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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.2271 of 2026

In the matter of an Application under Articles 226 and 227
of the Constitution of India, 1950

* * *

Rajendra Narayan Mohanty,
Aged about 57 years,
Son of Anadhi Charan Mohanty,
At: Gandarpur, New Malgodown Road,
Cuttack – 753 003, Odisha
Bearing
GSTIN:21ABCPM1806F1ZD. ... Petitioner

-VERSUS-

1. Joint Commissioner of State Tax,
CT & GST Circle, Cuttack I East, Cuttack
At: OSFC Tower, OMP Square
Cuttack-753004.
2. CT & GST Officer,
Cuttack I East Circle,
Cuttack. ... Opposite parties

Counsel appeared for the parties:

For the Petitioner : Mr. Madhab Lal Agarwal,
Advocate

For the Opposite parties : Mr. Sunil Mishra,
Standing Counsel
(Commercial Tax & Goods
and Services Tax Organisation)



P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 12.02.2026 :: Date of Judgment : 12.02.2026

JUDGMENT

Questioning the propriety, legality and validity of rejection of application for refund *vide* Order dated 22nd October, 2025 passed in Form GST RFD-06 by the Joint Commissioner of State Tax, CT & GST Circle, Cuttack I East Circle, Cuttack pertaining the tax periods from 1st April, 2019 to 31st March, 2020, wherein the claim for refund of excess/extra deposit(s) amounting to Rs.6,01,645/- under the Central Goods and Services Tax Act, 2017 (for short, “the CGST”) and Rs.6,01,645/- under the Odisha Goods and Services Tax Act, 2017 (for short, “the OGST”) made by utilising Cash Ledger *vide* Form GST DRC-03 dated 18th September, 2022 on the ground of limitation stipulated in Section 54 read with Clause (h) of Paragraph (2) of *Explanation* appended thereto has been rejected, the petitioner has approached this Court craving to invoke extraordinary jurisdiction under Article 226/227 of the Constitution of India with the following prayer(s):



“In the facts and under the circumstances stated above, the Hon’ble Court would graciously be pleased to admit this writ application and issue appropriate writ/writ(s) including writ of mandamus and/or certiorari or by any other writ:

- a) Admit this writ application*
- b) Issue rule nisi calling upon the opposite parties as to why the impugned refund rejection order dated 22.10.2025 issued vide Annexure-1 shall not be quashed being arbitrary, erroneous, unreasonable, contrary to the provisions and unsustainable in law;*
- c) And if the opposite parties fail to show cause or show insufficient cause make the said Rule absolute by issuing appropriate writ in the nature of certiorari quashing the impugned order under Annexure-1;*
- d) Issue appropriate writ/writs in form of Mandamus directing the learned Joint Commissioner, opposite party No.1 to refund the excess payment of tax of Rs.6,01,644.00 each under the CGST and SGST Act through DRC-03 dated 18.09.2022 under Annexure-4 to the petitioner within a stipulated period of time in accordance with law.*
- e) Issue any appropriate writ(s)/direction(s)/order(s) deemed fit in the fact and circumstances of the case.*

And for which act of your kindness, the petitioner shall remain ever pray as in duty bound.”

Facts culled out from the writ petition and arguments:

- 2.** Sri Madhab Lal Agarwal, learned Advocate submitted that a proceeding under Section 74 of the Central Goods



and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively, “the GST Act”) was initiated on 1st December, 2020 pertaining to the tax periods comprised in Financial Year, 2019-20 based on scrutiny of returns which emerged that though “Tax Deducted at Source credit receipt” during the months of April, 2019, May, 2019, June, 2019, September, 2019 and October, 2019 was received by the petitioner, the return in Form GSTR-3B disclosed tax liability at *NIL* and the authority having perceived discrepancy in the return in Form GSTR-1 (Rule 59), Show Cause Notice dated 2nd February, 2022 was issued. In the Reply dated 2nd March, 2022 it was informed that the petitioner filed the annual return and discharged alleged tax liability by depositing amount of taxes (Central Goods and Services Tax as also Odisha Goods and Services Tax) along with interest thereon by utilising Credit Ledger in Form GST DRC-03, dated 8th February, 2021. However, due to mistaken advice, on 18th September, 2022, sum of Rs.6,01,645/- under the CGST Act and Rs.6,01,645/- under the OGST Act was deposited utilising Cash Ledger *vide* Form GST DRC-03.

