CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 52185 OF 2024 WITH CROSS OBJECTION APPLICATION NO. 50588 OF 2025 (SM)

[Arising out of the Order-in-Appeal No. 441-444 (AK)/ST/JPR/2024 dated 18/07/2024 passed by The Commissioner, Central Excise – I, Jaipur.]

M/s Meenu Builders **Appellant**
P. No. Bajrang Vihar – 1,
Mahadev Nagar, Macheda,
Jaipur – 302 013.

VERSUS

The Commissioner of Central Excise, Central Goods & Service Tax, **Respondent**
NCR Building, C-Scheme, Statue Circle,
Jaipur – 302 005.

WITH

SERVICE TAX APPEAL NO. 52186 OF 2024 WITH CROSS OBJECTION APPLICATION NO. 50589 OF 2025 (SM)

[Arising out of the Order-in-Appeal No. 441-444 (AK)/ST/JPR/2024 dated 18/07/2024 passed by The Commissioner, Central Excise – I, Jaipur.]

M/s Meenu Builders **Appellant**
P. No. Bajrang Vihar – 1,
Mahadev Nagar, Macheda,
Jaipur – 302 013.

VERSUS

The Commissioner of Central Excise, Central Goods & Service Tax, **Respondent**
NCR Building, C-Scheme, Statue Circle,
Jaipur – 302 005.

WITH

SERVICE TAX APPEAL NO. 52189 OF 2024 WITH CROSS OBJECTION APPLICATION NO. 50590 OF 2025 (SM)

[Arising out of the Order-in-Appeal No. 441-444 (AK)/ST/JPR/2024 dated 18/07/2024 passed by The Commissioner, Central Excise – I, Jaipur.]

M/s Meenu Builders **Appellant**
P. No. Bajrang Vihar – 1,
Mahadev Nagar, Macheda,
Jaipur – 302 013.

VERSUS

The Commissioner of Central Excise, **Respondent**

Central Goods & Service Tax,
NCR Building, C-Scheme, Statue Circle,
Jaipur – 302 005.

WITH
SERVICE TAX APPEAL NO. 52190 OF 2024 WITH
CROSS OBJECTION APPLICATION NO. 50591 OF 2025 (SM)

[Arising out of the Order-in-Appeal No. 441-444 (AK)/ST/JPR/2024 dated 18/07/2024 passed by The Commissioner, Central Excise – I, Jaipur.]

M/s Meenu Builders **Appellant**
P. No. Bajrang Vihar – 1,
Mahadev Nagar, Macheda,
Jaipur – 302 013.

VERSUS

The Commissioner of Central Excise, Central Goods & Service Tax, **Respondent**
NCR Building, C-Scheme, Statue Circle,
Jaipur – 302 005.

APPEARANCE

Shri Bipin Garg, Advocate – for the appellants.
Shri Vishwajeet Saharan, Authorized Representative (DR) – for the Department

AND
SERVICE TAX APPEAL NO. 52211 OF 2024 WITH
CROSS OBJECTION APPLICATION NO. 50585 OF 2025 (SM)

[Arising out of the Order-in-Appeal No. 450-452 (AK)/ST/JPR/2024 dated 18/07/2024 passed by The Commissioner, Central Excise – I, Jaipur.]

M/s Nahar Singh, **Appellant**
Plot No. 200, Sumel Nagar II,
Mansarovar,
Jaipur – 302 020.

VERSUS

The Commissioner of Central Excise, Central Goods & Service Tax, **Respondent**
NCR Building, C-Scheme, Statue Circle,
Jaipur – 302 005.

WITH
SERVICE TAX APPEAL NO. 52213 OF 2024 WITH
CROSS OBJECTION APPLICATION NO. 50587 OF 2025 (SM)

[Arising out of the Order-in-Appeal No. 450-452 (AK)/ST/JPR/2024 dated 18/07/2024 passed by The Commissioner, Central Excise – I, Jaipur.]

M/s Nahar Singh, Contractor, **Appellant**

Plot No. 200, Sumel Nagar II,
Mansarovar,
Jaipur – 302 020.

