CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

SERVICE TAX APPEAL NO. 10122 OF 2018

[Arising out of OIA No. CCESA-SRT-APPEAL-PS-028-2017-18 dated 29.09.2017 passed by Commissioner (Appeals) office of Commissioner of Central Excise and CGST Commissionerate, Surat]

PURUSHOTTAM NAGAR COOPERATIVE HOUSING SOCIETY LTD VIBHAG 14 **Appellant**
Ashirwad Palace, Gr. Floor, Plot No. 118,119 120-Tower-R,
Bhatar Road, Jivkor Nagar,
Bhatar, Surat, Gujarat

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-SURAT-I **Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat- 395001

WITH

SERVICE TAX APPEAL NO. 10129 OF 2018

[Arising out of OIA No. CCESA-SRT-APPEAL-PS-029-2017-18 dated 29.09.2017 passed by Commissioner (Appeals) office of Commissioner of Central Excise and CGST Commissionerate, Surat]

PURUSHOTTAM NAGAR COOPERATIVE HOUSING SOCIETY LTD VIBHAG 14 **Appellant**
Ashirwad Palace, Gr. Floor, Plot No. 118,119 120-Tower-R,
Bhatar Road, Jivkor Nagar,
Bhatar, Surat, Gujarat

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-SURAT-I **Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat- 395001

Appearance:
Shri S. Suriyanarayan, Advocate for the Appellant
Shri Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10361-10362/2026

Date of Hearing : 16/01/2026
Date of Decision : 18/06/2026

Dr. AJAYA KRISHNA VISHVESHA

These appeals have been preferred by the appellants feeling aggrieved from the impugned Orders-in-Appeal No. CCESA-SRT (Appeals) PS-28/2017-18 dated 29th September, 2017 and CCESA-SRT (Appeals) PS-29/2017-18 dated 29th September, 2017 passed by learned Commissioner (Appeals) Central Excise and CGST Surat through which the learned Commissioner rejected the appeal filed by the appellant M/s. Ashirvad Palace Building Maintenance but allowed cross appeal filed by the Department and set aside the order passed by the Adjudicating Authority.

1.2 The facts of the case in brief are that M/s. Ashirwad Palace Building Maintenance, Ashirwad Palace, Bhatar, Surat filed a refund claim of Rs. 71,55,508/- consequent upon the order passed by the Commissioner (Appeals) vide Order-in-Appeal No. SUR-EXCUS-001-APP-124/2014-15 dated 30th September, 2014. The Adjudicating Authority passed the refund claim of Service Tax amount of Rs. 36,11,179/- as per the provisions of Section 11B of Central Excise Act, 1944 out of the refund claim amount of Rs. 71,55,508/- filed in Form-R on 15th February, 2015. The Adjudicating Authority rejected the refund claim of Service Tax amounting to Rs. 35,44,329/-. Aggrieved with the impugned order, the appellant filed appeal before the learned Commissioner. The learned Commissioner vide Order-in-Appeal No. CCESA-SRT (Appeal) PS-028/2017-18 dated 29.09.2017 rejected the appeal preferred by the appellant M/s. Ashirwad Palace Building Maintenance and upheld the order passed by the Adjudicating Authority.

1.3 Feeling aggrieved from the Order-in-Original dated 30.10.2015, the Department also filed cross appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) vide order No. CCESA-SRT (Appeals) PS-29/2017-18 dated 29th September, 2017 allowed the appeal of the Revenue and set aside the order passed by the Adjudicating Authority. The

Commissioner held that the partial refund claim has been allowed by the Adjudicating Authority but he has not examined the financial and other related documents incidental to the service tax adjustments made with the members consequent upon the order passed by the Commissioner (Appeals) vide Order-in-Original No. SRT-1/ST-DIV-IV/KVM/Ref./11/2015-16 dated 30.10.2015. The learned Commissioner held that the claimant is not entitled to the partial amount of refund sanctioned by the Adjudicating Authority. He allowed the appeal and set aside the order passed by the Adjudicating Authority.

