

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – II

Service Tax Appeal No. 51910 of 2024

[Arising out of Order-in-Appeal No. 29-30 (RLM)ST/JPR/2024 dated 31.01.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Girraj Construction Company **...Appellant**
422, Sumer Nagar,
Mansarovar, Jaipur

VERSUS

Commissioner of Central Excise & CGST, **...Respondent**
Jaipur
NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 50513 of 2024

[Arising out of Order-in-Appeal No. 29-30 (RLM)ST/JPR/2024 dated 31.01.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Girraj Construction Company **...Appellant**
422, Sumer Nagar,
Mansarovar, Jaipur

VERSUS

Commissioner of Central Excise & CGST, **...Respondent**
Jaipur
NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Anuj Kumar Neeraj and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 51951 of 2024

[Arising out of Order-in-Appeal No. 459-460 (AK)ST/JPR/2024 dated 22.07.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Hari Narayan Khandelwal **...Appellant**
A-2, Koolwal Bhawan,

Janta Colony Jaipur

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH

Service Tax Appeal No. 51952 of 2024

[Arising out of Order-in-Appeal No. 459-460 (AK)ST/JPR/2024 dated 22.07.2024
passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Hari Narayan Khandelwal

A-2, Koolwal Bhawan,
Janta Colony Jaipur

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH

Service Tax Appeal No. 50567 of 2025

[Arising out of Order-in-Appeal No. 619 (GS) ST/JPR/2024 dated 27.12.2024
passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Kdiya Infrastructure Limited

Pratap Apartment, House No. 604,
Sector-29, pratap Nagar, Jaipur

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH**Service Tax Appeal No. 50098 of 2025**

[Arising out of Order-in-Appeal No. 549-554(GS) ST/JPR/2024 dated 04.12.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Indolia Construction**...Appellant**

Plot No. 24, Kalyan Nagar,
6, Sita Bari, Tonk Road, Jaipur

*VERSUS***Commissioner of Central Excise
& Service Tax, Jaipur****...Respondent**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the Respondent

WITH**Service Tax Appeal No. 50097 of 2025**

[Arising out of Order-in-Appeal No. 549-554(GS) ST/JPR/2024 dated 04.12.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Indolia Construction**...Appellant**

Plot No. 24, Kalyan Nagar,
6, Sita Bari, Tonk Road, Jaipur

*VERSUS***Commissioner of Central Excise
& Service Tax, Jaipur****...Respondent**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the Respondent

WITH**Service Tax Appeal No. 50102 of 2025**

[Arising out of Order-in-Appeal No. 549-554(GS) ST/JPR/2024 dated 04.12.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Indolia Construction**...Appellant**

Plot No. 24, Kalyan Nagar,
6, Sita Bari, Tonk Road, Jaipur

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH

Service Tax Appeal No. 50101 of 2025

[Arising out of Order-in-Appeal No. 549-554(GS) ST/JPR/2024 dated 04.12.2024
passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Indolia Construction

Plot No. 24, Kalyan Nagar,
6, Sita Bari, Tonk Road, Jaipur

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH

Service Tax Appeal No. 50103 of 2025

[Arising out of Order-in-Appeal No. 549-554(GS) ST/JPR/2024 dated 04.12.2024
passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Indolia Construction

Plot No. 24, Kalyan Nagar,
6, Sita Bari, Tonk Road, Jaipur

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH

Service Tax Appeal No. 50100 of 2025

[Arising out of Order-in-Appeal No. 549-554(GS) ST/JPR/2024 dated 04.12.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Indolia Construction

...Appellant

Plot No. 24, Kalyan Nagar,
6, Sita Bari, Tonk Road, Jaipur

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

...Respondent

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 50094 of 2025

[Arising out of Order-in-Appeal No. 546 (GS) ST/JPR/2024 dated 04.12.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. KBS Enterprises

...Appellant

A-169, Shikha Vihar,
Ram Nagariya Mod, Jagatpura,
Jaipur

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

...Respondent

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 52004 of 2024

[Arising out of Order-in-Appeal No. 438 (AK) ST/JPR/2024 dated 17.07.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. KBS Enterprises