VERSUS

The Commissioner of Central Excise, Central Goods & Service Tax, **Respondent**
NCR Building, C-Scheme, Statue Circle,
Jaipur – 302 005.

WITH
SERVICE TAX APPEAL NO. 52234 OF 2024 WITH
CROSS OBJECTION APPLICATION NO. 50586 OF 2025 (SM)

[Arising out of the Order-in-Appeal No. 450-452 (AK)/ST/JPR/2024 dated 18/07/2024 passed by The Commissioner, Central Excise – I, Jaipur.]

M/s Nahar Singh, Contractor, **Appellant**
Plot No. 200, Sumel Nagar II,
Mansarovar,
Jaipur – 302 020.

VERSUS

The Commissioner of Central Excise, Central Goods & Service Tax, **Respondent**
NCR Building, C-Scheme, Statue Circle,
Jaipur – 302 005.

APPEARANCE

Shri Bipin Garg, Advocate – for the appellants.
Shri Rohit Issar, Authorized Representative (DR) – for the Department

CORAM : **HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 50608-50614/2025

DATE OF HEARING : 07.04.2025
DATE OF DECISION: 08.05.2025

ASHOK JINDAL

All the appeals are having common issue, therefore, all are disposed of by a common order. Revenue has also filed Cross Objections and the same are taken on record. I further take note

of that the appeals have been filed by the appellants in the month of October 2024, whereas Cross Objections have been filed on 07.04.2025 when the matter was listed for final hearing. The Defect Memo was issued to the Revenue pointing out the following defects :-

> No verification of the cross objection, is not filed in proper format and undertaking required as per Circular dated 27.02.2017 to this effect the matter is not previous filed or pending before any legal forum before any Supreme court writ or High Court.
>
> It is considered that the Defect Memo issued to the Revenue is technical in nature, therefore, the defects mere removed and the Cross Objections are taken on record.
>
> As the Cross Objections have been filed on 07.04.2025 and no application for condonation of delay has been filed, therefore, Cross Objections deserves to be dismissal as time barred, on this account also the Cross Objections filed by the Revenue are requested not to be considered.

2. Now coming to the merits of the case.

3. As issue in all the appeals is common and facts of the appeals are common, therefore, all are taken up together.

4. The facts of the case are that appellants were engaged in construction of Single House on the basis of work order issued by the Rajasthan Housing Board, the appellants were paying duty since 01.07.2008 onwards which has exempted under Notification

No. 25/2012-ST dated 20.06.2012 (Sl. No. 14B) and as per Notification No. 30/2012-ST dated 20.06.2012, the appellant were liable to pay 50% service tax under Sl. No. 14B of the said notification and Rajasthan Housing Board is liable to pay remaining 50% under reverse charge mechanism. The appellants raised bills on Rajasthan Housing Board. While clearing the payments by Rajasthan Housing Board raised by the appellant, the Rajasthan Housing Board deducted 50% of the amount from the running bill of the appellant and deposit the said amount with the Revenue. Revenue has recorded the findings thereto. Thereafter, on realizing that appellants was not liable to pay service tax, the appellants filed refund claims of the service tax paid by them during the period 01.10.2008 to 31.03.2016. Various show cause notices were issued to the appellants for rejection of the refund claims on account of being time barred as same were claimed before the Adjudicating Authority after one year of the payment of service tax and on the basis of unjust enrichment. Initially the refund claims of the appellants were rejected. On appeal, the learned Commissioner (Appeals) allowed the refund claims to the extent of 50% of the service tax paid by the appellant along with interest @ 6%, but rejected the refund claim of 50% of service tax paid by the service recipient on the ground that appellant has not produced any evidence to the effect of payment of said service tax by the service recipient. Against those orders, appellants are before me.