2.1. On 8th November, 2024 the Assistant Commissioner of State Tax, CT&GST Circle, Cuttack-I East passed the following order:



“Where upon scrutiny of your GST returns filed for the month from July, 2019 to Sept, 2019

Under 61 of the OGST Act, it is revealed that you had accepted TDS credit for the month of Apr, 2019, May, 2019, June, 2019, September, 2019 and October, 2019, but filed GSTR-3B with NIL tax liabilities. You were informed about the discrepancy in form DRC-OIA vide no 7931, dated 1.12.2020. But, you had not furnished the reply. Hence, DRC-01 was issued vide ref. no. ZD210222001162K, dated 02.02.2022.

You had replied in DRC-06 vide ARN: ZD210322001012P dated 02.03.2022, stating that you had already filed the annual return on 08.02.2021 for the Financial Year, 2019-20, paying all the differential taxes in DRC-03. Further, you have also paid the liable interest in DRC-03 on dated 02.03.2022. It is worthwhile to mention that the GST Audit of your business entity has already been completed for the FY 2019-20. On verification, your compliance is considered as genuine; hence the proceeding is hereby dropped.”

2.2. At this stage, the petitioner could come to notice that on account of mistaken notion it deposited the taxes twice for the self-same transactions during the period 2019-20; utilising Credit Ledger on 08.02.2021 while furnishing annual return and thereafter again by utilising Cash Ledger on 18.09.2022. Hence, he filed an application in Form GST RFD-01, dated 23rd August, 2025 claiming refund to the tune of Rs.12,03,290/- (CGST: Rs.6,01,645/- + OGST: Rs.6,01,645/-). On 19th September, 2025, a Show-Cause Notice was issued by



the Joint Commissioner of State Tax, CT&GST Circle, Cuttack-I East (for short be referred to as “Proper Officer”) in Form GST RFD-08 indicating that:

“The taxpayer has applied refund in Form GST RFD-01 beyond the relevant date in contravention of explanation to Section 54(14)(2)(h) of the OGST/CGST Act, 2017.”

- 2.3. In response thereto, a reply dated 3rd October, 2025 was filed explaining that the proceeding under Section 74 of the GST Act for the Financial Year 2019-20 being dropped by Order dated 8th November, 2024, the application for refund could be made on 23rd August, 2025. Therefore, it is submitted by Sri Madhab Lal Agarwal, learned Advocate that the application for refund was well within the period stipulated under Section 54 of the GST Act.
- 2.4. Learned counsel for the petitioner submitted that by rejecting such application on flimsy ground and the Revenue cannot retain taxes deposited twice in respect of self-same transaction particularly when it has acknowledged the fact of such double deposits being made by the petitioner.
- 2.5. Stemming upon Ground Nos.D and E *vide* Paragraph 18 of the writ petition, it is the contention of the learned counsel that it is manifest from the language employed in Section 54(1) of the GST Act that the taxpayer can make the application within two years and he “may



make application before two years from the relevant date in such form and manner as may be prescribed”. Expanding his argument, he would submit that the claimant “may” make application within two years. The words used in above expression leaves no ambiguity that such period of limitation is not mandatory, but directory. In appropriate cases, refund application may be made even beyond two years. The time-limit fixed under Section 54(1) is directory in nature and it is not mandatory. Therefore, though not conceded, but for argument sake, even if the application is filed beyond the period of two years, the legitimate claim of refund cannot be denied to the petitioner in appropriate cases.¹

2.6. He, thus, wound up his argument by contending that without proper application of conscientious mind, on wrongful exercise of discretion the authority passed a laconic order on 22nd October, 2025 refusing to grant relief claimed by way of application for refund.

¹ The Hon’ble Delhi High Court (Division Bench) in *Sethi Sons (India) Vrs. Assistant Commissioner, 2023 SCC OnLine Del 8351* observed as follows:
“26. *In Lenovo India Pvt. Ltd. Vrs. The Joint Commissioner of GST (Appeals-1), 2023 SCC OnLine Mad 7810, the learned Single Judge of the Madras High Court has held that **the period of two years as stipulated in Section 54(1) of the CGST Act is directory and not mandatory. Thus, even if an application is made beyond the period of two years, the taxpayer’s claim cannot be denied. We respectfully have reservation regarding this view.** However, we do accept that if the taxpayer has made a bona fide attempt to make an application but was prevented to do so on account of technical glitches or for any reason attributable to GST authorities, its claim for refund cannot be denied on account of delay.*”



3. Sri Sunil Mishra, learned Standing Counsel appearing for the CT & GST Organization made valiant attempt to justify action of the Proper Officer and pleaded to dismiss the writ petition by sustaining the Order of rejection dated 22nd October, 2025. He would submit that since the application for refund being not made within the period envisaged under Section 54 of the GST Act, the claim of the petitioner has rightfully been denied by the Proper Officer.