...Appellant

A-169, Shikha Vihar,
Ram Nagariya Mod, Jagatpura,
Jaipur

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH

Service Tax Appeal No. 50096 of 2025

[Arising out of Order-in-Appeal No. 546 (GS) ST/JPR/2024 dated 04.12.2024
passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. KBS Enterprises

A-169, Shikha Vihar,
Ram Nagariya Mod, Jagatpura,
Jaipur

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH

Service Tax Appeal No. 52119 of 2024

[Arising out of Order-in-Appeal No. 445-449 (AK) ST/JPR/2024 dated 18.07.2024
passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Jagdish Narayan Patel

128, Shyopur, Sanganer,
Jaipur - 302011

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the
Respondent

WITH

Service Tax Appeal No. 52120 of 2024

[Arising out of Order-in-Appeal No. 445-449 (AK) ST/JPR/2024 dated 18.07.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Jagdish Narayan Patel

128, Shyopur, Sanganer,
Jaipur - 302011

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 52121 of 2024

[Arising out of Order-in-Appeal No. 445-449 (AK) ST/JPR/2024 dated 18.07.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Jagdish Narayan Patel

128, Shyopur, Sanganer,
Jaipur - 302011

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

...Respondent

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 52123 of 2024

[Arising out of Order-in-Appeal No. 445-449 (AK) ST/JPR/2024 dated 18.07.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Jagdish Narayan Patel

128, Shyopur, Sanganer,
Jaipur - 302011

...Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

...Respondent

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaath, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 52124 of 2024

[Arising out of Order-in-Appeal No. 445-449 (AK) ST/JPR/2024 dated 18.07.2024
passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Jagdish Narayan Patel

...Appellant

128, Shyampur, Sanganer,
Jaipur - 302011

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

...Respondent

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaath, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 50568 of 2025

[Arising out of Order-in-Appeal No. 11 (GS) ST/JPR/2025 dated 27.12.2025
passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Raj Construction Company

...Appellant

A-18, Sethi Colony,
Jaipur-302004

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

...Respondent

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaath, Advocates for the Appellant
Shri V.J. Saharan and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 50099 of 2025

[Arising out of Order-in-Appeal No. 548 (GS) ST/JPR/2024 dated 04.12.2024 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Raj Construction Company

...Appellant

A-18, Sethi Colony,
Jaipur-302004

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

...Respondent

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the Respondent

WITH

Service Tax Appeal No. 50570 of 2025

[Arising out of Order-in-Appeal No. 622 (GS) ST/JPR/2025 dated 08.12.2025 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Barwal Construction Company

...Appellant

Village Dantali,
Tehsil Sanganer, Jaipur - 302011

VERSUS

**Commissioner of Central Excise
& Service Tax, Jaipur**

...Respondent

NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the Appellant
Shri Rohit Issar and Shri S.K. Roy Authorized Representatives for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

DATE OF HEARING: 24.09.2025
DATE OF DECISION: **11.11.2025**

FINAL ORDER NO. 51743-51764/2025

ASHOK JINDAL

All the appeals are having common issue, therefore all disposed of by a common order.

2. The facts of the case are that the appellants were engaged in construction of single houses/flats for EWS and lower income group person and society on the basis of work order issued by Rajasthan House Board (RHB). With effect from 01.07.2012, the said activity was exempted from service tax as per S.No. 14(b) and (c) of Notification No. 25/2012-ST dated 20.06.2012. As per S.No. 9 of Notification No. 30/2012-ST dated 20.06.2012, the appellants were liable to pay 50% of service tax amount and RHB were liable to pay remaining 50% of service tax under Reverse Charge mechanism. On the bills raised by the appellants, RHB were clearing the bill after deducting service tax amount and depositing to the government account. Prior to 01.07.2012, total amount the service tax was to be paid by the appellants. It is the submission of the appellants that they have paid service tax by mistake which was not leviable on them, therefore, the amount paid by them as well as paid by RHB on their behalf are not liable to be deposited. As no service tax is leviable on the appellants, therefore the said amount remains deposits, therefore, the appellants filed refund claims and after some litigation, the Original Adjudicating Authority/Commissioner (Appeals) sanctioned the refund amounts of the tax paid by the appellants without interest. While allowing the refund, it is observed that the claim is not time barred being it is only a deposit. However, as far as refund of amount, 50% deposited by RHB, (which was deducted by RHB from the appellant's bill, hence the said amount was borne by the appellants) and also observed that the appellants submitted only some