5. The learned counsel for the appellant submits that the only reason for denial of refund claim of 50% of the service tax paid by the service recipient is that no documentary evidence has been produced which was not the subject matter in the show cause notice, therefore, the refund claims cannot be rejected and the show cause notice, itself has recorded that the service recipient namely Rajasthan Housing Board has deducted the payment to be paid by the appellant and the 50% of the said tax has been deposited by the Rajasthan Housing Board with the Revenue. He further submitted that the refund claim are to be sanctioned along with interest after three months of filing of the refund claim till itself realization interest @ 12%, but no interest has been granted to the appellant, therefore, the said interest is payable to the appellant @ 12% as per provision of Section 11B and 11BB of the Act are not applicable to the facts of this case.

6. On the other hand, learned authorized representative appearing on behalf of the Revenue submits that as appellants has paid service tax on their own and the said assessment has become final, therefore, the same has not been challenged by the appellant, therefore, the refund claim are not applicable and refund is not entitled by the appellant and in the case of **ITC Ltd.** reported as **1993 (67) E.L.T. 3 (S.C.)**. He also relied on the decision of **Mafatlal Industries Ltd. versus Union of India** reported as **1996 (12) TMI 50 (S.C.)** to say that relevant date is the date one year from the payment of service tax and although it is a mistake of law, but same is governed by section

11B of the Act. He also submits that appellant has failed to pass a bar of unjust enrichment, therefore, refund claim is not entitled to the appellant. With regard to interest on refund, he relied decision of **Triumph International (India) Pvt. Ltd. versus Commissioner of GST & CE, Chennai** reported as **2024 (7) TMI 300 – CESTAT Chennai** and **M/s Dinesh Tobacco Industries versus Commissioner Jodhpur** vide Final Order No. 57990-57991 of 2024 dated 09.08.2024 and **M/s Nino Chaks (P) Ltd. versus Commissioner of Customs (General)** reported as **2019 (9) TMI 1166 – Delhi High Court**.

7. Heard the parties considered the submissions.

8. I find that the main issue in the impugned order is that it is alleged the appellant has not produced the relevant document in support of the payment by the Rajasthan Housing Board of the 50% of service tax which has been rejected by the learned Commissioner (Appeals).

9. I find that in paragraph 3 of the show cause notice it has been recorded as under :-

> "3 (i) On service portion in execution of works contract service provider is liable to pay service tax on 50% portion and on rest amount, service receiver is liable to pay tax under reverse charge mechanism. Since, the Contract/Work order awarded by RHB was including service tax, thus RHB has rightly deducted service tax and paid to the Government exchequer under Reverse charge mechanism.
>
> (ii) RHB has deducted the service tax from the payment to be made to the work order awardee as per the terms and conditions of

> the work order and deposited the same to Government exchequer fulfilling their tax liability under RCM. Thus it cannot be said the amount was in the nature of "deposit" as the service tax was neither deposited under protest nor the claimant has informed to the department nor filed refund claim with the department at that time".

10. As show cause notice, itself, evident that Rajasthan Housing Board had deducted the service tax, the payment to be made to the work order awarded as per terms and conditions of the work orders and deposit the same to the Government exchequer fulfilling the tax liability under RCM themselves. It is a fact on record, therefore, it cannot be said that the appellant had not produced any evidence in support of that service recipient had paid 50% of the service tax which had been rejected for want of documentary evidence, therefore, I hold that as it is a fact on record that service recipient paid the 50% of the service tax in that circumstances I hold that appellant is entitled for 50% of the service tax paid by the service recipient.

11. Through Cross Objections, the Revenue has objected the sanctioning of refund claim to the appellant. I find that in this case it is a fact on record that as per the show cause notice, refund claim sought to be rejected on the ground that time limit under Section 11B of the Act is applicable and refund claim is hit by unjust enrichment and appellant has not provided any factual reason for construction of single house and it is alleged that the appellant has not submitted original duty paying document and the appellant is not submitted any detailed work order.

12. Heard the parties, I find that the appellant produced the work orders showing that the service tax inclusive of the payment of service rendered by the appellant and the service recipient had deducted 50% of the service tax which is payable by the service recipient under reverse charge mechanism from the running bill of the appellant and it is a fact on record that the activity undertaken by the appellant is not liable to service tax and service tax paid by the appellant by mistake of law, therefore, time limit prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to the facts of the case as held by the Hon'ble Karnataka High Court in the case of **Commissioner of Central Excise versus KVR Construction** reported as **2012 (26) S.T.R. 195 (Kar.)**. In that circumstances, the Cross Objections filed by Revenue are contrary to the law, therefore, the said are not acceptable. Now issue arises as appellant has paid service tax by mistake of law. In that circumstances on the refund claim sanctioned to the appellant whether the appellant are entitled to with interest or not, if yes then at what rate.

