April 2014. On behalf of the revenue it has been contended that in view of the provisions of [section 11B](#) of the CE Act, the limitation for filing the refund claim would be before the expiry of one year from the relevant date. The expression "relevant date" is defined under clause (B) of the



Explanation to [section 11B](#) of CE Act and insofar as the present case is concerned would be the date of payment of duty. However, as discussed hereinabove, the provisions of [section 11B](#) of the Act would not apply to the claim of refund made by the petitioner. Consequently, the limitation prescribed under the said provision would also not be applicable.

14. It has been further contended on behalf of the revenue, that in case the limitation prescribed under [section 11B](#) of the CE Act is not applicable, the general principles of limitation would apply and the limitation of three years for filing a suit would apply, whereas on behalf of the petitioner reliance has been placed upon [section 17](#) of the Limitation Act, 1963 to contend that this case would be governed by the said provision and hence the limitation would not begin to run till the petitioner discovered the mistake. In support of the above submission, on behalf of the petitioner, reliance has been placed on the following decisions:-



14.1 The decision of the Supreme Court in Dehri Rohtas Light Rly. Co. Ltd. v. District Board, Bhojpur (supra), was cited, wherein it has been held thus:

"12. The question thus for consideration is whether the appellant should be deprived of the relief on account of the laches and delay. It is true that the appellant could have even when instituting the suit agitated the question of legality of the demands and claimed relief in respect of the earlier years while challenging the demand for the subsequent years in the writ petition. But the failure to do so by itself in the circumstances of the case, in our opinion, does not disentitle the appellant from the remedies open under the law. The demand is per se not based on the net profits of the immovable property, but on the income of the business and is, therefore, without authority. The appellant has offered explanation for not raising the question of legality in the earlier proceedings. It appears that the authorities proceeded under a mistake of law as to



the nature of the claim. The appellant did not include the earlier demand in the writ petition because the suit to enforce the agreement limiting the liability was pending in appeal, but the appellant did attempt to raise the question in the appeal itself. However, the Court declined to entertain the additional ground as it was beyond the scope of the suit. Thereafter, the present writ petition was filed explaining all the circumstances. The High Court considered the delay as inordinate. In our view, the High Court failed to appreciate all material facts particularly the fact that the demand is illegal as already declared by it in the earlier case.

13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party



on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case¹ relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned

down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed."

(Emphasis supplied)

14.2 Reliance was also placed upon the decision of this court in *Swastik Sanitarywares Ltd. v. Union of India* (supra), wherein it has been held as follows:

"15. In the present case, however, we find that the second deposit of the same amount on clearance of the same goods did not amount to deposit of excise duty and was a pure mistaken deposit of an amount with the Government which the revenue cannot retain or withhold. Such claim, therefore, would not fall within [Section 11B](#) of the Act. It is true that insofar as the Act is concerned, for refund of duty, the provision is contained in Section 11B. However, merely because there is no specific statutory provision pertaining to return of amount deposited under a

mistake, per se, in our opinion, should not deter us from directing the respondents to return such amount. Admittedly, there is no prohibition under the Act from returning such an amount. Allowing the respondents to retain such amount would be, in our opinion, highly inequitable. We may not be seen to suggest that such a claim can be raised at any point of time without any explanation. In a given case, if the petitioner is found to be sleeping over his right, or raises such a claim after unduly long period of time, it may be open for the Government to refuse to return the same and this court in exercise of discretionary writ jurisdiction, may also not compel the Government to do so.

16. In the present case, however, no such inordinate delay is pointed out. The petitioners have contended that the error was noticed by them some time in October, 2003 whereupon immediately on 1-11-2003, such refund claim was filed.

17. In a recent judgment in case of C.C. Patel & Associates Pvt. Ltd. (supra), this court had occasion to deal with somewhat similar situation where the petitioner had deposited service tax twice which was not being refunded by the Department. In that context, it was observed as under:-

(12) We fail to see how the department can withhold such refund. We say so for several reasons. Firstly, we notice that under sub-section(3) of [section 68](#), the time available to a service provider such as the petitioner for depositing with the Government service tax though not collected from the service recipient was 75 days from the end of the month when such service was provided. This is in contrast to the duty to be deposited by a service provider upon actual collection by the 15th of the month following the end of the month when such duty is collected. Sub-section (3) of [section 68](#) thus provided for an outer limit of 75 days, but never provided that the same



cannot be paid by the 15th of the month following the end of the month when such service was provided. Thus, if the petitioner deposited such duty with the Government during a particular quarter on the basis of billing without actual collection, he had discharged his liability under sub-section (3) of [section 68](#). Thereafter, on an artificial basis, the Assessing Officer could not have held that he ought to have deposited same amount once all over again in the following quarter. This is fundamentally flawed logic on the part of the Assessing Officer.

