BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.04.2026

PRONOUNCED ON : 08.04.2026

CORAM:

THE HON'BLE MR JUSTICE N.ANAND VENKATESH
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

C.M.A(MD)No.368 of 2022

M/s.Sanmar Matrix Metals Ltd.
Vadugapatti Village,
Viralimalai,
Pudukottai – 621 316. ... Appellant

Vs.

The Commissioner of GST and Central Excise,
Tiruchirappalli Commissionerate,
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620 001. ... Respondent

PRAYER:- Civil Miscellaneous Petition filed under section 35G of the Central Excise Act to The Appellant prefers this present statutory appeal against the Final Order No.42294/2021 dated 08.09.2021 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Ms.Radhika Chandra
for M/s.K.Vaitheeswaran

For Respondent : Mr.N.Dilip Kumar
Senior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by N.ANAND VENKATESH, J.)

The appellant was an assessee under the provisions of the "Central Excise Act, 1944" (for brevity hereinafter referred to as "the Act") and migrated into GST regime after the same came into force. The appellant availed CENVAT credit, in respect of excise duty paid on inputs and capital goods and service tax paid on input services under the provisions of CENVAT Credit Rules, 2004.

2. A show cause notice dated 03.06.2011 was issued proposing to deny CENVAT credit of service tax paid on input service during the period May 2010 to March 2011. The proposal was confirmed by the adjudicating authority by Order-in-Original No.4/2012 dated 30.03.2012.

3. The appellant filed an appeal before the first appellate authority challenging the denial of this CENVAT credit. The first appellate authority dismissed the appeal filed by the appellant. Aggrieved by the same, the appellant challenged the same before the Tribunal.

4. The appellant, in the meantime, had filed an application under Rule 18 of the Central Excise Rules, 2002 seeking for refund of excise duty paid on goods cleared for export. The application was processed and refund was sanctioned by order dated 06.05.2014. However, the rebate sanctioned was appropriated against the demand arising out of the Order-in-Original No.4/2012, dated 30.03.2012.

5. It is alleged that the rebate was appropriated without considering the pendency of the appeal in respect of the demand, before the appellate Tribunal. Ultimately, the appellate tribunal by order dated 10.12.2018 was pleased to set aside the demand arising out of the Order-in-Original No.4/12.

6. In the light of the above development, the appellant filed a request dated 14.08.2020 seeking for return of the rebate appropriated against the demand confirmed in Order-in-Original No. 4/2012 in the light of the order passed by the Tribunal. The request for return of rebate was rejected by an order dated 08.09.2020 on the ground that the amount of rebate appropriated cannot be returned based on a letter as it does not have the character of pre-deposit and also the request dated 14.08.2020 is barred by limitation, as the Tribunal order is dated 10.12.2018 and such claim for refund ought to have been made within a period of one year.

7. The appellant filed an appeal before the first appellate authority and the first appellate authority dismissed the appeal by order dated 15.03.2021 once again on the ground of limitation. This order was upheld by the Appellate Tribunal through the impugned proceedings dated 08.09.2021 and aggrieved by the same, the present appeal has been filed before this Court under Section 35G of the Act read with Section 83 of the Finance Act, 1994.

8. This appeal was admitted on 08.04.2022 and the following substantial questions of law were framed:

"1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the claim for return of amount illegally appropriated, is also in the nature of refund consequent to the Order of the Tribunal and the limitation in terms of explanation (B) (ec) to Section 11B is applicable ?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the return of rebate appropriated during the pendency of Appeal is consequent to the order of the Tribunal and hence, the limitation as prescribed in explanation (ec) to Section 11B is applicable when the appropriation of refund pertains to a completely different proceedings?"

9. When this appeal was taken up for final hearing on 26.03.2026, this Court, after hearing both sides, passed the following order:

"We heard the learned counsel for the appellant and the learned Senior Standing Counsel, appearing on behalf of the respondent.

