

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH, COURT NO. 4**

**SERVICE TAX APPEAL NO. 52352 OF 2024**

[Arising out of Order-in-Appeal No.112/ST/DLH/2024 dated 24.06.2024 passed by the Commissioner of Central Tax (Appeal-I), New Delhi]

**M/s. McCann Erickson (India) Pvt Ltd**

**Appellant**

8, Balaji Estate, Ravi Dass Marg, Kalkaji, New Delhi-110019

Vs.

**The Commissioner of CGST & CX GST, Delhi  
East Commissionerate,**

**Respondent**

14-15, Farm Bhawan, Nehru Place,  
New Delhi-110019

**Appearance:**

Present for the Appellant : Shri Mihir Deshmukh, Advocate

Present for the Respondent: Shri Shashank Yadav and Shri Rakesh Kumar,  
Authorised Representative

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER ( JUDICIAL )**

**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER ( TECHNICAL )**

**Date of Hearing :28.01.2026**

**Date of Decision:20.03.2026**

**Final Order No.50385/2026**

**HEMAMBIKA R. PRIYA**

This appeal has been filed by M/s. McCann Erickson (India) Pvt Ltd<sup>1</sup> against the Order-in-Appeal No.112/ST/DLH/2024 dated 24.06.2024 passed by the Commissioner (Appeals-I), Delhi, which rejected the refund of service tax amounting to Rs.2,93,72,118/-.

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**1. the Appellant**

2. The brief facts are that the Appellant was registered for providing advertising agency services taxable under the Chapter V of the Finance Act, 1994. The Appellant discharged their service tax liability on a monthly basis in accordance with the provision of section 66B of the Finance Act, 1994. However, for certain months from January 2017 onwards, the Appellant paid service tax without adjusting the previously paid Service Tax in the previous tax periods (December 2016 onwards). Consequently, the appellant paid the service tax in excess of the amount required to be paid. Further in addition to the above, the Appellant had discharged excess payment in cash in the months of March 2017 and April 2017 to the tune of Rs.23,30,533/-. Such excess payment of tax made in the months of March and April 2017 was not adjusted for the discharging the liability of any future months. The Appellant filed a refund application in 'Form R' dated 09.01.2020 amounting to Rs.2,93,72,118/- (Rs.2,70,41,585/- + Rs.23,30,533/-). On scrutiny of the said claim, the Department opined that the refund claim was time barred. Further, the appellant had not submitted any documents to establish the non utilization of such excess tax paid. A Show Cause Notice dated 30.04.2020 was issued to the Appellant.

2.1 The Assistant Commissioner vide Order-in-Original No.13/2023-24 dated 14.02.2024 rejected the refund claim on the ground that refund claim filed was beyond time limit of one year prescribed under Section 11B of Central Excise Act, 1944. Being aggrieved by the aforesaid order, the Appellant filed an appeal before the Commissioner (Appeals). The Commissioner, vide the impugned Order-in-Appeal No.12/ST/DLH/2024 dated 24.06.2024 confirmed the finding of the adjudicating authority

that limitation under section 11B of the Act is applicable to the refund claim.

3. Learned counsel submitted that the said excess payment of service tax was not in nature of tax, hence the limitation of one year under Section 11B of Central Excise Act, 1944 was not applicable in the present case. Learned counsel further contended that the impugned order was erroneous as it had applied the limitation prescribed under Section 11B of the Act to the present case where admittedly Appellant had paid excess amount even though such excess amount was not due to the department. Therefore, the impugned order rejecting the Appellant's refund of amounts, being in the nature amount paid in excess of tax liability, was unsustainable. Learned counsel placed reliance on the case of **Union of India vs. ITC Ltd.**<sup>2</sup>, while dealing with the question of refund of excess excise paid, the Hon'ble Supreme Court held that that the appellant's claim to refund would not be disallowed solely because it seemed barred by limitation. Learned counsel further submitted that the appellant 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. He relied on of **M/s Jain Irrigation systems Ltd. vs. CCE, Nashik**<sup>3</sup>, the Tribunal allowed the refund of service tax paid which was not actually payable. He further stated that such excess payment takes on the nature of a deposit and no amount can be collected from the appellant by revenue department if it is not in accordance with law. Similar view was taken by the Hon'ble High Court of Delhi in case of