1.4 Feeling aggrieved from both the impugned orders dated 29th September, 2017 as mentioned above passed by the learned Commissioner (Appeals), the present appeals have been filed before this Tribunal.

2. The learned Counsel for the appellant submitted that appeal no. ST/10122/2018 relates to denial of refund of Rs. 35,44,329/- out of the total refund claim of Rs. 71,55,508/- on the ground that the said amount of Rs.35,44,329/- has been deposited by Ashirwad Palace Common Maintenance and not by M/s. Ashirwad Palace Building Maintenance, the appellant. In this case, Show Cause Notice dated 13th September, 2012 was issued by DGCEI, which was addressed to the appellant – "Ashirwad Palace Building Maintenance" and not to "Ashirwad Palace Common Maintenance". The Show Cause Notice was in respect of "Ashirwad Palace", a residential complex not paying Service Tax in respect of the maintenance charges collected from its residents. Paragraph 13 of the Show Cause Notice sought appropriation of amounts deposited by Ashirwad Palace Building Maintenance and Ashirwad Palace Common Maintenance during the investigation under the common name "Ashirwad Palace".

2.1 The Show Cause Notice dated 13.09.2012 was adjudicated by Order-in-Original dated 11th April, 2014. which was in favour of the Revenue. However, on appeal the learned Commissioner vide Order-in-Appeal dated 30th

September, 2014 allowed the appeal of the assessee filed in the name of Ashirwad Palace on the principle of mutuality. The Revenue filed appeal against the order passed by the learned Commissioner but thereafter, withdrew the appeal in view of Government Litigation Policy.

2.2 The learned Counsel for the appellant submitted that on 9th January, 2015 refund application was made in the name of Ashirwad Palace Building Maintenance seeking refund of Rs. 71,55,508/- recovered by DGCEI during investigation from December-2011 to October-2012. The learned Assistant Commissioner issued a Show Cause Notice dated 6th May, 2015 proposing denial of entire refund claim of Rs. 71,55,508/-, on the ground of non-submission of original copies of taxpayers' counterfoils for amounts of Rs. 2,50,000/- and 2,50,000/- deposited on 2nd December, 2011. It was also stated that copies of all taxpayers' counterfoils show that the amount of Rs. 71,55,508/- was deposited under the assessee code which does not belong to the claimant. Thus, no amount has been paid by the claimant even though refund has been claimed and evidence regarding unjust enrichment not submitted. The Show Cause Notice was adjudicated vide Order-in-Original dated 30th October, 2015 through which the learned Assistant Commissioner sanctioned refund of Rs. 36,11,179/- and rejected the remaining amount of Rs. 35,44,329/- on the ground that the said amount was not deposited by the appellant but was deposited in the name of Ashirwad Palace Common Maintenance. This order was upheld by the learned Commissioner vide Order-in-Appeal dated 29th September, 2017. The reasoning given by the Adjudicating Authority is not sustainable and not proper because the DGCEI issued Show Cause Notice to the appellant proposing appropriation of the entire amount paid by "Ashirwad Palace" without distinguishing between Ashirwad Palace Building Maintenance and Ashirwad Palace Common Maintenance. Therefore, the Revenue should not have recognized Ashirwad Palace Building Maintenance and Ashirwad Palace Common Maintenance as

separate entities depositing Service Tax at the time of adjudicating Refund Application.

2.3 The learned Counsel for the appellant also submitted that the taxpayers' counterfoils dated 2nd December, 2011 and 16th October, 2012 do not contain any signatures of the appellant. It supports the argument of the appellant that the assessee codes were obtained by DGCEI and the DGCEI deposited the cheques collected from the appellant directly into the Government account.