certificate/documentary evidence issued by RHB, the appellants are entitled for refund of the amount for which documents were submitted, hence in absence of any documentary evidence rejected the claim partly. Further, as far as claim of interest on the amount refunded as well as 50% deposited by the RHB, the Commissioner (Appeals) observed that 'as far as interest on amount of refund is concerned, I find that the adjudication order was passed well within three months from the date of filing of refund claim application as prescribed under the law, therefore no interest is payable on amount of refund. Against those orders, the appellants are before me.

3. The grievance of the appellants are as under:

3.1 In Appeal No. ST/51910/2024, ST/50513/2024, ST/51951-51952/2024, ST/50567/2025, ST/50097-50098/2025 and ST/50100-50103/2025, is that the refund claims were sanctioned but no interest was paid to the appellants and claiming interest at the rate of 12% as per the order of this Tribunal in case of **Meenu Builders Vs. Commissioner of Central Excise, Central Goods & Service Tax, Jaipur reported in (2025) 31 Centax 356 (Tri.-Del).**

3.2 In Appeal No. ST/50094/2025, ST/50096/2025 and ST/52004/2024, the appellant is claiming refund of the part of the service tax deposited by RHB along with interest at the rate of 12%.

3.3 In appeal Nos. ST/52119-52124/2024, ST/50099/2025 and ST/50570/2025, the grievance of the appellants are that in some cases part refund was rejected on the amount deposited by RHB

due to non-submission of RHB certificates and claiming the said refund and the interest at the rate of 12% per annum.

3.4 In Appeal No. ST/50568/2025, the refund has been granted giving 6% interest whereas appellant is claiming the interest is to be paid at the rate of 12%.

4. The learned counsel for the appellant submits that as per the decision of this Tribunal in the case of **Meenu Builders (supra)** on identical issues, this Tribunal held that the RHB has paid the service tax on behalf of the appellant under Reverse Charge Mechanism by deducting the amount tax deposited by them from the running bills of the appellants and the same has been recorded in Para 3 of the show cause notice. In that circumstances, the refund claim cannot be rejected.

4.1 Further, it is submitted that refund claims are to be sanctioned along with interest at the rate of 12% as provision of Section 11B and 11BB of Central Excise Act, 1944 are not applicable as it is the case of paid tax by mistake of law. Therefore, it is not a tax. It is only an amount deposited by the appellants.

5. On the other hand, learned Authorized Representative opposed the contention of the appellants and submits that if they are entitled to claim interest on delayed refund, the same is to be sanctioned after three month from the date of the order of this Tribunal as held by Hon'ble Kolkata High Court in the case of **Commissioner of Customs Vs. Vedanta Ltd. (CUSTA No. 14 of 2025 decision dated 10.09.2025]**, wherein it has been held that the refund is to be crystallized in favour of the respondent only on and after 05.09.2023 when the assessment order was passed.

6. Heard the parties and considered the submissions.
7. I have gone through the decision of Hon'ble Kolkata High Court in the case **Vedanta Ltd. (supra)**. The facts of the said case are as under:

"3. The respondent had filed 12 shipping bills during the period 05.06.2007 to 17.03.2008 for export of iron ore fines from Haldia Port. In the export consignments the iron (Fe) content was declared as more than 62%. The respondent paid the custom duty as per the self-assessment made which was accepted by the Department and the goods were cleared for the purpose of export. When the exports are affected the duty payable was at the rate of Rs. 300/- per metric ton. In terms of the exemption notification No. 62 of 2007-Customs dated 03.05.2007 the export duty was fixed at Rs. 50/- per metric ton on iron ore fines having iron content 62% and below. In respect of the 12 shipping bills filed by the respondent they had declared the duty payable at Rs. 300/- per metric ton and this self-assessment was accepted by the Department as they declared iron content was accepted by the Department as they declared iron content was more than 62% in every consignment and the respondent had paid the duty accordingly and the goods were allowed to be exported. After a lapse of more than a year of the export shipment, the respondent vide letter dated 1st October, 2009 requested the Assistant Commissioner of Customs, Export Department, Customs House, Kolkata stating that certain errors have occurred in respect of the iron content in the 12 shipping bills and sought for rectification. By reply dated 04.06.2010, the Department informed the respondent that there was no mistake either clerical or arithmetical in respect of the assessment and the request made by the respondent cannot be considered under Section 154 of the Act which provides for correction, clerical errors etc. arising from any accidental slip or omissions. The respondent challenged the said order before the Commissioner of Customs (Appeals), Kolkata and the order dated passed by the Deputy Commissioner of Customs (Exports) dated 04.06.2010 was set aside and the said authority was directed to dispose of the representation to determine whether the case of the respondent fits in as errors "arising out of omission". The Assistant Commissioner of Customs by order dated 11.05.2015 rejected the request for rectification of error in respect of the 12 shipping bills. Aggrieved by such order dated 11.05.2015 the respondent preferred appeal before the appellate authority and the appeal was rejected by order dated 13.05.2016. The respondent challenged the said order before the learned Tribunal by preferring an appeal and the learned Tribunal by order dated 28.07.2022 set aside the order passed by the appellate authority dated 13.05.2016 and the appeal was allowed by way of remand

to the original authority with a direction to pass a speaking order, finalizing the assessment. Direction was issued that relief as per notification No. 62/2007-Cus dated 03.05.2007 be given taking into account the test reports; those consequential benefits, if any, be given to the respondent as per law. The respondent filed an application on 05.08.2007 in Form No. 102 which is a statutory format for filing an application for refund and they claim a sum of Rs. 6,93,69,000/- is liable to be refunded. The respondent also requested for implementation of the order passed by the learned Tribunal dated 28.07.2022. By order dated 05.01.2023, the original authority rejected the refund claim. Aggrieved by the order passed by the learned Tribunal dated 28.07.2022, the appellant department filed appeal before this court in CUSTA No. 2 of 2023. In the meantime, the respondent also filed a writ petition before this Court in WPO 636 of 2023 challenging the order dated 05.01.2023 rejecting the application for refund. The appeal filed by the department before this Court in CUSTA No. 2 of 2023 was dismissed by order dated 28.06.2023. The writ petition filed by the respondent in WPO 636 of 2023 was disposed of by setting aside the order rejecting the refund application dated 05.01.2023 and remanding the matter back to the adjudicating authority to implement the order of the Tribunal dated 28.07.2022 within a timeframe by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or its representative. Pursuant to the directions issued in the writ petition as well as the directions issued by the Tribunal the Assistant Commissioner of Customs (Exports) by order dated 05.09.2023 reassessed the 12 shipping bills and extended the benefit of the Notification No. 6/2007-Customs dated 03.05.2007 and refunded the excess amount paid by the respondent, by sanctioning a refund of Rs. 6,93,69,000/-. After the order dated 05.09.2023 passed by the adjudicating authority the Department on 06.09.2023 refunded the excess duty to the respondent through online bank transfer. Subsequently, the respondents submitted a letter dated 13.09.2023 for payment of interest alleging that interest is payable on account of the delay in effecting refund. The Assistant Commissioner of Customs (Exports) by order dated 27.11.2023 rejected the claim for interest holding that the reassessment of the shipping bills and the subsequent refund of the excess export duty has been completed within 8 weeks from the date of the order of this Court and there is no delay in sanctioning the claim and, therefore, no interest is payable in terms of the provisions of Section 27A of the Act. The respondent challenged the said order by filing an appeal before the Commissioner of Customs (Appeals). The appellate authority by order dated 18.07.2024 remanded the matter to the original authority for compliance of the direction issued by this court as well as the learned Tribunal. The appellate authority opined that the prescribed time limit for sanctioning the interest on delayed refunds might be computed in terms of the order passed by the learned Tribunal dated 28.07.2024. Aggrieved by such order dated 18.07.2024, the respondent preferred appeal before the learned Tribunal. The

learned Tribunal by order dated 07.01.2025 directed the appellant Department to pay interest to the respondent at the rate of 12% per annum and that the interest is payable from 11.01.2011 till 5/6. 9.2023 when the amount was finally paid by the respondent, time frame was fixed for compliance. This order dated 07.01.2025 is impugned in this appeal."