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**2.1993 Supp.IV SCC 326**  
**3.2016 (42) STR 377 (Tri-Mum)**

Commissioner of CGST, Delhi vs M/s Afflatus International<sup>4</sup>; **Telecare Network (India) Pvt. Ltd.Vs. Union of India**<sup>5</sup>, wherein it was held that in case of payment of tax made under mistake of law, the period of limitation as otherwise raised in terms of Section 11B of the Act would be inapplicable.

3.1 Learned counsel also placed reliance on following decisions:

- (i) **M/s National Institute of Public Finance and Policy Vs Commissioner of Service Tax, New Delhi**<sup>6</sup>;
- (ii) **Commissioner of Central Excise (Appeals), Bangalore v. KVR Construction**<sup>7</sup>;
- (iii) **Joshi Technologies International, Inc-India Projects Vs Union of India**<sup>8</sup>;
- (iv) **Oriental Insurance Company Limited us. Commissioner of Central Excise & Service Tax, New Delhi**<sup>9</sup>;
- (v) **Parijat Construction v. Commissioner Excise, Nashik**<sup>10</sup>;
- (vi) **Veer Over Seas Limited**<sup>11</sup>; and
- (vii) **JP Biscuits Pvt Ltd Vs C.C.E. & S.T.-Surat-I**<sup>12</sup>.

3.2 Learned counsel contended that similar refund of excess payment of service tax had been adjudicated and sanctioned by the Maharashtra Appellate Authorities. He submitted that similar refund i.e. refund on

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4. 2024-VIL-948-DEL-ST

5.2024-VIL-961-DEL-CU

6.2017 TIOL 4385 CESTAT DEL

7.MANU/KA/1770/2010: 2012 (26) S.T.R 195 (Kar.)

8.2016 TIOL 1240HC AHM CX

9.2020 TIOL 293 CESTAT Del

10.2018 (359) E.L.T. 113 (Bom.)

11.2018 (15) GSTL 59 (Tri-LB; Sujaya D. Alva Vs. Commr. of C. Ex. & Service Tax, Mangaluru 2019 (28) G.S.T.L. 196 (Kar.)

12.2022-VIL-519-CESTAT-AHM-ST

account of excess payment of service tax had been adjudicated and sanctioned by the Maharashtra Appellate Authorities in Appellant's Mumbai service tax registration. Learned counsel contended that in the said case in Mumbai, the Adjudicating Authority in the Order-in-Original had rejected the refund claim on the ground of being barred by limitation under Section 11B of the Central Excise Act, 1944. However, in appeal against the said order, the Commissioner (Appeals) vide Order-in-Appeal dated 16 March 2021 had set aside the rejection of refund on the ground of being barred by limitation and held in favour of the Appellant on the following ground:

"9.2: Respectfully following the above decision of higher judicial foras, I am in agreement that when service tax is paid by mistake inadvertently, a claim for refund cannot be barred by limitation merely because the period of limitation under Section 11B has expired. I further observe that there is no reference to time bar provisions under clause 142 (5) of the CGST Act. In view of the non-obstante clause in Section 142 (5) the refund claim of the appellant would not be subject to any time bar provided under Section 11B of the Central Excise Act.Held accordingly".

3.2.1 In light of the aforesaid, he submitted that the department has already allowed refund claim in Appellant's own case concluding that refund cannot be barred where tax has been paid inadvertently/ by mistake merely because period of limitation has expired under section 11B. The department was bound to follow consistency in its approach, in absence of which, would lead to severe chaos and quasi- judicial indiscipline. This would also burden the judicial/ quasi-judicial authorities in deciding the issues which is no longer res-integra.