2.4 The learned Counsel for the appellant further submitted that Ashirwad Palace Building Maintenance and Ashirwad Palace Common Maintenance are one and same entity having separate bank accounts and their separate Service Tax assessee codes were obtained by the DGCEI. Therefore, in these circumstances, the learned Commissioner should have allowed the refund of the balance amount of Rs. 35,44,329/- to Ashirwad Palace Common Maintenance to do justice to the appellant. The learned Counsel for the appellant relied upon the law laid down in **Uday Raj Singh** vs. **Commissioner** reported at 2023 (8) TMI 744 CESTAT-New Delhi and **Welspun Corporation Ltd** vs. **CCE** reported at 2023 (2) TMI 780 CESTAT-Ahmedabad.

2.5 The learned Counsel for the appellant also submitted that once department withdrew its appeal before the Hon'ble CESTAT against the O-I-A dated 30.09.2014 the Revenue had no authority to retain the money collected from "Ashirwad Palace" towards Service Tax on the ground that assessee codes were different in the taxpayers counterfoils or on some other technical grounds. The learned Counsel for the appellant relied upon the law laid down in **Anita Exports** vs. **Union of India** reported at 2015 (10) TMI 762.

2.6 The learned Counsel for the appellant also submitted that the Revenue should have refunded the pre-deposit of Rs. 71,55,508/- made by Ashirwad Palace suo *motu* with 12% interest without waiting for any refund application

once it withdrew its appeal before the Hon'ble CESTAT. Regarding this submission, the learned Counsel for the appellant relied upon the order oassed by the Tribunal in **Ispat Traders** vs. **COMMISSIONER OF CUSTOMS** reported at 2010 (9) TMI 346 CESTAT, Ahmedabad.

2.7 The learned Counsel for the appellant also submitted that the factum of payment of the entire sum of Rs. 71,55,508/-, into the Government exchequer is undisputed and the Revenue has admitted to have received the said money. He has further submitted that the division of deposits under two separate registration codes was merely an internal accounting classification within the same residential setup. The selection of an alternative code at the time of deposit was merely a clerical error. The deposits were made prior to obtaining formal registration and are linked to the same Permanent Account Number relating to Income Tax. He has also submitted that the Show Cause Notice originally issued by the department treated 'Ashirwad Palace' as a single consolidated assessee. The demand was never split or bifurcated between two units during the assessment, adjudication, and at recovery stages. The Revenue cannot now artificially split one entity into two entities solely to block a legitimate refund. The learned Counsel relied on the judgment pronounced by Hon'ble Gujarat High Court in **Devang Papers Mills Pvt Ltd** vs. **Union of India** reported at 2016 (41) STR 418 (Guj.) Hon'ble Gujarat High Court has held in this case that substantive refund benefits cannot be denied due to technical errors in the entry or wrong accounting code, provided the money has reached the exchequer.

2.8 Regarding appeal No. ST/10129/2018, the learned Counsel for the appellant submitted that the Assistant Commissioner sanctioned Rs. 36,11,179/- but rejected the remaining amount of Rs. 35,44,329/- vide Order-in-Original dated 30th October, 2015. Against the sanctioned amount of refund, the Revenue filed appeal before the learned Commissioner (Appeals) on the ground that the refund sanctioning authority has not considered

applicability of principle of unjust enrichment". The learned Commissioner (Appeals) allowed the appeal of the Revenue vide order dated 29th September, 2017 and set aside the Order-in-Original regarding the sanctioning of the refund amount of Rs. 36,11,179/-. Feeling aggrieved from the said order this appeal has been filed by the appellant.

2.9 The learned Counsel for the appellant contended that when the Service Tax itself was not leviable due to the principle of mutuality, the Appellate Commissioner could not have found that the amount received from the members of the appellant, towards maintenance was inclusive of Service Tax. There is no question of passing on the incidence of tax by the appellant to its members. The learned Counsel for the appellant relied upon **Ultratech Cement Ltd** vs. **Commissioner of Central Tax** 2024 SCC online CESTAT 3121.

2.10 The learned Counsel for the appellant further submitted that when there is no dispute about the appellant having given the cheques to DGCEI during the course of investigation, the said cheques recovered from the appellant during the course of investigation are nothing but pre-deposit made by the appellant which do not come under the ambit of 'unjust enrichment' as held in **Advanced Steel Tubes Ltd** vs. **CCE** 2013 SCC Online CESTAT 2761,

2.11 The learned Counsel for the appellant prayed that the appeals filed by the appellants may be allowed and the impugned Orders-in-Appeal passed by the learned Commissioner (Appeals) be set aside.