Hearing:

4. As short point is involved in the matter, on consent of counsel appearing for the parties the writ petition is heard and disposed of at the stage of “Fresh Admission”.
- 4.1. Heard Sri Madhab Lal Agarwal, learned counsel for the petitioner and Sri Sunil Mishra, learned Standing Counsel appearing for the Commercial Tax and Goods and Services Tax Organisation.

Consideration of rival contentions and arguments:

5. On perusal of Order of rejection dated 22nd October, 2025 (referred to as “impugned Order”), the following fact emerged:

“On verification of eligibility to get refund, it is found that the Taxpayer has already paid the tax liability as against DRC-01A vide Letter No.7931 on dated 01.12.2020 of Rs.6,01,645.00 each under CGST and SGST vide DRC-03,



on dated 08.02.2021. Further, the tax payer has again paid the same amount i.e. of Rs.6,01,644.00 each under CGST & SGST vide DRC-03, with ARN: AD210922004482K dated 18.09.2022.”

- 5.1. As is apparent from the above fact as returned by the Proper Officer that for the transaction effected during 2019-20, tax liability to the tune of Rs.6,01,645/- towards CGST and Rs.6,01,645/- towards OGST have been discharged twice by utilising Credit Ledger on 8th February, 2021 and Cash Ledger on 18.09.2022.
- 5.2. In the impugned Order it is found mentioned that “*no supporting documents attached*”. On examination of record, this factual aspect appears to be a myth. Upon scrutiny of documents enclosed with writ petition, it could be ascertained from the documents at Annexure-5 that along with application for refund in Form GST RFD-01, the petitioner had enclosed Form GST DRC-03 showing payment of Rs.6,01,645/- towards CGST and Rs.6,01,645/- towards OGST on 8th February, 2021 and Form GST DRC-03 disclosing deposit of Rs.6,01,645/- towards CGST and Rs.6,01,645/- towards OGST on 18th September, 2022. This apart, a cancelled cheque has been submitted to facilitate the authority to make restitution of one set of taxes (CGST and OGST) to his bank account. On perusal of copy of Order-Sheet indicating day-to-day proceedings maintained by the authority reveals that the petitioner has deposited



Rs.6,01,645/- towards CGST and Rs.6,01,645/- towards OGST twice.

5.3. Thus, under the above unimpeachable evidence as made available on record, there is no escape than to say that the Revenue is unjustified to withhold or retain one set of Rs.6,01,645/- towards CGST and Rs.6,01,645/- towards OGST inasmuch as the same would offend provision contained in Article 265 of the Constitution of India².

5.4. At paragraph 9 of the writ petition, it is candidly admitted by the petitioner that “*on the wrong advice to discharge liability only through Cash Ledger, the petitioner again on 18.09.2022 deposited a sum of Rs.6,01,645/- each under the CGST and SGST Act through DRC-03 from Cash Ledger*”, notwithstanding the fact that it had already deposited such amounts on 8th February, 2021 by utilising amount standing in the Credit Ledger.

5.5. It may be apt at this juncture to refer to decision rendered by the Hon’ble Delhi High Court in *Delhi Metro Rail Corporation Ltd. Vrs. Additional Commissioner, Central Goods and Services Tax Appeals-II, 2023:DHC:6874-DB*, noticing the provisions of Article

² Article 265 of the Constitution of India envisages as follows:
“265. Taxes not to be imposed save by authority of law.—
No tax shall be levied or collected except by authority of law.”



265 of the Constitution *vis-à-vis* refund of amount deposited under mistake. It is held therein as follows:

- “12. Article 265 of the Constitution of India proscribes any levy or collection of tax except by authority of law. Concededly, GST is not payable by the DMRC in respect of the service of preparation of Detailed Project Report for respondent no.3. Thus, the amount of ₹2,90,520/- deposited by the DMRC on an erroneous belief that payment for services rendered by it were chargeable to tax, cannot be retained by the respondents.
13. It is well-settled that GST is an indirect tax. The burden of such tax is inevitably borne by the final recipient. In the present case, respondent No.3 would be liable to reimburse the GST chargeable on services availed by it. But since GST is not payable in respect of such services, respondent No.3 has not paid the said amount.
14. The period of limitation for applying for a refund as prescribed under Section 54 of the CGST Act, would not apply where GST is not chargeable and it is established an amount has been deposited under a mistake of law.”