2. The warp and woof of the submission made on the side of the appellant is that the Tribunal by an order dated 06.05.2013, granted stay of the demand that was raised by the Department along with interest and penalty, subject to the condition that the appellant makes a pre-deposit of a sum of Rs. 10,000/- within four weeks and it was also made clear in the order that on such pre-deposit being made, the dues arising from the impugned order will await and the recovery itself will be stayed during the pendency of the appeal. When the stay order was in operation, the appropriation was made by passing an Order-in-Original No.30 of 2014 dated 06.05.2014. On going through the appropriation order, it is seen that the subject matter

before the Tribunal, namely, Order-in-Original No. 4 of 2012 dated 03.03.2012 was also included and the duty along with penalty was appropriated by making a specific mention about the stay order that was granted by the Tribunal on 06.05.2013. Ultimately, the main appeal came to be allowed by the Tribunal by order dated 10.12.2018.

3. The petitioner sent a communication dated 14.08.2020 requesting for refund by quoting the earlier request made through communication dated 27.07.2020.

4. The above request made by the petitioner ultimately came to be rejected by Order-in-Original No. 23 of 2020 dated 18.09.2020 and it was confirmed by the appellate authority and it was further confirmed by the CESTAT through the impugned proceedings dated 03.09.2021, which is the subject matter of challenge in the present appeal.

5. The learned counsel for the appellant submitted that the appropriation of the amount that pertain to the Order- in-Original dated 30.03.2012 in the teeth of the stay order granted by the Tribunal is invalid and the very filing of the appeal and

which was pending on the date when the appropriation order was passed, must be taken to be a protest expressed on the side of the appellant. Therefore, the amount refundable to the appellant cannot be construed as a duty to bring it within the purview of 'Explanation (EC) to Section 11B of the Central Excise Act, 1944'. The learned counsel for the appellant by bringing to out attention various judgments and circulars issued by the Department submitted that such a refund is not subject to the limitation as provided in terms of the Explanation (EC) to Section 11B of the Central Excise Act, 1944.

6. Per contra, the learned Senior Standing Counsel appearing on behalf of the respondent submitted that the appropriation order was put to challenge by filing WP(MD) Nos. 11682 and 11683 of 2014 and 3287 of 2015 and all these writ petitions were closed by an order dated 22.07.2019. Hence, the appropriation order that was passed was never interfered by this Court.

7. In view of the same, the appellant cannot be permitted to collaterally attack the appropriation order in

this appeal. The learned counsel further submitted that the right claimed by the appellant seeking for refund had arisen only pursuant to the order passed by the Tribunal on 10.12.2018 and therefore, the refund ought to have been sought for within a period of one year. If the same is not done, the appellant loses the right to claim for any refund. To substantiate this submission, the learned Senior Standing Counsel relied upon various orders passed by this Court.

8. This Court had put a pointed question to the learned counsel for the appellant as to whether this Court can go into the legality or otherwise of the appropriation order pertaining to the appropriation made to the amount covered under Order-in-Original dated 30.03.2012, when the writ petition challenging the same has been closed and the appropriation order as such has not been interfered. We raised this question only on the ground that while passing an order in this appeal, we have to necessarily deal with the issue as to whether the appropriation made by the Department, in spite of the stay order passed by the Tribunal, is valid. If a writ petition

had not been filed challenging the appropriation order, at least we could have gone into the legality and determined as to whether the amount sought as a refund can be construed as a duty and consequently will come within the purview of duty under Section 11B of the Central Excise Act.

9. The learned counsel for the appellant seeks for some time to clarify on this issue.

10. List the matter on 02.04.2026."

10. Pursuant to the above order, the matter was listed for final hearing today. The learned counsel for the appellant submitted that there is no estoppel in a taxing statute and the principle of equitable estoppel which is the rule of equity cannot prevail against the law. To substantiate this submission, the learned counsel relied upon the judgment in ***Metal Forgings Pvt. Ltd. v. Union of India and Ors***., reported in ***1985 (20) ELT 280 (Delhi)***, ***Commissioner of Wealth Tax v. Meattles (P.) Ltd***., reported in ***[1985] 156 ITR 569***. The learned counsel also relied upon the judgment of the Apex Court in ***Metlex (1) Pvt. Ltd. v. Commissioner of C. Ex., New Delhi***, reported in ***2004 (165) ELT 129***.