3. The learned Authorised Representative, while countering the arguments of the learned Counsel for the appellant, submitted that the main contention of the learned Counsel for the appellant is that M/s. Ashirwad Palace Building Maintenance and M/s. Ashirwad Palace Common Maintenance are one assessee. The learned AR submitted that the DGCEI demand was raised on two separately identifiable units - Ashirwad Palace Building Maintenance and

Ashirwad Palace Common Maintenance, both have been distinctly mentioned in the DGCEI Show Cause Notice and the demand appropriation Order dated 11th April, 2014. However, the appellant now selectively rely upon only on the common name 'Ashirwad Palace' which has been clearly mentioned at para 5.3 of the impugned Order-in-Appeal dated 29th September, 2017. The learned AR further submitted that each unit has its own Service Tax registration and bank account. M/s. Ashirwad Palace Builidng Maintenance had assessee code AACAA3583HSD001 and Ashirwad Palace Common Maintenance had assesse code NACAAAADVVVVSE001 and payments were made from both the codes.

3.1 The learned AR further submitted that the second contention of the learned Counsel for the appellant is that the impugned Order-in-Appeal and Order-in-Original go beyond the scope of the Show Cause Notice. This argument has no force because the refund Show Cause Notice dated 6th May, 2015 expressly alleges that copies of all taxpayers' counterfoils show that the amount of Rs. 71,55,508/- were deposited under the assessee code which does not belong to the claimant thus no money has been paid by the claimant. The learned AR submitted that the appeals of the appellant may be dismissed.

4. I have heard the learned Counsel for the appellant and the learned Authorised Representative for the department and perused the records.

4.1 First issue before this Tribunal is regarding admissibility of the part of the refund claim amounting to Rs. 35,44,329/- rejected by the Adjudicating Authority and upheld by the learned Commissioner under Section 11B of Central Excise Act, 1944 and under Notification No. 41/2013-ST dated 29.06.2012. Second issue is whether the refund claim of the appellant is barred by the principle of 'Unjust Enrichment'.

4.2 In the impugned order the learned Commissioner has mentioned in para 5.3 of the order as follows:-

> *"The refund application was filed by the appellant M/s. Ashirwad Palace Building Maintenance, Ashirwad Palace, Ground Floor, Plot No. 118, 129, 120-Tower-R, Bhatar Road Jivkornagar, Surat. It is also quite clear that the Adjudicating Authority has gone in to the refund application based on the claim of the applicant and thus has decided the claim. It is claimed by the appellant that Ashirwad Palace Building Maintenance and Ashirwad Palace Common, Maintenance are one single entity and Show Cause Notice of DGCEI and further the Adjudicating Authority through the Order-in-Original dated 11.04.2014 has considered them as single unit. On going through the records, it is quite clear that the demand by DGCEI and final order as mentioned above of the Adjudicating Authority has separately mentioned the liability of both the entities. It is also a notable fact that both the Ashirwad Palace Building Maintenance and Ashirwad Palace Common Maintenance have separate Service Tax assessee code AACAA3583HSD001 and NACAAADWSE001 respectively and also having separate bank account. In view of this fact the claim of the appellant has no merit. I also find that both the above mentioned units were engaged in providing different nature of services which have been detailed in the Show Cause Notice of DGCEI and also the Show Cause Notice was issued to both the units."*

4.3 I am of the view that the conclusion arrived at by the learned Commissioner in the impugned order is not sustainable. This conclusion is not in accordance with the law laid down by the Hon'ble Jurisdictional High Court of Gujarat in **Devang Papers Mills Pvt Ltd** vs. **Union of India** (supra). In this case, the Petitioner had mistakenly deposited excise duty under an incorrect registration code ending in 001 instead of 002. Hon'ble Gujarat High Court observed as follows:-