13. The said issue has examined by the Tribunal in the case of **Gajendra Singh Sankhla versus Commissioner of CGST, Jodhpur (Raj.)** vide Final Order No. 50597-50599 of 2025 dated 06.05.2025. In view of the decision of this Tribunal in the case of **Gajendra Singh Sankhla** (supra), wherein this Tribunal observed as under :-

"6. On hearing the arguments advanced by both the sides, the sole issue arises is that in the case where service tax is paid by mistake of law, whether the provision of Section 11B was not applicable for grant of refund or not and what should be rate of interest applicable 6% or 12%.

7. Revenue has relied on the decision of this Tribunal in the case of **Triumph International (India) Pvt. Ltd.** (supra). In the said case although this Tribunal has referred the decision of Hon'ble Karnataka High Court in the case of **KVR Constructions**, but no findings are recorded how the said decision is not applicable, but relied on decision of **Mafatlal Industries Ltd.** (supra). But the Hon'ble Karnataka High Court in the case of **KVR Constructions Ltd.** has taken case of the decision of the Hon'ble apex Court in the case of **Mafatlal Industries Ltd.** (supra), which has been affirmed by the Hon'ble Apex Court. I am bound by the latest decision of the Hon'ble Apex Court in the case of **KVR Constructions Ltd.** (supra). Therefore, the said decision of **Mafatlal Industries Ltd.** (supra) is not applicable to the facts of this case and moreover in the said case, the issue was whether exemption was available to the assessee or not and initially it was held that the said exemption is not available to the assessee and the appellant initially claimed for exemption and the said claim was not ineligible to the appellant and thereafter the appellant paid the duty along with interest. Later on, by the decision of the

Hon'ble Apex Court in the case of **SRF Ltd.** it was found that appellant was entitled for exemption under Notification No. 30/2004-CE dated 01.03.2004. Consequently, they filed refund claim of duty paid. In the said case, it was held that interest is payable @ 6% and refund claim under Section 11B of the Act which is not the case in hand. In this case, appellant paid the service tax by mistake and which was not payable by the appellant. Therefore, the decision in the case of **Triumph International (India) Pvt. Ltd.** (supra) is not applicable to the facts of this case. Further, in the case of **Dinesh Tobacco Industries Ltd.** (supra), it is the case that the assessee claim refund of the central excise duty paid under compounded levy scheme on the goods which were exported and they were entitled for rebate of duty paid on goods exported which is not the case in hand. Further, Revenue is relied on the decision of the Hon'ble High Court of Delhi in the case of **S.S. Automotive Ltd.** (supra), in the said case the respondent themselves has conceded the claim of said interest. Further, in the case of **D.D. International Pvt. Ltd.** (supra), a refund claim was sanctioned under Section 129EE of the Customs Act. In that circumstances, the Hon'ble High Court held that the interest is payable @ 6%, I find that whether the provision of Section 11B of the Act are examined by the Hon'ble Karnataka High Court. In the case of **KVR Constructions Ltd.** (supra) wherein the Hon'ble High Court recorded as under :-