5.6. In aforesaid *Delhi Metro Rail Corporation Ltd. (supra)* it has also been observed as follows:

- “10. This Court had called upon the respondents to ascertain whether the Department had accepted the aforesaid view or had appealed the decision of the Gujarat High Court in *Comsol Energy Private Limited*



Vrs. State of Gujarat, R/Special Civil Application No. 11905 of 2020, vide Judgment dated 21.12.2020.

11. *Mr. Tripathi, learned counsel appearing for the respondents, fairly states that the Department has not filed any appeal against the decision of the Gujarat High Court in M/s Cosmol Energy Private Limited v. State of Gujarat (supra).”*

5.7. In the circumstances where under a mistaken notion when taxpayer deposited the amount, the same is not liable to be retained by the State in view of Article 265 of the Constitution of India, the Hon’ble Gujarat High Court in *Cosmol Energy Private Limited Vrs. State of Gujarat, R/Special Civil Application No. 11905 of 2020, vide Judgment dated 21.12.2020, held as follows:*

“6. *Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Since the amount of IGST collected by the Central Government is without authority of law, the Revenue is obliged to refund the amount erroneously collected. In the case of State of Madhya Pradesh and another Vrs. Bhailal Bhai and others, AIR 1964 SC 1006, a Constitution Bench of the Supreme Court held that, where sales tax, assessed and paid by the dealer, is declared by the competent court to be invalid in law, the payment of tax already made is one under a mistake of law within the meaning of Section 72 of the Contract Act and, therefore, the Government to whom the payment was made by mistake must be repaid. **The Supreme Court further held that in that respect the High Court, in exercise of its jurisdiction under***



Article 226 of the Constitution of India, has power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realized by the Government without the authority of law.

7. **Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the GGST Act. The amount collected by the Revenue without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable. In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under mistake of law, which is as under:**

‘Section 17(1) of the Limitation Act, 1963:

- (1) *Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—*
- (a) *the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
 - (b) *****
 - (c) *the suit or application is for relief from the consequences of a mistake; or*
 - (d) ****’*

8. *This Court, in the case of Binani Cement Ltd. Vrs. Union of India, reported in 2013 (288) ELT 193 (Guj),*



held that where the duty is collected without any authority of law, such collection of duty is considered as collected without authority of law and, therefore, is opposed to Article 265 of the Constitution of India and, thus, unconstitutional. **It is held that the assessee is not bound by the limitation prescribed under the special law for claiming the refund of the excess duty or duty collected illegally. The period of limitation prescribed under the Limitation Act would apply.**

The relevant abstract of the decision at paragraphs Nos.23 and 25 are as under:

‘23. Despite this prima-facie conclusion we have reached, there is a reason why we are inclined to hold that what is collected by the respondents from the petitioners can never be described as a customs duty. We say so because the very levy has been declared to be unauthorized by the Supreme Court in the case of Commissioner of Central Excise & Customs, Bhubaneswar-I Vrs. Tata Iron & Steel Co. Ltd., (2003) 12 SCC 150. The Apex Court held that in absence of any Notification under Section 7 of the Coal Mines Act, the customs department could not levy any duty from the importers relying solely on the notification issued under Section 6 of the Coal Mines Act. Such notification could authorize only collection of additional duty of excise. **That being so, the collection of the amount from the petitioners could not take the colour of additional duty of customs either mistakenly or illegally collected. It is a**



case where the duty was collected without any authority of law. Such collection of duty is not illegal or unlawful or irregularly collected customs duty under the Customs Act, but a duty collected without authority of law and therefore opposed to Article 265 of the Constitution of India and is thus unconstitutional. In that view of the matter, the petitioners cannot be bound by the limitation prescribed in the Customs Act, 1962 for claiming refund of excess duty or duty collected illegally. The period of limitation prescribed under the Limitation Act would apply.