> *"Such amount was deposited by the petitioner with the Government of India and it was duly credited in the Government account… Indisputably, thus, the petitioner had singular duty liability for which the actual payment was also made. Under the circumstances... the respondents are directed to give credit of the duty paid by the petitioner… by making necessary accounting entries on the basis that the same was paid at the relevant time."*

4.4 In the present case, the entire sum of Rs. 71,55,508/- was deposited into the Government exchequer by the appellant and this fact has not been disputed by the Revenue till date. The amount was split into separate codes which is a matter of internal administrative arrangement for the maintenance

of the unit of the very same residential complex. There is no dual liability nor there is any element of fraud**.** It is pertinent to note here that the DGCEI's Show Cause Notice proposed appropriation of entire amount paid by 'Ashirwad Palace' without distinguishing between 'Ashirwad Palace Building Maintenance' and 'Ashirwad Palace Common Maintenance". The Department itself issued a single bifurcated Show Cause Notice to the appellant as a unified entity. Hence, the Revenue cannot be permitted to treat the appellant as a single entity for demand of service tax and its recovery but treat it as two separate entities – 'Ashirwad Palace Building Maintenance' and 'Ashirwad Palace Common Maintenance', for consideration of refund application. Technical book keeping errors cannot override the substantive statutory right of the assessee to claim refund of an amount which has been wrongly held to be not payable. Thus, the rejection of Rs. 35,44,329/- on artificial technical grounds is unsustainable and violate the law laid down by Hon'ble Gujarat High Court in **Devang Papers Mills Pvt Ltd** case (supra).

4.5 It is also pertinent to note here that the Show Cause Notice issued by the DGCEI culminated in Order-in-Original dated 11.04.2014 in favour of Revenue. The Order-in-Original considered only 'Ashirwad Palace' in the entire order and more particularly in paragraph 26 containing the operative portion of the order. The confirmation of demand etc. were in the name of 'Ashirwad Palace' only though both 'Ashirwad Palace Building Maintenance' and 'Ashirwad Palace Common Maintenance' were mentioned as addressee in the bottom of the order. The entire Order-in-Original dealt with only 'Ashirwad Palace'.

4.6 It is also a significant fact that when the Assistant Commissioner issued Show Cause Notice dated 06.05.2015 proposing denial of entire refund claim, the appellant filed reply dated 18.09.2015 in which it was specifically stated that the amounts paid were deposited by writing the PAN number of the claimant.

4.7 I also find sufficient force in the argument of the learned Counsel for the appellant that the taxpayers' counterfoils dated 02.12.2011 and 16.10.2012 do not contain any signature of the appellant and it may be possible that assessee codes were obtained by DGCEI and the cheques collected from the appellant were deposited directly into Government account by the DGCEI.

4.8 In **Uday Raj Singh** vs. **Commissioner** reported at 2023 SCC Online CESTAT 5072, it was observed that principle under the trade notice no. 03/2014-ST dated 10.07.2014 read with the circular is, "where the Government dues by way of service tax are deposited, may be in a wrong accounting code or STC code, the assessee is not required to pay the tax again and the same would cover the present case where the tax amount due has been deposited with the Government exchequer but under wrong STC. It is also not the case of the revenue that the partnership firm, in respect of which the challans were deposited, had any service tax liability. In the above case, the Tribunal has quoted the relevant para from the order in the case of **Commissioner of Central Excise, Haldia** vs. **Tata Meta Links Ltd** reported at 2023 (6) TMI 10-CESTAT Kolkata –

> *10. We find that the Appellant has discharged their Service Tax liability under RCM on GTA services. They have deposited the service tax in the account of Kolkata Commissionerate (AABCT1389BST002) instead of Haldia Commissionerate (AABCT1389BST001). The mistake in remittance of service tax in a difference service tax registration of the same assessee is a matter of internal adjustment at department's end and the assessee cannot be saddled with the demand of service tax again. This clarification has been issued by Board in Circular No. 58/07/2003 dated 20/05/2003 and communicated to the trade vide Trade Notice No. 03/2014 dated 10/07/2014 by Cochin Commissionerate.*
>
> *11. From the above circular it is clear that the discrepancy such as payment of service tax under wrong registration can be adjusted against the correct registration for which the service tax is actually due. Accordingly, in the light of the above circular, the department could have made the necessary adjustment instead of raising the demand on the appellant.*

4.9 Accordingly, the Tribunal allowed the adjustment of the amount which was already with the Revenue and dropped the Show Cause Notice and the impugned order was set aside and the appeal was allowed.