(13) Further, to accept such formula adopted by the Assessing Officer would amount to collecting the tax from the petitioner twice. The petitioner having already paid up the service tax even before collection in a particular quarter, cannot be asked to pay such tax all over again in the following quarter on the same service on the ground that such tax had to be deposited in the later

quarter but was deposited earlier. Any such action would be without authority of law. Further, before raising demand of Rs.1,19,465/- under the head of duty short paid, the Assessing Officer should have granted adjustment of the duty already paid by the petitioner towards the same liability.

(14) Under the circumstances, we are of the opinion that the department cannot withhold such amount which the petitioner rightfully claimed. Under the circumstances, question of applying limitation under [section 11B](#) of the Act would not arise since we hold that retention of such service tax would be without any authority of law."

14.3 Strong reliance was placed upon the decision of the Supreme Court in [Salonah Tea Co. Ltd. v. Supdt. of Taxes](#) (supra), wherein it has been held thus:

"13. Under [Article 113](#) of the [Limitation Act, 1963](#) the limitation was the period of

three years from the date the right to sue accrues. It may be noted that in the instant case under [Section 23](#) of the Act, it was provided that the Commissioner shall, in the prescribed manner refund to a producer or a dealer any sum paid or realised in excess of the sum due from him under this Act either by cash or, at the option of the producer or dealer, be set off against the sum due from him in respect of any other period. [Section 23](#) applies only in a case where money is paid under the Act. If there is no provision for realisation of the money under the Act, the act of payment was ultra vires, the money had not been paid under the Act. In that view of the matter [Section 23](#) would not apply.

14. The High Court in the instant case after analysing the various decisions came to the conclusion that where a petitioner approached the High Court with the sole prayer of claiming refund of money by writ of mandamus, the same was normally not granted but where the refund was prayed as a consequential relief the same was normally entertained if

there was no obstruction or if there was no triable issue like that of limitation. We agree that normally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under [Article 226](#) of the Constitution the court has power to direct the refund unless there have been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to respondent or any third party. It is true that in some cases the period of three years is normally taken as a period beyond which the court should not grant relief but that is not an inflexible rule. It depends upon the facts of each case. In this case, however, the High Court refused to grant the relief on the ground that when the section was declared ultra vires originally that was the time when refund should have been claimed. But it appears to us, it is only when the Loong Soong case was decided by the



High Court in 1973 that the appellant became aware of his crystal right of having the assessment declared ultra vires and in that view of the matter in October 1973 when the judgment was delivered in July 1973 the appellant came to know that there is mistake in paying the tax and the appellant was entitled to refund of the amount paid. That was the time when the appellant came to know of it. Within a month in November 1973 the present petition was filed. There was no unexplained delay. There was no fact indicated to the High Court from which it could be inferred that the appellant had either abandoned his claims or the respondent had changed his position in such a way that granting relief of refund would cause either injury to the respondent or anybody else. On the other hand, refunding the amount as a consequence of declaring the assessment to be bad and recovery to be illegal will be in consonance with justice, equity and good conscience. We are, therefore of the view that the view of the High Court in this matter cannot be sustained."