25. *In the result, the petition is allowed in part. The collection of the duty described as additional duty of customs in purported exercise of powers under Section 7 of the Coal Mines Act, is held unlawful. The petitioners shall be entitled to refund of such duty paid only within three years immediately preceding the date of filing of the petition, which happens to be 18.08.2006. Such refund shall be granted to the petitioners with simple interest at the rate of 9% per annum from the date of payment till actual refund, however, only after ascertaining that the burden of such duty was not passed on to consumer or any other person.'*

9. *Similar situation arose in the case of Joshi Technology International Vrs. Union of India, reported in 2016 (339) ELT 21 (Guj), wherein this Court held that the statutory time limit provided under Section 11B of the Central Excise Act is not applicable to the claim of refund of duty paid under*



mistake as the same was paid under mistake of law and, therefore, such claim is considered as outside purview of enactment. It was held that general provisions provided under the Limitation Act is applicable to claim refund of such duty. The relevant paragraphs of the decision are given as under:

'14.4 Thus, in view of the principles enunciated by the Supreme Court in Salonah Tea Co. Ltd. Vrs. Superintendent of Taxes, Nowgong, (1988) 2 SCR 474, in case where money is paid by mistake, the period of limitation prescribed is three years from the date when the mistake was known. Besides, Section 17 of the Limitation Act inter alia provides that when a suit or application is for relief from the consequences of a mistake, the period of limitation would not begin to run until the plaintiff or applicant has discovered the mistake, or could, with reasonable diligence, have discovered it. Therefore, in case where money is paid under a mistake, the limitation would begin to run only when the applicant comes to know of such mistake or with reasonable diligence could have discovered such mistake. Adverting to the case at hand, the mistake is in the nature of a mistake of law. It appears that the legal position was not clear and hence, pursuant to representations made by the trade and field formations, the CBEC was required to issue the circular dated 07.01.2014 clarifying the issue. As noticed earlier, the petitioner had all along, right from July 2004 been paying Education Cess and subsequently, from the year 2007 was paying



Secondary and Higher Secondary Education Cess, till April 2014. It was only when the Circular dated 07.01.2014 came to be issued by the CBEC, clarifying the issue that the petitioner came to know about its mistake. Considering the nature of the mistake and the fact that the issue was not free from doubt till the above circular came to be issued by the CBEC, it also cannot be said that the petitioner could with reasonable diligence have discovered the mistake. It appears that it is only sometime after the Education Cess and Secondary and Higher Secondary Education Cess came to be paid for the month of April 2014 that the petitioner came to know about its mistake and in July 2014, it filed the application for refund before the second respondent. Since the period of limitation begins to run only from the time when the applicant comes to know of the mistake, the application made by the petitioner was well within the prescribed period of limitation. Moreover, as discussed hereinabove, the retention of the Education Cess and Secondary and Higher Secondary Education Cess by the respondents is without authority of law and hence, in the light of the decision of this court in Swastik Sanitarywares Ltd. Vrs. Union of India, 2013 (296) ELT 321 (Guj), the question of applying the limitation prescribed under Section 11B of the CE Act would not arise.

19. ***

To summarise:



Merely because the provisions of the Central Excise Act, 1944 and the rules framed thereunder for collection and refund viz., the machinery provisions have been incorporated in the OID Act for collection and refund of the cess levied thereunder, it cannot be inferred that the Oil Cess imposed under the provisions of the OID Act assumes the character of central excise duty. The finding recorded by the adjudicating authority that the Oil Cess is in the nature of excise duty, is erroneous and contrary to the law laid down by this court in Commissioner Vrs. Sahakari Khand Udyog Mandal Ltd., (2005) 3 SCC 738.

In the facts of the present case, the refund is claimed on the ground that the amount was paid under a mistake of law and such claim being outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition. The petitioner was, therefore, justified in filing the present petition before this court against the order passed by the adjudicating authority rejecting its claim for refund of the amount paid under a mistake.

Since Oil Cess is not a duty of excise, the amount paid by the petitioner by way of Education Cess and Secondary and Higher Secondary Education Cess, cannot in any manner be said to be a duty of excise inasmuch as what was paid by the petitioner was not a duty of excise calculated on the aggregate of all the duties of excise as



envisaged under the provisions of Section 93 of the Finance Act, 2004 and section 138 of the Finance Act, 2007. Thus, the amount paid by the petitioner would not take the character of Education Cess and Secondary and Higher Secondary Education Cess but is simply an amount paid under a mistake of law. The provisions of Section 11B of the Central Excise Act, 1944 would, therefore, not be applicable to an application seeking refund thereof. The petitioner was therefore, wholly justified in making the application for refund under a mistake of law and not under section 11B of the Central Excise Act, 1944.