3.3 Learned counsel further contended that the excess service tax amount collected was without the authority of law and was in contravention to Article 265 of the Constitution. The payment of the service tax which had been made by the Appellant for the relevant period (December 2016 to May 2017) cannot be legally termed as payment of service tax by law. Thus, the excess service tax paid by the Appellant was not payable by the Appellant under the Finance Act, 1994 and there is a corresponding legal right with the Appellant to recover it. This right cannot be defeated by a mere limitation in the Act or the Rules when the collection is without the authority of law. He submitted that even if amount had been paid under mistake of law, it does not take colour of tax. He relied on the judgement of **Commissioner of Sales Tax, U.P. v. Auraiya Chamber of Commerce, Allahabad**<sup>13</sup>; where the Hon'ble Supreme Court held that "no tax shall be levied or collected except by authority of law." He contended that this issue was no longer res integra, as is held by the Hon'ble Supreme Court in the case of **Salonah Tea Company Ltd. V. Superintendent of Taxes**<sup>14</sup>; **M/S Monnet International Ltd Vs CCE, New Delhi**<sup>15</sup>; **Javed Akhtar v CCGST, Mumbai West**<sup>16</sup>; **Heavy Engineering Corporation Ltd. v. Union of India**<sup>17</sup>, **Indian Oil Corporation Ltd. v. CCE., New Delhi**<sup>18</sup> and **Indo Rama Synthetics (India) Ltd. v Union of India**<sup>19</sup>.

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13.1986(25) E.L.T. 867(S.C.)

14. 2002 TIOL 504 SC CT

15. 2017 TIOL 1023 CESTAT DEL

16. TS-496-CESTAT-2021 (Mum)-ST

17.2004 (167) ELT 396. (Cal.)

18.2010(256) ELT 232 (P&H)

19.2002 (143) ELT 299 (Tri-Del.)

3.4 Learned counsel relied on Rule 3 of Point of Taxation Rules, 2011 which provided that service provider was liable to pay tax at the time of raising the invoice or the date on which payment is received, whichever was earlier. In the instant case, the Appellant had paid the tax on accrual basis in the months December 2016 to May 2017 i.e. service tax discharged at the time of booking of the revenue on accrual basis in the books of accounts, which had been partly adjusted at the time of payment of service tax liability on the invoices raised in the month of January 2017 onwards. However, Rs.2,70,41,585/- was not adjusted at the time of payment of service tax liability on the invoices raised in the June 2017. Further, there was an excess tax payment in cash for the months of March 2017 and April 2017 amount to the tune of Rs.23,30,533/-. He prayed that the appeal may be allowed.

4. Learned authorized representative submitted that refund was not a constitutional right, rather a statutory right. He submitted that Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. There being no challenge either to the levy or collection of taxes in these cases, taxes paid into the coffers of the Union Government or the States become the property of the Union/States. He placed reliance on Hon'ble Apex Court judgment in the case of **Union of India vs. VKC Footsteps India Pvt Ltd**<sup>20</sup>. Learned authorized representative also submitted that the issue of whether the condition of limitation is directory or mandatory was pending before the Supreme Court. The Hon'ble Supreme Court had already taken cognizance of the

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**20.2021 (52) G.S.T.L. 513 (S.C.)**

matter as to whether the condition of limitation is directory or mandatory. He relied on the following case laws:

- (i) **Flemingo Travel Retail Ltd. vs. Commr. of CGST & C. Ex., Mumbai East**<sup>21</sup>.
- (ii) **Commissioner of CGST & Central Excise, Mumbai East vs. Flemingo Travel Retail Ltd**<sup>22</sup>.
- (iii) **Commissioner of CGST & Central Excise, Mumbai East vs Flemingo Travel Retail Ltd**<sup>23</sup>.