4.10 In **Welspun Corporation Ltd** vs. **CCE & ST Rajkot** reported at 2023 (2) TMI 780 – CESTAT Ahmedabad. The Tribunal held as follows:-

> "*There is no dispute as the same was admitted in the show cause notice as well as in the impugned order that the service tax of Rs. 78,17,225/- was deposited by the appellant's head office at Mumbai under different registration number of input service distributor. The appellant's Anjar unit is not a separate entity as the same is part of a single entity i.e. "Welspun Gujarat Stahi Rohren Ltd" which is now known as "Welspun Corp Ltd". Therefore, the payment made by head office under different registration number cannot be demanded from the Appellant's Anjar Unit and if at all there is discrepancy of different registration of head office, the department could have adjusted service tax paid by the head office against the service tax due of appellant's Anjar unit.*
>
> *From the Circular No 58/7/2003 dated 20.05.2003 it is clear that the discrepancy such as payment of service tax under wrong registration can be adjusted against the correct registration for which the service tax is actually due. In the present case, even though the service tax was paid under the registration of head office Mumbai but the appellant's Anjar unit as well as their Mumbai head office is one single entity. Accordingly, in the light of the above circular, the department could have made the necessary adjustment instead of raising the demand twice on the appellant.*
>
> *The issue has been well settled in many cases. Reliance may be placed in the case of M/S. WESTERN COALFIELDS LTD VERSUS COMMISSIONER OF EXCISE & SERVICE TAX (2019 (4) TMI 1075-CESTAT MUMBAI] where it was held that as long as the duty is paid and credited duly to the Govt. of India account, procedural infractions which are curable in nature will not nullify such payments. Demanding such duty second time is certainly harsh and has no sanction of law, more so along with interest and penalty.*
>
> *From the above judgments and board circular cited, it is settled that merely because the service tax paid under different registration but by the same company, cannot be tantamount to non-payment of service tax. Hence, the demand of service tax which was already paid cannot be made twice. Accordingly, demand of service tax in this case is also not sustainable."*

4.11 It will be worthwhile to mention here that CBEC (Board) issued circular F. No. 275/37/2K-CX-8A dated 02.01.2002 in which it has been directed as follows:-

> *"3. In order to attain uniformity and to regulate such refunds, it is clarified that refund applications under Section 118(1) of the Central Excise Act, 1944 or under Section 27(1) of the Customs Act, 1962 need not be insisted upon. A simple letter from the person who has made such deposit, requesting the return of the amount, along with an attested Xerox copy of the order-in-appeal or CEGAT order consequent to which the deposit made becomes returnable and an attested Xerox copy of the Challan in Form TR6 evidencing the payment of the amount of such deposit, addressed to the concerned Assistant/Deputy Commissioner of Central Excise or Customs, as the case may be, will suffice for the purpose. All pending refund applications already made under the relevant provisions of the Indirect Tax Enactments for return of such deposits and which are pending with the authorities will also be treated as simple letters asking for return of the deposits, and will be processed as such. Similarly, bank guarantees executed in lieu of cash deposits shall also be returned.*
>
> *4. The above instructions may be brought to the notice of the field formations with a request to comply with the directions and settle all the claims without any further delay. Any deviation and resultant liability to interest on delayed refunds shall be viewed strictly."*

4.12 In **Ajay Industrial Corporation Limited** vs. **Assistant Commissioner of Customs** reported at 2015 SCC Online Bombay 4545, Hon'ble Bombay High Court has held as follows:-