*Since the provisions of Section 11B of the Act are not applicable to the claim of refund made by the petitioner, the limitation prescribed under the said provision would also not be applicable and the general provisions under the Limitation Act, 1963 would be applicable. Section 17 of the Limitation Act inter alia provides that when a suit or application is for relief from the consequences of a mistake, the period of limitation would not begin to run until the plaintiff or applicant has discovered the mistake, or could, with reasonable diligence, have discovered it. **Since the period of limitation begins to run only from the time when the applicant comes to know of the mistake, the application made by the petitioner was well within the prescribed period of limitation.** Moreover, since the very retention of the Education Cess and Secondary and Higher Secondary Education Cess by the*



respondents is without authority of law, in the light of the decision of this court in Swastik Sanitarywares Ltd. Vrs. Union of India (supra), the question of applying the limitation prescribed under Section 11B of the CE Act would not arise.

Even in case where any amount is paid by way of self-assessment, in the event any amount has been paid by mistake or through ignorance, it is always open to the assessee to bring it to the notice of the authority concerned and claim refund of the amount wrongly paid. The authority concerned is also duty bound to refund such amount as retention of such amount would be hit by Article 265 of the Constitution of India which mandates that no tax shall be levied or collected except by authority of law. Since the Education Cess and Secondary and Higher Secondary Education Cess collected from the petitioner is not backed by any authority of law, in view of the provisions of Article 265 of the Constitution, the respondents have no authority to retain the same.'

10. *Similarly, in the case of 3E Infotech Ltd. Vrs. CESTAT, reported in 2018 (18) GSTL 410 (Mad), the Madras High Court held that the service tax paid under mistake of law is to be returned to the assessee irrespective of the period covered under the refund application. It was held that refusing to return the amount would go against the mandate of Article 265 of the Constitution of India. The relevant paragraphs of the decision are as under:*



- ‘12. Further, the claim of the respondent in refusing to return the amount would go against the mandate of Article 265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law.
13. **On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired.** Such a position would be contrary to the law laid down by the Hon'ble Apex Court, and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs.4,39,683/- cannot be barred by limitation, and ought to be refunded.
14. There is no doubt in our minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper, and against the tenets of Article 265 of the Constitution of India. On the facts and circumstances of this case, we deem it appropriate to pass the following directions:
- a) The Application under Section 11B cannot be rejected on the ground that is bared by limitation, provided for under Section.
 - b) The claim for return of money must be considered by the authorities.’ ***”

5.8. The Hon'ble Supreme Court in the case of *Union of India Vrs. ITC Ltd.*, (1993) Supp.1 SCR 272, has held as under:



“7. In *Salonah Tea Company Ltd. Etc. Vrs. Superintendent of Taxes*, (1988) 33 ELT 249 (SC) this Court said:

‘Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally as a corollary of the said statement of law it follows that taxes collected without the authority of law, as in this case, from a citizen should be refunded because no State has the right to receive or to retain taxes or levies realised from citizens without the authority of law.’

Dealing with the question of bar of limitation for making a claim for refund of tax or duty paid or collected without the authority of law in such cases, the Court opined:

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

In Shri Vallabh Glass Works Ltd. Vrs. Union of India, 1984 (16) ELT 171 (SC), this Court, while examining the question as to what is the point



of time from which the limitation should be deemed to commence observed that relief in respect of payments made beyond the period of three years may not be granted from the date of filing of the petition, taking into consideration the date when the mistake came to be known to the party concerned. Just as an assessee cannot be permitted to evade payment of rightful tax, the authority which recovers tax without any authority of law cannot be permitted to retain the amount, merely because the taxpayer was not aware at that time that the recovery being made was without any authority of law. In such cases, there is an obligation on the part of the authority to refund the excess tax recovered to the party, subject of course to the statutory provisions dealing with the refund.

We are, therefore, of the opinion that the High Court, while disposing of the writ petition under Article 226 of the Constitution of India, was perfectly justified in holding that the bar of limitation which had been put against the respondent by the Collector Central Excise (Appeals) to deny them the refund for the period 01.09.1970 to 28.05.1971 and 01.06.1971 to 19.2.1972 was not proper as admittedly the respondent had approached the Assistant Collector Excise soon after coming to know of the judgment in A.K. Roy Vrs. Voltas Limited, (1973) 2 SCR 1089 and the assessee was not guilty of any laches to claim refund.”