8. On those such facts, the Hon'ble High Court observed as under:

"After taking note of the overall effect of the provisions prior to the amendment and post amendment under Finance Act, 2011 it was held that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self- assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 154 or under other relevant provisions of the Act. Thus, the judgment of the Hon'ble Supreme Court has vividly explained the scheme of Section 27 and if the law laid down in ITC is applied to the respondent's case, it has to be held that the refund got crystalized in favour of the respondent only on and after the order-in- original dated 05.09.2023 by which the assessment of the shipping bills was reassessed/ modified. Therefore, the Tribunal fell in error in directing payment of interest from an anterior date when the refund did not get crystalized in favour of the respondent. The learned Advocate appearing or the respondents had relied upon various decisions before the Tribunal some of which were also relied upon before this Court, namely, Sandvik Asia Ltd., Riba Textiles Ltd., Parle Agro Pvt. Ltd., Keshari Steels, DHL Express India Pvt. Ltd."

and the Hon'ble High Court finally held that the refund should crystalized in favour of the respondent only on and after 05.09.2023 when the assessment order was passed.

9. Admittedly, the facts in the case of **Vedanta Ltd. (supra)** are not similar to the facts in the case in hand as in the said case at the time of filing shipping bills, the exporter rightly paid the duty as

per iron ore fines content which was later found that the iron ore fines content order were less than 62%. Therefore, they are not liable to pay duty at the rate of 30% and it was finally decided on 05.09.2023 that the exporter is liable to pay duty at the rate of 5% not at the rate of 30%. Therefore, the Hon'ble High Court has rightly held that the facts of the said case are not similar to the case in the case of **Sandvik Asia Ltd., Riba Textiles Ltd., Parle Agro Pvt. Ltd., Keshari Steels and DHL Express India Pvt Ltd.** Admittedly, the facts of the case in hand are not similar to the case of **Vedanta Ltd. (supra)**, therefore, the said decision was not applicable to the facts of this case.

10. The facts of the matters in hand, it is the fact on record that RHB has deducted the amount paid by them from the running bills of the appellants, therefore, incident of duty paid by the appellant and same has been rightly recorded in Para 3 of the show cause notice. As it is recorded in the show cause notice itself that RHB has deducted service tax from the payment made to the work order awardee as per the terms and conditions of the work order and deposited with the same to the government exchequer fulfilling their tax liability under Reverse Charge Mechanism. In that circumstances, the appellant is not required to produce any certificate from RHB. In view of this, I hold that appellants are entitled for refund claim of the amount paid by RHB under "Reverse Charge Mechanism" in full.

11. Now next issue arises whether the appellants are entitled to claim interest at the rate of 12% or not.

12. The said issue has been examined by this Tribunal in the case of **Meenu Builders (supra)**, wherein this Tribunal observed as under:

"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.

.....

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. 770](#) (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.

.....

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 impugned 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%.

13. Therefore following the decision in the case of **Meenu Builders (supra)** on similar facts, I hold that the appellants are entitled for refund claim of the amount paid by the appellants and service recipient i.e. RHB along with interest at the rate of 12%.

14. In view of this, following order is passed:

The appellants are entitled for refund of the amount paid by RHB under RCM under Reverse Charge Mechanism and the appellants are entitled to claim interest at the rate of 12% per annum on the amount of refund in terms of the order of this Tribunal in the case of **Meenu Builders (supra)**.

15. In these terms, appeals are disposed of.

(Pronounced in the open Court on **11.11.2025**)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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