11. This Court considered the submissions made on either side and the materials available on record.

12. This Court will now proceeded to answer the substantial questions of law that were framed when the present appeal was entertained on 08.04.2022.

13. In the case in hand, the CENVAT credit that was availed by the appellant was sought to be denied and the Order-in-Original No. 4/2012 dated 30.03.2012 came to be passed as a consequence, the demand that was made to the tune of Rs. 18,66,451/- was confirmed and the appellant was also directed to pay the appropriate interest on the above demand under the relevant provisions of the Act and the Rules. Penalty was also imposed against the appellant. This Order-in-Original that was passed by the Joint Commissioner, was confirmed in appeal by order dated 25.09.2012.

14. The above order was put to challenge before the CESTAT, South Zonal Bench, Chennai. An interim order was passed by CESTAT on 06.05.2013 by directing the appellant to make a pre-deposit of Rs. 10,000/- within a period of four weeks and upon such deposit, it was made clear that the dues arising out of the impugned order and the recovery will stand stayed during the pendency of the appeal.

15. Admittedly, when the interim order was in force, the Order-in-Original No.13/2014 dated 06.05.2014, came to be passed by the competent authority whereby the rebate that was involved to the tune of Rs.7,92,177/- in thirteen numbers came to be rejected and the arrears of revenue which also covered the demand made in Order-in-Original No. 4/12 dated 30.03.2012 was adjusted. Accordingly, the rebate amount that was payable based on the claim made by the appellant came to be adjusted by appropriating the total arrears of revenue to the tune of Rs. 74,32,547/- including the interest due on delayed payment of duty.

16. The appellate tribunal, ultimately, passed the final order on 10.12.2018 by setting aside the demand arising out of the Order-in-Original No. 4/2012 pertaining to CENVAT credit. It is under these circumstances, the appellant sought for refund of the rebate appropriated against the demand confirmed in Order-in-Original No.4/2012 in the light of the order passed by the tribunal.

17. Section 11B of the Act deals with claim for **refund of duty and interest**, if any, paid on such duty. Sub-section (1) provides that such refund should be claimed by making an application before the expiry of one year from the relevant date in such form and manner as may be prescribed. The relevant date is provided under Explanation B and for the facts of the present case, clause (ec) will be relevant. It provides that in case where duty becomes refundable as a consequence of judgment, decree, order or direction of an appellate authority, the appellate tribunal or any Court, the date of such judgment or order will be relevant for calculating the limitation period.

18. The second proviso to Section 11B provides that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

19. As stated supra, the appeal was pending before CESTAT and an order of stay was also granted by CESTAT and thereby, the dues payable under Order-in-Original No.4/2012 dated 30.03.2012 was stayed during the pendency of the appeal. Strictly speaking, when such stay order was in force, the Order-in-Original No.30/2014 dated 06.05.2014 ought not to have been passed by including the demand made under Order-in-Original No.4/2012 dated 30.03.2012. In fact, in the said order, the concerned authority has taken note of the stay order passed by CESTAT on 06.05.2013. After having taken note of this stay order, the concerned authority has proceeded to disregard the same presumably under the Second Proviso to Sub-section (2A) of Section 35C of the Act, which provided that if an appeal pending is not disposed of within a period of 180 days, the stay order shall on the expiry of the said period

will stand vacated. The concerned authority has noted in the said order dated 06.05.2014 that the appellant has not produced any order of further stay. The First, Second and Third Proviso to Sub-section (2A) stood omitted by Act 25 of 2014 with effect from 01.10.2014. It is, therefore, contended by the learned Senior Standing Counsel for the respondent department that the stay order can be disregarded since it is presumed to have been vacated and hence, the demand made against the Order-in-Original No.4/2012 dated 30.03.2012 was also included while appropriating the rebate against the arrears of revenue.

20. At this juncture, it will be relevant to take note of the Circular dated 04.07.2016, which came to be issued by the Department of Revenue, Central Board of Excise and Customs, where it was decided that from 06.08.2014 onwards no recovery will be made during the pendency of the stay application.