In Macro Polymers Private Ltd. Vrs. Union of India, R/Special Civil Application No. 921 of 2025, vide Judgment dated 08.08.2025, the Hon’ble Gujarat High



Court made reference to *Commissioner of C.EX (Appeals), Bangalore Vrs. KVR Construction, 2012 (26) STR 195 (Kar)* which is quoted hereunder:

“The Hon'ble High Court of Karnataka in the case of Commissioner of C.EX (Appeals), Bangalore Vrs. KVR Construction, reported in 2012 (26) STR 195 (Kar), has held as under:

- ‘18. From the reading of the above Section, it refers to claim for refund of duty of excise only, it does not refer to any other amounts collected without authority of law. In the case on hand, admittedly, the amount sought for as refund was the amount paid under mistaken notion which even according to the department was not liable to be paid.*
- 19. According to the appellant, the very fact that said amounts are paid as service tax under Finance Act, 1994 and also filing of an application in Form-R of the Central Excise Act would indicate that the applicant was intending to claim refund of the duty with reference to Section 11B, therefore, now it is not open to him to go back and say that it was not refund of duty. No doubt in the present case, Form-R was used by the applicant to claim refund. It is the very case of the petitioner that they were exempted from payment of such service tax by virtue of Circular dated 17.09.2004 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. In case, 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 17.09.2004, 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.'*

11. *In view of the above analysis made in the aforesaid decision in case of M/s. Gujarat State Police Housing Corporation Ltd Vrs. Union of India and Another, reported in 2024 (1) TMI 1409 (Guj) referred to and relied upon in case of Messrs Aalidhra Texcraft Engineers and Another Vrs. Union of India and Others, reported in 2025 (1) TMI 50 (Guj) [rendered on 12.12.2024 in Special Civil Application No. 14554 of 2024] which is squarely applicable to the facts of the present case more particularly, **when the petitioner has deposited Rs. 78,55,766/- twice, it would not be covered by the provision of Section 27 of the Act and no limitation would apply as the same***



is required to be refunded by the respondent-authority and could not have been rejected on the ground of limitation under Section 27(1B) of the Act in view of the provision of Article 265 of the Constitution of India.”

5.9. Under the above discussed legal position, it can safely be concluded that the period stipulated for making application under Section 54 of the GST Act is not applicable in the nature of claim for refund made by the petitioner. On perceiving that the petitioner has deposited the amounts twice, the Joint Commissioner of State Tax, CT & GST Circle, Cuttack-I East ought to have adhered to provisions contained in Article 265 of the Constitution of India instead of rejecting the application for refund on the ground envisaged under sub-section (1) of Section 54 of the GST Act read with Clause (h) of Paragraph (2) of *Explanation* appended thereto. The Order dated 22.10.2025 in Form GST RFD-06 indicates sole ground for rejection that the application for refund was filed beyond the period stipulated in sub-section (1) of Section 54 of the GST Act read with Clause (h) of Paragraph (2) of *Explanation* appended thereto.

5.10. It is pertinent at this stage to reproduce sub-section (1) of Section 54 and *Explanation* appended thereto:

“(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by



him, may **make an application before the expiry of two years from the relevant date** in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section 49, may claim such refund in manner as may be prescribed.

Explanation.—

For the purposes of this section,—

- (1) 'refund' includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3).
- (2) 'relevant date' means—
 - (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or



- (ii) *if the goods are exported by land, the date on which such goods pass the frontier; or*
 - (iii) *if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;*
 - (b) *in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;*
 - (c) *in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—*
 - (i) *receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or*
 - (ii) *issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;*
 - (d) *in case where the tax becomes refundable as a consequence of judgement, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgement, decree, order or direction;*



- (e) *in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under Section 39 for the period in which such claim for refund arises;*
- (f) *in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;*
- (g) *in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and*
- (h) ***in any other case, the date of payment of tax.”***

5.11. It has already been discussed *supra* that since the nature of claim made by way of filing application for refund that on account of mistaken notion the tax has been deposited twice, the case falls within the fold of Article 265 of the Constitution of India, but not under Section 54 of the GST Act. Therefore, the rejection of application for refund on the anvil of sub-section (1) of Section 54 read with Clause (h) of Paragraph (2) of *Explanation* appended thereto is inapplicable and thus, the Order rejecting the application for refund is liable to be quashed.