"15. We are not concerned with the other conditions of Section 11B of the Act because it is not the case of the appellant Department that the burden of service tax was passed on to any other person. As a matter of fact, the controversy in this appeal revolves around the maintainability of the very application filed under Section 11B of the Central Excise Act and whether Sec. 11 applies to the facts of the present case at all. In the case of *Mafatlal Industries Ltd.* v. *Union of India* (supra), the question was with regard to the refund of Central Excise and Customs Duties. It was held that all claims except where levy is held to be unconstitutional, is to be preferred and adjudicated upon under Section 11B of the Central Excise Act, 1944 or under Section 27 of the Customs Act, 1962 and subject to claimant establishing that burden of duty has not been passed on to a third party. In such circumstances, it was held, no civil suit for refund of duty is maintainable. It also observes that writ jurisdiction of High Courts under Article 226 and of Supreme Court under Article 32 remains unaffected by the provisions of Section 11B of the Act. It was further held that concerned Court while exercising the jurisdiction under the said articles, will have due regard to the legislative intent manifested by the provisions of the Act and the writ petition would naturally be considered and disposed of in the light of the provisions of Section 11B of the Act. It has been held therein that power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it, as the power under Article 226 is conceived to serve the ends of law and not to transgress them. At paragraph 113 of the said judgment, they classify the various refund claims into three groups or categories :

(a) The levy is unconstitutional-outside the provisions of the (I) Act or not contemplated by the Act.

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

(c) Mistake of law - the levy or imposition was (III) unconstitutional or illegal or not exigible in law (without jurisdiction) and, so found in a proceeding initiated not by the particular assessee, but in a proceeding initiated by some other assessee either by the High Court or the Supreme Court, and as soon as the assessee came to know of the judgment (within the period of limitation), he initiated action for refund of the tax paid by him, due to mistake of law.

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

"137. Applying the law laid down in the decisions aforesaid, it is not possible to conclude that any and every claim for refund of illegal/unauthorized levy of tax can be made only in accordance with the provisions of the Act (Rule 11, Section 11B etc. as the case may be), and an action by way of suit or writ petition under Article 226 will not be maintainable under any circumstances. An action by way of suit or a petition under Article 226 of the constitution is maintainable to assail the levy or order which is illegal, void or unauthorized or without jurisdiction and/or claim refund, in cases covered by propositions No. (1), (3), (4) and (5) in *Dulalbhai's* case, as explained hereinabove, as one passed outside the Act and ultra

vires. Such action will be governed by the general law and the procedure and period of limitation provided by the specific statute will have no application (Collector of Central Excise, Chandigarh) *M/s. Doaba Co-operative Sugar Mills Ltd., Jalandhar* [1988 (37) E.L.T. 487 (S.C.) = 1988 Supp. SCC 683]; *Escorts Ltd.* v. *Union of India & Ors.* [1994 Supp (3) SCC 86] Rule 11 before and after amendment, or Section 11B cannot affect Section 72 of the Contract Act or the provisions of Limitation Act in such situations. My answer to the claims for refund broadly falling under the three groups of categories enumerated in paragraph 6 of this judgment is as follows :

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

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

…..

17. If this Court ultimately concludes that Section 11B of the Act is applicable to the facts of the present case, then, the argument of the learned Counsel for the appellant that Writ Petition was not maintainable would merit consideration. Therefore, at this stage, we will not consider the matter regarding maintainability of the Writ Petition, as first we have to look to the provisions of 11B of the Act and then decide whether Section 11B is applicable to the facts of the case as finding thereon would have bearing for considering the issue of maintainability of Writ Petition. Section 11B of the Central Excise Act reads as under :

"11B. Claims for refund of duty : (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the document referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person."

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

19. According to the appellant, the very fact that said amounts are paid as service tax under Finance Act, 1994 and also filing of an application in Form-R of the Central Excise Act would indicate that the applicant was intending to claim refund of the duty with reference to Section 11B, therefore, now it is not open to him to go back and say that it was not refund of duty. No doubt in the present case,

Form-R was used by the applicant to claim refund. It is the very case of the petitioner that they were exempted from payment of such service tax by virtue of circular dated 17-9-2004 and this is not denied by the Department and it is not even denying the nature of construction/services rendered by the petitioner was exempted from to payment of Service Tax. What one has to see is whether the amount paid by petitioner under mistaken notion was payable by the petitioner. Though under Finance Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was exemption to pay such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority lacked authority to levy and collect such service tax. 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.