20. In [State of M.P. v. Bhailal Bhai](#), AIR 1964 SC 1006, this Court had occasion to consider what was unreasonable delay in moving the court when tax was paid under a mistake. There the respondents were dealers in tobacco in the State of Madhya Bharat. The State had imposed sales tax on the sale of imported tobacco by the respondents. But no such tax was imposed on the sale of indigenous tobacco. The respondents filed writ petitions under [Article 226](#) of the Constitution for the issue of writ of mandamus directing the refund of sales tax collected from them. They contended that the impugned tax was violative of [Article 301\(a\)](#) of the Constitution and they paid the tax under a mistake of law and the tax so paid was refundable under [Section 72](#) of the Indian Contract Act, 1872. The appellant contended that there was no violation of [Article 301](#) of the Constitution, and even if there was such violation the tax came within the special provision under [Article 304\(a\)](#) of the Constitution and the High

Court had no power to direct refund of tax already paid and in any event the High Court should not exercise its discretionary power of issuing a writ of mandamus directing this to be done since there was unreasonable delay in filing the petition. The High Court rejected all the contentions of the appellant and a writ of mandamus was issued as prayed for. It was held that tax was violative under [Article 301](#) of the Constitution. But it was held that even though the tax contravened [Article 301](#) of the Constitution, it was valid if it came within the saving provisions of [Article 304](#) of the Constitution. Tobacco manufactured or produced in the appellant State, similar to the tobacco imported from outside had not been subjected to the tax and therefore the tax was not within the saving provisions of [Article 304\(a\)](#) of the Constitution. It was reiterated that the tax which had already been paid was so paid under a mistake of law under [Section 72](#) of the Indian Contract Act. The High Courts had power for the purpose of enforcement of fundamental rights and statutory rights to

grant consequential reliefs by ordering repayment of money realised by the government without the authority of law. It was reiterated that as a general rule if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by the extraordinary remedy of mandamus. Even if there is no such delay, in cases where the opposite party raises a prima facie issue as regards the availability of such relief on the merits on grounds like limitation the court should ordinarily refuse to issue the writ of mandamus. Though the provisions of the [Limitation Act](#) did not as such, it was further held, apply to the granting of relief under [Article 226](#), the maximum period fixed by the legislature as the time within which relief by a suit in a civil court must be claimed may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under [Article 226](#) could be measured. The court might consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. Where the delay is more than

that period it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the [Limitation Act](#) was three years from the date when the mistake was known. In this case knowledge is attributable from the date of the judgment in Loong Soong case on 10-7-1973 and there being a statement that the appellant came to know of that fact in October 1973 and there being no denial by the averment made on this ground, the High Court, in our opinion, in the instant case was in error in presuming that there was a triable issue on this ground and refusing to grant refund."

(Emphasis supplied)

14.4 Thus, in view of the principles enunciated by the Supreme Court in [Salonah Tea Co. Ltd. v. Superintendent of Taxes, Nowgong](#) (supra), in case where money is paid by mistake, the period of limitation prescribed is three years from the date when the mistake was known. Besides, [section 17](#) of the Limitation Act inter alia provides that when a suit or

application is for relief from the consequences of a mistake, the period of limitation would not begin to run until the plaintiff or applicant has discovered the mistake, or could, with reasonable diligence, have discovered it. Therefore, in case where money is paid under a mistake, the limitation would begin to run only when the applicant comes to know of such mistake or with reasonable diligence could have discovered such mistake. Adverting to the case at hand, the mistake is in the nature of a mistake of law. It appears that the legal position was not clear and hence, pursuant to representations made by the trade and field formations, the CBEC was required to issue the circular dated 07.01.2014 clarifying the issue. As noticed earlier, the petitioner had all along, right from July 2004 been paying Education Cess and subsequently, from the year 2007 was paying Secondary and Higher Secondary Education Cess, till April 2014. It was only when the Circular dated 07.01.2014 came to be issued by the CBEC, clarifying the issue, that the petitioner came to know about its mistake. Considering the nature of the

mistake and the fact that the issue was not free from doubt till the above circular came to be issued by the CBEC, it also cannot be said that the petitioner could with reasonable diligence have discovered the mistake. It appears that it is only sometime after the Education Cess and Secondary and Higher Secondary Education Cess came to be paid for the month of April 2014 that the petitioner came to know about its mistake and in July 2014, it filed the application for refund before the second respondent. Since the period of limitation begins to run only from the time when the applicant comes to know of the mistake, the application made by the petitioner was well within the prescribed period of limitation. Moreover, as discussed hereinabove, the retention of the Education Cess and Secondary and Higher Secondary Education Cess by the respondents is without authority of law and hence, in the light of the decision of this court in *Swastik Sanitarywares Ltd. v. Union of India* (supra), the question of applying the limitation prescribed under [section 11B](#) of the CE Act would not arise."