21. The above submission made by the learned Senior Standing Counsel appearing for the respondent cannot be countenanced. The

relevant provision that was relied upon prior to the amendment makes it clear that such interim order will stand vacated on the expiry of the only period specified in the first proviso, only if the delay in disposing the appeal is attributable to the party in whose favour the order of stay was granted by the tribunal.

22. If the revenue is permitted to adopt such novel ways to adjust the amounts by getting over an order of stay and thereby indirectly recovering the money, it cannot be construed as a duty payable as on the date of such appropriation. This is in view of the fact that an appeal has been filed challenging the Order-in-Original and the same has to be construed as a protest on the side of the appellant. In fact, the second proviso to Section 11B specifically provides that the limitation of one year will not apply where any duty and interest has been paid under protest. Therefore, in the teeth of the order of stay granted by CESTAT, that the appropriation that has been made by the department by taking advantage of the unamended provision, at the best can only be construed as a payment made under protest.

23. At this juncture, it will be relevant to take note of the judgment in ***Commissioner of C. EX., Chennai-II v. Electro Steel Castings Ltd.***, reported in ***2014 (299) ELT 305*** and the relevant portion is extracted hereunder:

> "6. Though it is sought to be contended on the side of the Revenue that the decision of the Supreme Court in the case cited above is more applicable to the case of the Revenue, we are not inclined to accept the same. The Apex Court in para 83 under an identical situation, dealt with the same issue, wherein also payment was made, when the assessee has been contesting the levy of duty for the earlier period. The Supreme Court is compelled to say that-
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> Now, where a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest. It is difficult to imagine that a manufacturer would pay the duty without protest even when he contests the levy of duty, its rate, classification or

any other aspect...

7. That being the categorical observation of the Supreme Court, the same is squarely applicable to the facts of the present case in favour of the assessee, wherein also, the payment of duty was made only during the pendency of appeal against very levy of duty for the earlier period.

8. In other case reported in MANU/SC/0875/2003 : (2004) 13 SCC 113: 2003 (157) E.L.T. 500 (S.C.) (Derm Snuff (P) Ltd. v. Commissioner of Central Excise, Chandigarh) relied on by the Revenue, the Supreme Court has in para 5 dealt with the issue relating to actual dispute involved herein, but the same relates to cause of action. In that case, the Hon'ble Supreme Court was called upon to decide starting date of period of limitation, whether it is from the date on which identical third party's case or the assessee's own case was finally decided by the Tribunal. In the case cited above, the payment was made under protest and the assessee originally classified the products under sub-heading 2404.60. Whereas, the Revenue classified the products under sub-heading 2404.50. The CESTAT in the

case of another assessee held the same product to be classifiable under the Heading 2404.60 and the same was accepted by the Tribunal in favour of the assessee. On the basis of such decision, the appellant filed the application for refund of the duty paid under protest. In the meanwhile, the assessee's own case involving same issue came to be decided on 28.08.2003 in favour of the assessee on the basis of the identical finding that the assessee's product would be classifiable under sub-heading 2404.60 and not under 2404.50. When the question to be determined whether the cause of action for refund claim arises after disposal of the assessee's own case or after disposal of the third party- assessee's case, the Hon'ble Supreme Court in para 5 held mat the relevant date from which the period of limitation starts to run is from the date on which the assessee's own case finally decided by the Tribunal Le. on 28-8-2003. Nevertheless, it is held that the payment of duty was made under protest was within time and no limitation was applicable to the refund claim of such duty and refund was hence ordered and the same was also upheld by the Supreme Court. Thus, the facts involved in

both the cases decided by the Supreme Court, were identical and the Supreme Court, while dealing with the issue relating to period of limitation, uniformly held that no limitation was applicable to the payment made under protest. The Hon'ble Supreme Court in the earlier judgment clearly observed that the payment made, when the assessee has been challenging the earlier levy of duty, is deemed to be under protest and not otherwise. Hence, the combined appreciation of both the cases decided by the Supreme Court would lead to an irresistible inference that the payment made herein is also deemed to be under protest and no limitation is applicable and the claim is maintainable and is rightly decided by the CESTAT.