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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".

and the said decision has been upheld by the Hon'ble Apex Court. Further, the Hon'ble High Court of Tripura in the case

of **Tripura Cricket Association** (supra) Hon'ble High Court observed as under :-

"4. Learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble Karnataka High Court in case of *CCE (Appeals)* v. *KVR Construction* [2012] 22 taxmann.com 408/36 STT 33/2012 (26) S.T.R. 195 (Kar.). In the said judgment, the Hon'ble Karnataka High Court came to the conclusion that section 11B of the Central Excise Act was not applicable to a refund application filed by the petitioner based on mistake of law. The Hon'ble Karnataka High Court fairly held that section 35B(1)(*b*) was inapplicable. Learned counsel for the petitioner further relied upon the challenge to the said order of the Hon'ble Karnataka High Court before the Hon'ble Supreme Court in case of *Commissioner* v. *KVR Construction* 2018 (14) G.S.T.L. J70 (SC). The Hon'ble Supreme Court dismissed the challenge to the order passed by the Karnataka High Court referred hereinabove and came to hold that the Karnataka High Court had held that the provision of limitation under section 11B of the Central Excise Act, 1944 would not apply for refund of service tax paid by mistake on exempted services even though the assessee had filed claim under Form-R which shows that they had treated such payment as duty but later on claimed it as not a duty. Mere payment of an amount by the assessee and acceptance by the Department would not regularize such an amount as duty if it was not actually payable and paid by mistake. It was further held that writ petition against the order of Commissioner (Appeals) rejecting refund of Service tax paid on exempted services as time-barred, is maintainable and cannot be rejected on the ground of availability of alternate appellate remedy particularly when payment of Service Tax exempted services held not be Tax/duty so as to attract the provisions of section 11B of Central Excise Act, 1944 and also the provision of Section 35B of the said Act relating to appeal to Appellate Tribunal is not applicable.

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6. The issue framed hereinabove is answered in the positive in favour of the petitioner and the appellate authority *i.e.* the Commissioner of Central Tax (Appeals) is directed to take up the appeal and dispose of the same within a period of 2(two) months from the date of communication of the copy of this order to the authorities concerned. It is further clarified that pendency of the Vidarbha Cricket Association case before the Hon'ble Supreme Court may or may not be of relevance that the law as it stands as on date and the issue having been confirmed by the Hon'ble Supreme Court in the *KVR Construction* (*supra*) *vis-à-vis* the issue of limitation, we find no justifiable ground for the Commissioner of Central Tax (Appeals) to remit the case to the 'Call Book'. Hence, necessary immediate direction be given to return the file from the 'Call Book' and take up the matter immediately and dispose of the same within the time as directed hereinabove".

8. On going through the above judicial pronouncement of the case laws relied upon by both the sides, I am of the

considered view that it is admitted fact that appellant had paid service tax by mistake which is not payable at all and same shall be treated as Revenue deposit not service tax paid by the appellant. Therefore, the provision of Section 11B of the Act is not applicable. The same view has been affirmed by the Hon'ble Apex court in the case of **KVR Constructions Ltd.** (supra). As provision of Section 11B are not applicable to the facts of the present case, in that circumstances, determining the rate of interest under Section 11BB of the Act is not applicable. Therefore, the Notification No. 67/2003 – CE (NT) dated 12.09.2003 also not applicable to the facts of the case.

9. In that circumstances, relying on the decision of further in the case of **Indus Towers Limited** vide Final Order No. 60101 of 2025 dated 24.01.2025, wherein the interest @ 12% has been granted to the appellant. Therefore, following the judicial pronouncement, I hold that the appellant are entitled interest @ 12% on delayed refunds. Accordingly, the Revenue is directed to pay interest @ 12% per annum to the appellant. All appeals are allowed by modifying the imp8ugned orders granting refund along with interest @ 12%".

14. In view of this, I hold that the appellants are entitled for refund of service tax paid by them was under mistake of law, therefore, the appellants are entitled for refund claim along with

interest @ 12% as provisions of Section 11B and 11BB of the Act are not applicable.

15. In view of this, I hold that the appellants are entitled for refund claim of the amount paid by the appellants and service recipient along with interest @ 12%.

16. Accordingly, the appeals are allowed. Cross Objections filed by the Revenue are also disposed of in the above terms.

(Order pronounced in open court on 08/05/2025.)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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