4.1 Learned authorized representative further submitted that refund proceedings cannot over turn the self-assessment made by the appellant. The erstwhile service tax regime and the transitional provisions of GST Act and Rules provides for revision of return. He also submitted that as the revision of return was not done in the prescribed time, the original self-assessment of the respondent has attained finality. As per Rule 2(b) of Service Tax Rules "assessment" includes self-assessment of service tax by the appellant.

4.2 Learned authorized representative contended that as per the facts on record in the appeal memorandum, revision of Service Lax return for the said period was not done. He placed reliance upon the following case laws:

- (i) **ITC Ltd. vs Commissioner of Central Excise, Kolkata-VI**<sup>24</sup>.

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**21.2022 (64) G.S.T.L. 564 (Tri. - Mumbai)**  
**22.(2023) 5 Centax 173 (S.C.)**  
**23. (2023) 9 Centax 260 (S.C.)**  
**24.2019 (368) E.L.T. 216 (S.C.)**

- (ii) **BT (India) Pvt. Ltd. vs. Union of India**<sup>25</sup>.
- (iii) **M/s Jagdambha Phosphates vs. Commissioner of CGST, Udaipur**<sup>26</sup>.

5. We have heard the learned counsel for the appellant and the learned authorized representative for the Department and perused the records.

6. In order to appreciate the submissions, it would be pertinent to reproduce Section 11B of the Central Excise Act, 1944. In this context, we note that Section 83 of Chapter V of the Finance Act, 1994 governing the matters of service tax, inter alia, provide that legal provisions under Section 11B governing refund of Central Excise shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise. In order to appreciate the issues under dispute, the specific legal provisions of Section 11B of the Central Excise Act, 1944 are extracted given below for ease of reference:

“Claim for refund of duty and interest, if any, paid on such duty.

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

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**25.MANU/DE/7485/2023**

**26.2024 (10) TMI 1547 - CESTAT NEW DELHI**

6.1 Plain reading of the above legal provisions, makes it clear that the scope of Section 11B *ibid*, deals with refund of duty/tax and duty/tax refers to the duty/tax leviable as per the provisions of the Central Excise/ Service Tax statute. If there are certain taxable services provided over a period for which the service tax payable is "X" and when the same has been paid firstly as per law, and excess amount inadvertently, it is obvious that the excess amount paid in the context of service tax has no legal basis, either for levy or for payment as service tax, in as much as there is no taxable event for which the levy and payment would apply. The above issue has been dealt with in detail by the Co-ordinate Bench of the Tribunal in the case of M/s. Bansal Biscuits P Ltd., vide Final order no. 77489/2023 dated 17.11.2023 wherein it was held that the limitation of time prescribed under Section 11B *ibid* is not applicable. The relevant paragraphs of the said order are extracted and given below:

"13. Based on the decision of Third Member Reference Bench, the CESTAT, Hyderabad vide its Final Order No. A/30082/2022 dated 05/09/2022 in the Credible Engg. Construction Vs. CCE, Hyderabad, has held as under:-

"46. In view of the difference of opinion, the following questions arise for consideration by learned 3rd Member: (1) Whether the limitation prescribed under section 11B of the Central Excise Act will not be applicable as the tax was paid erroneously though eligible to exemption and as such is in the nature of deposit and hence limitation is not attracted as held by Member (Judicial) following the ruling of Hon'ble Karnataka High Court in KVR Construction affirmed by Hon'ble Supreme Court 2018(14)STR J17. The reference is accordingly, answered in the following manner:

"The limitation prescribed under section 11B of the Excise Act would not be applicable if an amount is paid under a mistaken notion as it was not required to be paid towards any duty/tax."

14. The above decision of the CESTAT, which is based on the third member reference Bench's decision, amounts to LB decision on the issue. The decision of this Final Order is squarely applicable to the acts of the present case. Therefore, it is held that in the present case the provisions of Section 11B (time limit) would not be applicable."