30.The Hon'ble High Court of Karnataka in the case of Commr. Of C.EX (Appeals), Bangalore vs. KVR, reported in 2012 (26) S.T.R. 195 (Kar.) Construction has held as under:-

"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. Incase, 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.

23. Now we are faced with a similar situation where the claim of the respondent/assessee is on the ground that they have paid the amount by mistake and therefore they are entitled for the refund of the said amount. If we consider this payment as service tax and duty payable, automatically, Section 11B would be applicable. When once there was no compulsion or duty cast to pay this service tax, the amount of Rs. 1,23,96,948/- paid by petitioner under mistaken notion, would not be a duty or "service tax" payable in law. Therefore, once it is not payable in law there was no authority for the department to retain such amount. By any stretch of imagination, it will not amount to duty of excise to attract Section 11B. Therefore, it is outside the purview of [Section 11B](#) of the Act."

31. The Hon'ble Supreme Court in the case of Commissioner vs. KVR Construction, reported in 2018 (14) G.S.T.L. J70 (S.C.) has held thus:-



"Delay Condoned

The Special Leave petitions are dismissed."

The Hon'ble Supreme Court by order dated 11.07.2011 dismissed the Special Leave Petition in Appeal (civil) No.CC 10732 and 10733 of 2011 filed by the Commissioner of wages against the judgment and order of Karnataka High Court in the case of KKR (supra).

32. The Hon'ble Delhi High Court in the case of [Teleecare Network \(India\) Pvt. Ltd. vs. Union of India](#), reported in 2018 (8) TMI 1901 has held as under:-

"12. There is no dispute about the applicability of SRF Ltd (supra); indeed the Revenue's refrain during the hearing was that the amounts could not be refunded because the claims were time-barred and that the petitioner has an alternative remedy. This Court is of opinion that the plea of alternative remedy- an unoriginal and frequently used stereotypical defence by

public bodies - in such cases at least dodges the crux of any dispute, i.e the liability of the concerned public body or agency on merits. Sans any dispute with respect to facts, this Court finds it entirely unpersuasive, since [Article 144](#) of the Constitution, compels all authorities to give effect to the law declared by the Supreme Court (as in this case, the SRF Limited judgment). The other plea which the Customs had relied on, to defeat the petitioner's refund application was [Section 27 \(3\)](#) which confines refunds to the situations contemplated in [Section 27 \(2\)](#), notwithstanding any judgment, order or decree of the court. This Court is at a loss to observe the relevance of that reasoning, given that SRF Limited (supra) had ruled in principle that import implied a deemed manufacture, without any corresponding obligation on the part of the importer to have availed CENVAT credit. As such, the amount claimed was not duty and could not have been recovered by the Customs authorities in the first instance, given the declaration of law in SRF

Limited (supra). Therefore, they cannot now seek shelter under [Section 27 \(3\)](#) to resist a legitimate refund claim."

33. The Hon'ble Madras High Court in the case of M/s. 3E Infotech (supra) Court has held thus:-

"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 Vs. ITC Ltd.](#) reported in (1993) Supp. IV SCC 326, while dealing with the question of refund of excess excise paid held:-

"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 Collect 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.

11. A similar view has been taken by the Bombay High Court in the case of [Parijat Construction Vs. Commissioner Excise, Nashik](#), reported in 2018(359) ELT 113 (Bom), where the Bombay High Court has held as under:-

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

5. Both decisions have held the limitation prescribed under Section 11B of the said Act to be not applicable to refund claims for service tax paid under a mistake of law. The decision of the Supreme Court in the case of Collector of C.E., Chandigarh v. Doaba Co-Operative Sugar Mills (supra) relied upon by the Appellate Tribunal has in applying Section 11B, limitation made an exception in case of refund claims where the payment of duty was under a mistake of law. We are of the view that the impugned order is erroneous in that it applies the limitation prescribed under

Section 11B of the Act to the present case 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. 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."

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."