> *"62. In this case, as discussed above, it stands established on record and is an admitted position between all parties that the petitioner has never received the imported goods covered under Bill of Entry No. 8441729 dated 27 April 2022. The Petitioner has been pursuing the matter for nearly three years without any effective redress, caught between Respondent No. 1 and Respondent No. 2, each of whom disclaims liability. The Court finds that, considering the undisputed facts and the statutory scheme under Sections 13, 23, 27, and 27A of the Customs Act, 1962, the Petitioner cannot be made to suffer for reasons beyond its control.*
>
> *63. We hold that the Petitioner's case squarely falls within the ambit of Section 23 of the Customs Act, 1962, since the goods were lost or rendered unavailable before clearance for home consumption. Consequently, the Petitioner is*

entitled to a refund of the customs duty amounting to Rs. 35,37,358/-, together with interest at 9% from the date of payment of the Custom Duty.

64. Accordingly, we direct the Respondent No. 1, the Assistant Commissioner of Customs (Refund), to process and refund the said amount to the Petitioner, along with interest at 9%, within a period of four weeks from the date of uploading of this order. The interest shall be computed from the date of its payment by the Petitioner till the actual date of refund. A compliance report must be filed by the Assistant Commissioner of Customs (Refund)-R1, latest by 8 January 2026, so that the Petitioner is not once again forced to come to this Court alleging noncompliance."

4.13 I am also of the view that when the department withdrew its appeal before the CESTAT against the Order-in-Appeal dated 30th September, 2014 passed by the learned Commissioner, the Revenue had no authority to retain the money collected from 'Ashirwad Palace' towards service tax on the ground of assessee codes being different in the taxpayers' counterfoils or other some technical grounds. The Revenue should have refunded the amount which is in fact a pre-deposit made by the 'Ashirwad Palace' *suo motu* with appropriate interest without waiting for any refund application, once, the appeal was withdrawn by the Revenue which was pending before the CESTAT against the order dated 30.09.2014 passed by the Commissioner.

4.14 In **Ispat Traders** vs. **Commissioner of Customs Jamnagar** reported at 2010 SCC Online CESTAT 4287, it has been held as follows:-

"20. In the case of Sheela Foam Pvt. Ltd. v. CCE, Noida reported in 2003 (154) E.L.T. 522 (Tri. LB) Tribunal took a view that the deposits made during investigation are required to be refunded with interest at 12% as per the circular issued by the Board on 2-1-02. In that case also the Tribunal held that the department was required to return the amount deposited by the appellant with interest at 12% calculated from the date of expiry of three months from the date of receipt of copy of the final order of the Tribunal.

21. The decisions cited by the learned advocate before me and discussed above and the circulars issued by the Board show clearly that whether the amount was deposited during investigation or paid subsequent to the order confirming the demand or paid as a result of direction of the Tribunal/Court, is required to be refunded with interest at 12% to the appellant when the issue is decided

in their favour. Further it is also clear from the precedent, decisions that even when a case is remanded to the original adjudicating authority, the amount deposited is required to be refunded.

22. Applying the precedent decisions and the circulars issued by the Board to the facts of this case, it becomes quite clear that as contended by the learned advocate for the appellant, they became eligible for refund of Rs. 4,71,447/- on 20-8-96 and this amount was to be refunded suo-motu or on a letter filed by the appellant. In this case also appellants have submitted that they have submitted a letter to the Assistant Commissioner to make payment on 9-7-96. Therefore the decision of the lower authorities that appellant is not eligible for refund till the issue was finally decided by the Assistant Commissioner by his order dated 30-6-09 is unsustainable.

23. In view of the discussions above and on the basis of the circulars issued by the Board and the precedent decisions, it is quite clear that the question of filing a refund claim under Section 27 of the Act does not arise and the appellant in this case have already fulfilled their obligation by submitting a letter on 9-7-96. Therefore the department was bound to sanction refund before 20-8-96. Having failed to do so, the department is liable to pay interest at 12% in view of the several precedent decisions cited by the learned advocate and discussed above.