5.12. The learned Standing Counsel in course of hearing abandoning the ground on which the Proper Officer has rejected the refund application advanced argument that



Clause (d) of Paragraph (2) of *Explanation* appended to Section 54 could have been the appropriate provision for rejecting the application. Bare reading of said clause would suggest that in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, the Appellate Tribunal or any Court, the period of limitation stipulated in sub-section (1) of Section 54 would be reckoned as “relevant date”. Since the Order dated 22nd October, 2025 has been passed by the Joint Commissioner of State Tax, CT & GST Circle, Cuttack-I East in consideration of application for refund in Form GST RFD-01, such Order would not be comprehended within the expression “*as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court*” in view of distinction being perceived amongst terms “the Appellate Authority”, “the Tribunal” and “the Court” as noticed in *Indian Oil Adani Ventures Limited Vrs. State of Odisha, 2025 SCC OnLine Ori 4024*.

5.13. Moreover, above such stand taken at the stage of hearing of writ petition, which is incongruous to the reason ascribed to by the Proper Officer, whose order of rejection is subject-matter of challenge, is liable be repelled and cannot be countenanced in view of ratio laid down in oft-referred decision in *Mohinder Singh Gill*



Vrs. Chief Election Commr., (1978) 1 SCC 405, wherein it has been held as follows:

“8. *The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. **Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.** We may here draw attention to the observations of Bose, J. in *Commr. of Police, Bombay Vrs. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16:**

‘Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’

Orders are not like old wine becoming better as they grow older.

A CAVEAT.”

5.14. The argument of Sri Sunil Mishra, learned Standing Counsel that “*relevant date*” for reckoning limitation



stipulated in sub-section (1) of Section 54 can be taken aid of by referring to Clause (d) of Paragraph (2) of *Explanation* appended to said section is unfathomable.

6. Looking at the matter from any angle, this Court does not find any plausibility in sustaining the impugned Order rejecting application for refund.

Conclusion:

7. It is demonstrably manifest from aforesaid discussions that retaining the amount paid in excess of tax liability by the State is hit by inhibition enshrined in Article 265 of the Constitution of India. The finding of Joint Commissioner of State Tax, CT&GST Circle, Cuttack-I East, Cuttack in his Order dated 22nd October, 2025 unequivocally accepted that the petitioner has made an excess payment of tax to the tune of Rs.12,03,290/- (CGST of Rs.6,01,645/- + OGST of Rs.6,01,645/-) as the deposits were made once by way of utilising Credit Ledger and thereafter under mistaken notion by using Cash Ledger. However, discharge of tax liability having been accepted in the proceeding under Section 74 of the GST Act *vide* Order dated 08.11.2024, there is no warrant for the authority concerned to retain the amounts found to have been deposited twice and reject the application for refund claimed by the petitioner.



- 7.1. The reason ascribed to by the Proper Officer in rejecting the application taking into account Clause (d) of Paragraph (2) of *Explanation* to Section 54 is apparently flimsy and inapplicable to the fact-situation of present case. The specious plea of the authority to reject the application for refund that it was filed beyond period stipulated under Section 54 of the GST Act pales into insignificance on the anvil of Article 265 of the Constitution of India.
- 7.2. Under the above premise, refund claimed in respect of tax paid erroneously or under mistaken notion cannot be denied solely on the ground of limitation stipulated in Section 54 of the GST Act.
- 8.** In the result, the writ petition is allowed. As a consequence of above discussion, Order dated 22nd October, 2025 passed by the Joint Commissioner of State Tax, CT & GST Circle, Cuttack-I East, Cuttack rejecting the application for refund cannot be sustained and the same is hereby quashed and set aside.
- 8.1. As submitted by the learned Standing Counsel appearing for the CT and GST Organization that the application for refund may not now be available for restoration, the petitioner can be allowed to move a fresh application for refund. Taking into consideration such suggestion, the petitioner is directed to file application



for refund within a period of fortnight hence. On such application being filed, the Joint Commissioner of State Tax, CT & GST Circle, Cuttack-I East, Cuttack shall consider the same in the light of the discussions made hereinabove and pass appropriate order granting refund. The decision so taken on the application for refund shall be communicated to the petitioner within a period of seven days from the date of receipt of such application for refund, failing which the amount of refund shall carry interest at the rate of 6% per annum till the date of actual payment calculated from the date of application for refund originally made.

9. The writ petition is disposed of, but in the circumstances, without costs.

**(HARISH TANDON)
CHIEF JUSTICE**

**(MURAHARI SRI RAMAN)
JUDGE**