34.The Hon'ble Supreme Court in the case of ITC Ltd. (supra), has held as under:-

"7. In Salonah Tea Company Ltd. Etc. v. Superintendent of Taxes Now-gong and Ors. etc. this Court said :

Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally as a corollary of the said statement of law it follows that taxes collected without the authority of law, as in this case, from a citizen should be refunded because no State has the right to receive or to retain taxes or levies realised from citizens without the authority of law. Dealing with the question of bar of limitation for making a claim for refund of tax or duty paid or collected without the authority of law in such cases, the Court opined: (SCC p. 411, para 14)

"Normally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under [Article 226](#) of the Constitution the court has power to direct the refund unless there has been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to the respondent or any third party. It is true that in some cases the period of three years is normally taken as a period beyond which the court should not grant relief but that is not an inflexible rule."

8. In [Shri Vallabh Glass Works Ltd., and Anr. v. Union of India and Ors.1984](#) (16) ELT 171 SC, 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 Central Excise (Appeals) to deny them the refund for the period 1.9.1970 to 28.5.71 and 1.6.1971 to 19.2.1972 was not proper as admittedly the respondent had approached the Assistant Collector Excise



soon after coming to know of the judgment in Voltas case (supra) and the assessee was not guilty of any laches to claim refund.

10. This now takes us to the basic question, viz. the right of the respondent to receive refund otherwise than in accordance with the provisions of [Section 11B](#) of the Act as amended by Act 40 of 1991, which amendments are aimed at preventing "unjust enrichment". Learned Counsel for the appellants urged that the excise duty, being an indirect tax, is passed on to the consumers and therefore the respondent was not in law justified to claim refund since, it was not even stated by the respondent in its affidavit that they were going to return the amount to various consumers or that any consumer had in fact sought such a refund. Reference in this connection was made by the learned Counsel specially to the provisions of [Section 11B\(3\)](#) of the Act as introduced by Act 40 of 1991 with effect from 20.9.1991 and it was submitted that with effect from 20th of September

1991, no person is entitled to claim and obtain refund of the excess duty paid except in accordance with the provision of [Section 11B\(2\)](#) of the Act, as amended, and that since the respondent had failed to produce any documentary evidence to show that it had not passed on the burden of excess excise duty to the consumers, it was not open to it to claim and obtain the refund. Learned Counsel therefore urged that in accordance with the directions of this Court in its order dated 8.10.1982, the respondent be directed to pay back the amount which was received by them under orders of this Court with interest @ 12% p.a."

35. Considering the above dictum of law, the amount of GST paid by the petitioner is admittedly paid as a self assessment, which the petitioner was not required to pay as per the Notification No.32/2017. Accordingly, in the facts of the case, the amount paid by the petitioner from electronic cash ledger is required to be refunded by the respondent authority and could not have been rejected on the

ground of limitation under [Section 54\(1\)](#) of the CGST Act.

36. In view of the foregoing reasons, the impugned order dated 20.07.2021 passed by the Appellate Authority and Orders in Original dated 18.12.2020 passed by the adjudicating authority rejecting the claims of the petitioner are hereby quashed and set aside. All these matters are remanded back to the adjudicating authority to process the refund claims in accordance with law without considering the limitation period for filing the refund claim as prescribed under [Section 54\(1\)](#) read with explanation 2(h) of the [CGST Act](#). Notice is discharged."

11. In view of the above analysis made in the aforesaid decision in case of *Gujarat State Police Housing Corporation Ltd* (supra) referred to and relied upon in case of Messars Aalidhra Texcraft Engineers and Anr (supra) which is squarely applicable to the facts of the



present case more particularly, when the petitioner has deposited Rs. 78,55,766/- twice, it would not be covered by the provision of section 27 of the Act and no limitation would apply as the same is required to be refunded by the respondent-authority and could not have been rejected on the ground of limitation under section 27(1B) of the Act in view of the provision of Article 265 of the Constitution of India.

12. In view of foregoing reasons, the impugned Order-in-Original dated 26.11.2024 passed by respondent No.2-Assistant Commissioner (Refund) is therefore, quashed and set aside. The respondents are directed issue refund order for the amount of Rs. 78,55,766/- deposited by the petitioner within a period of 08 weeks



from the date of receipt of copy of this order. However, it is made clear that the petitioner will not be entitled to any interest on such amount as the same was deposited by the petitioner twice voluntarily on a belief that the time limit granted by the Hon'ble Apex Court is expiring after six months. Rule is made absolute to the aforesaid extent. No order as to cost.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

JYOTI V. JANI