6.2 The issue of excess payment of duty/tax, has also been examined by the High Court of Gujarat in the case of **Swastik Sanitary Wares Limited**<sup>27</sup>, taking into account the judgement of the Supreme Court in **Mafatlal Industries**<sup>28</sup> and it was held that the assessee is eligible for refund of the amount paid for the second time. The relevant paragraphs of the said judgement is extracted and given below:

"14. If, for any reason, the petitioners were seeking refund of a duty paid, such claim had to be examined under Section 11B of the Act and in such a case, the period of limitation would apply in all its rigour. Neither the departmental authority nor this court in a writ jurisdiction ignore such statutory period of limitation. This position is abundantly clear flowing from the decision in the case of **Mafatlal Industries (supra)** wherein in the concluding portion of the majority judgment it was held and observed as under:-

108. The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment. (i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff - whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter - by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act,

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**27. SCA No.4676 of 2004 dated 29.08.2012**  
**28.(1997) 5 SCC(536)**

1985 or Customs Act, 1962 read with Customs Tariff Act or by misinterpreting or misapplying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified there under and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 - and of this Court under Article 32 - cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it."

6.3. Similarly, we note that in the case of **Commr. of C. E. (Appeals), Bangalore Vs. KVR Construction<sup>29</sup>**, the High Court of Karnataka held as under:-

"22. In the case of Commissioner of Central Excise, Bangalore v. Motorola India Pvt. Ltd. (supra), the Division Bench of this Court considered similar issue. It was a case where excess amount was paid over duty under Central Excise Act on the direction of the Department. There was an application for refund of amount and the same came to be rejected by the Assistant Commissioner on the ground of lapse of time. It was confirmed by both the Appellate Authority and also the Tribunal. Aggrieved by the order of the Tribunal, revenue came up before the High Court. Their lordships of the Division Bench held that order of the Tribunal to allow the claim on the basis that amount paid by mistake cannot be termed as duty in the said case was justified and therefore applying the law laid down in the decision of Apex Court in the case of India Cements Ltd. v. Collector of Central Excise - 1989 (41) E.L.T. 358, dismissed the appeal.

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**29. 2012 (26) STR 195 (Kar.)**

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."**

[emphasis supplied]

6.4 We note that this order was affirmed by Supreme Court as reported in **Commissioner Vs. KVR Construction**<sup>30</sup>. The co-ordinate Benches of this Tribunal have, in the following decisions, held that refund claims filed on account of Service Tax paid by mistake, are not governed by the time limit specified under Section 11B, which are as follows:

1. **Venkatraman Guhaprasad Vs. Commr. of GST & C. Ex., Chennai**<sup>31</sup>.
2. **Commr. V. KVR Construction** (supra).
3. **Parijat Construction Vs. Commr. of Central Excise, Nashik,** (supra).
4. **3E Infotech Vs. CESTAT, Chennai**<sup>32</sup>.
5. **Commr. of C.Ex. (Appeals), Bangalore Vs. KVR Construction,** (supra).

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30. 2018 (14) G.S.T.L. J70 (S.C.)

31. 2020 (42) G.S.T.L. 124 (Tri.-Chennai)

32. 2018 (18) G.S.T.L. 410 (Mad.)

6.5 In the present case, we find that the excess payment of service tax is an admitted fact, and this amount deposited in excess was by an inadvertent error, which the Government cannot retain or withhold. Such claim, therefore, would not fall within legal parameters of Section 11B of the Act.

7. Under these circumstances, we are of the opinion that the department cannot withhold such amount which the appellant had rightfully claimed. Hence, the 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. The refund is allowed with interest as per law.

8. In view of the above, we set aside the impugned order. The appeal is allowed.

(Order pronounced on **20.03.2026**)

**(DR. RACHNA GUPTA)**  
**MEMBER ( JUDICIAL )**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER ( TECHNICAL )**

Archana