24. Under these circumstances the impugned order is set aside and the Revenue is directed to sanction refund to the appellants without insisting on any further application under Section 27 of the Act and refund the amount with interest from 20-8-96 to the date of payment."

4.15 As far as the applicability of principle of "unjust enrichment", it is an established legal position that the principles of unjust enrichment under Section 11B cannot be mechanically applied when an amount is deposited during any such investigation. Such deposits made to secure the interest of the Revenue during proceedings are nothing but pre-deposit made by appellant and do not bear the characteristics of a self-assessed tax or duty passed on in commercial invoices. Once the underlying demand is set aside on merits as happened in this case vide Order-in-Appeal dated 30.09.2014, based on precedents of Hon'ble Supreme Court, the retained money lost any color of tax. The state cannot retain money of assessee without authority of law as per Article 265 of the Constitution of India.

4.16 When an amount deposited by appellant is not treated as tax, the bar of unjust enrichment is entirely inapplicable. The onus of maintaining seamless internal verification records lies squarely on the department. Once the payment is verified from the exchequer perspective, the full refund must follow as a necessary consequence of the demand being set aside.

4.17 It is also pertinent to note here that when the service tax itself was not leviable in this matter due to principle of mutuality, the Commissioner should not have concluded in the impugned order that the amounts received from the members of the appellant towards maintenance was inclusive of service tax. In **Ultratech Cement Ltd** vs. **Commissioner of Central Tax** reported at 2024 SCC Online CESTAT 3121, it has been held that, the provisions of Section 11B(5)(ec) of Central Excise Act, 1944 will apply only in respect of excise duty paid by the appellant and not applicable for refund of Rs. 26,38,300/- including Rs. 24,27,751/- being credit and interest of Rs. 2,10,549/- deposited by the appellant during investigation to cover the alleged wrong claim of Cenvat Credit which was held unsustainable by this Tribunal in appeal.

4.18 Therefore, in view of the law laid down in the **Ultratech Cement Ltd** case when the Revenue had no authority to levy service tax on the appellant due to principle of mutuality, there is no question of passing on the incidence of tax by the appellant to its members.

4.19 In **Advance Steel Tubes Ltd** vs. **CCE** reported at 2013 SCC Online CESTAT 2761, it has been held by the Tribunal that the issue involved in the present case is applicability of bar of unjust enrichment to refund claimed by the appellant. Appellant claims that duty sought to be refunded was paid during the course of investigation by way of debit entries in RG 23A register. I find that under Clause (d) of Sub-section (2) of the Section 11B of the Central Excise Act, bar of unjust enrichment is not attracted to duty of excise paid by

the manufacturer if he had not passed on the incidence of such duty to any other person. It was held by the majority order that Revenue stand that refund claim is hit by unjust enrichment is not tenable for which appeal is allowed.

4.20 In view of the above discussion, I am of the opinion that the learned Commissioner has erred in rejecting the appeal of the appellant and upholding the technical rejection of refund of Rs. 35,44,329/-. I am also of the view that the appellant is fully entitled to the refund of the entire amount of Rs. 71,55,508/-.

5. Consequently, the appeal filed by the appellant Purushottam Nagar Cooperative Housing Society Ltd Vibhag 14 against Order-in-Appeal No. CCESA-SRT (Appeals) PS-028/2017-18 is allowed and the said Order-in-Appeal rejecting the refund amount of Rs. 35,44,329/- is set aside. The Order-in-Appeal No. CCESA-SRT (Appeals) PS-029/2017-18 allowing the Revenue's appeal, on the ground of unjust enrichment is also set aside and the Revenue is directed to make the refund of the amount of Rs. 71,55,508/- to the appellant.

The balance unpaid amount of Rs. 35,44,329/- shall be refunded along with applicable interest under Section 35FF of the Central Excise Act, 1944 as made applicable to Service Tax matters from the date of the application till its realization.

(Order pronounced in the Court on 18.06.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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