9. In the light of the above discussion, we find no justification to interfere with the order of the Customs, Excise and Service Tax Appellate Tribunal. The Civil Miscellaneous Appeal is hence dismissed. Consequently, connected Miscellaneous Petition is closed. No costs."

24. It will also be relevant to take note of the judgment of the Bombay High Court in ***S. and H. Gears Pvt. Ltd. v. Commissioner of Customs***, reported in ***2004 (167) ELT 538***, where it was held that the very filing of an appeal against an assessment order amounts to payment of duty under protest. A similar view was taken by the Delhi High Court in ***Hutchisom Max Telecom Pvt. Ltd. Commissioner of Central Excise***, reported in ***2004 (165) ELT 175***, wherein it was held that filing of an appeal itself amounts to protest and hence, the refund cannot be denied on the ground of limitation when the dis allowance of the benefits of the notification was challenged by the assessee and such benefit was finally allowed by the tribunal.

25. At the risk of repetition, it has to be held that the appropriation was done by the department when the appeal was pending before CESTAT and an order of stay of recovery was also granted. Even if the department wants to justify this appropriation by relying upon the law as it stood prior to the amendment which came into effect from

01.10.2014, such appropriation will be construed as a payment of duty under protest. In such an event, the second proviso to Section 11B of the Act will come into play and the limitation of one year will not apply where the duty and interest has been paid under protest. Consequently, the amount that was appropriated pursuant to the Order-in-Original No. 4/2012 dated 30.03.2012, cannot be brought under Explanation (ec) of Section 11B of the Act and therefore, the limitation as prescribed under Sub-section (1) of Section 11B will not apply for the refund sought for by the appellant. Consequently, the refund sought for by the appellant is not barred by limitation. Both the substantial questions of law are answered accordingly in favour of the appellant.

26. The last issue pertains to the objection raised on the side of the department to the effect that the writ petitions filed in WP(MD) Nos. 11682 and 11683 of 2014 and 3287 of 2015 which was closed by an order dated 22.07.2019 forecloses the attempt made by the appellant to collaterally question the appropriation order dated 06.05.2014. The writ petition that was filed by the appellant questioning the appropriation

order was an independent relief sought for not only covering the Order-in-Original No.4/2012 dated 30.03.2012, but also two other orders passed. Refund was made by the department and the appellant was under the impression that the refund has been made towards all amounts appropriated. Therefore, it was informed to this Court that hab the refund has been obtained and nothing survives for adjudication. Recording the same, the writ petitions were closed on 22.07.2019.

27. The above order does not have any bearing in the issue involved in the present appeal. This Court is not testing the appropriation order passed by the competent authority. On the other hand, this Court is only testing the effect of such an appropriation order passed during the pendency of an appeal where an order of stay was also granted. This Court has already held that such appropriation made during pendency of the appeal will be construed as the payment of duty under protest and as a consequence, the period of limitation will not apply. Accordingly, this objection that was raised on the side of the department also stands rejected.

28. In the result, this appeal stands allowed and the impugned proceeding of the CESTAT in Final Order No.42294/2021, dated 08.09.2021 shall stand set aside and consequently, there shall be a direction to the respondent to refund the amount for which the appellant is entitled pursuant to the demand that arose in Order-in-Original No. 4/2012 dated 30.03.2012, within a period of six weeks from the date of receipt of a copy of this judgment. There shall be no order as to costs.

[N.A.V., J.] **[K.K.R.K., J.]**
08.04.2026

NCC :Yes/No
Index :Yes/No
PKN

To

1. The Commissioner of GST and Central Excise,
   Tiruchirappalli Commissionerate,
   No.1, Williams Road,
   Cantonment,
   Tiruchirappalli - 620 001.

2. The Customs, Escise and Service Tax Appellate Tribunal,
   Chennai.

3.The Record Keeper (Vernacular Records),
   Madurai Bench of Madras High Court,
   Madurai.

N. ANAND VENKATESH,J.
AND
K.K.RAMAKRISHNAN,J.

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