

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Excise Appeal No.70111 of 2026**

(Arising out of Order-in-Appeal No.01/ST/APPL/ALLD/2026 dated 15.01.2026 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

**M/s Maa Vindhya Vasini Tobacco Pvt. Ltd., .....Appellant**  
(133/134, Transport Nagar, Kanpur)

*VERSUS*

**Commissioner of Central Excise &  
CGST, Kanpur**

**....Respondent**

(117/7, Sarvodaya Nagar, Kanpur-208005)

**APPEARANCE:**

Shri S. R. Agarwal, Advocate, Mrs. Stuti Saggi, Advocate & Shri Sachin Shukla, Advocate for the Appellant  
Shri Prashant Kumar & Shri Abhishek Mukherjee, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.- 70211/2026**

DATE OF HEARING : 01.06.2026  
DATE OF PRONOUNCEMENT : 25.06.2026

**P. K. CHOUDHARY:**

The Appellants have filed the present appeal assailing the Order-in-Appeal No.01/ST/APPL/ALLD/2026 dated 15.01.2026, passed by the Commissioner (Appeals), CGST & Central Excise, Allahabad.

2. Brief facts of the case are that the Appellants were engaged in the manufacture of chewing tobacco falling under Chapter Sub Heading No.24039910 of the Central Excise Tariff Act, 1985. The original dispute involved a classification issue where the product, branded chewing tobacco manufactured by the Appellant, was disputed to be Jarda Scented Tobacco during the period from 01.06.2015 to 31.03.2016. The assessment was made provisional during this period. During the period of provisional assessment, the Appellants were forced to pay higher

amount on a pro-rata basis on the higher side. The Appellants paid this amount under protest.

3. The classification dispute was subsequently settled by this Tribunal vide Final Order No. A/70062/2022-EX [DB] dated 02.02.2022 in favour of the Appellants, holding that the product manufactured during the relevant period was Branded Chewing Tobacco. The Revenue challenged this decision before the Hon'ble Supreme Court, which was dismissed for non-condonation of delay.

4. The Appellants thereafter filed a refund claim for the excess amount of Rs.6,95,52,000/- vide an application dated 05.08.2022. Though the refund was sanctioned, the Adjudicating Authority credited the amount to the Consumer Welfare Fund vide Order-in-Original No.01/CE/PRE-GST/Refund/ACK-II/2023 dated 16.01.2023 on the ground of unjust enrichment, holding that the party failed to prove that the incidence of duty had not been passed on to the customers.

5. The Appellate Authority dismissed the Appellant's first appeal on 01.05.2023, upholding the unjust enrichment findings. On further appeal, this Tribunal, vide Final Order No.70213/2023 dated 22.11.2023, allowed the appeal, setting aside the lower orders and directing that the refund of Rs.6,95,52,000/- be credited directly to the account of the Appellants.

6. The Revenue's subsequent appeal before the Hon'ble High Court was dismissed, confirming the Tribunal's decision.

7. Consequently, the Revenue processed and disbursed the principal amount of Rs.6,95,52,000/-, which was received in the Appellants bank account on 11.03.2024. However, the Order-in-Original passed by the Adjudicating Authority was silent in respect of payment of interest for delayed payment of refund although the Appellants had requested to grant the refund along with the interest thereon for delayed refund.

8. The Appellants then approached the Commissioner (Appeals), who vide Order-in-Appeal No.37/CE/APPL/ALLD/2025 dated 07.02.2025, held that the Appellants were entitled to interest on the excess amount deposited.

9. In compliance, the Adjudicating Authority issued a Show Cause Notice<sup>1</sup> proposing as to why the interest rate should not be fixed at 6% *per annum*, restricted only to the period from 16.01.2023 to 11.03.2024. Despite the Appellant's objections, the Assistant Commissioner, vide Order-in-Original No.12/CE/Pre GST Refund/ACK-II/2025 dated 16.05.2025, sanctioned interest of only Rs.56,25,137/- calculated at 6% *per annum* for the period from 04.11.2022 (three months after the refund application date) to 10.03.2024.

10. Aggrieved, the Appellants preferred an appeal, which was rejected by the Ld. Commissioner (Appeals) through the impugned Order-in-Appeal No.01/ST/APPL/ALLD/2026 dated 15.01.2026, upholding the 6% rate and the restricted timeline on statutory grounds. The Appellants are now before this Tribunal against the Impugned Order.

11. Shri S. R. Agrawal, Advocate appearing for the Appellants have pointed out that the impugned order has been passed in deviation of the earlier Order-in-Appeal passed by the commissioner (Appeals) in his order dated 07.02.2025, wherein it was held that the interest on amount paid or payable be paid at the rate specified by Central Government starting with the first date after due date till the actual payment. The said Order-in-Appeal dated 07.02.2025 was passed relying upon the decision of Hon'ble Supreme Court in the case of Kuil Fireworks Industries and also on the decision of this Tribunal in the case of M/s. Rathi Steels.

12. It was also pointed out by the Learned Advocate that in the impugned order itself, the Commissioner (Appeals) has considered the findings of his predecessor in order dated 07.02.2025 in Para 5.3 of the impugned order. He has also gone through various case laws in Para 5.5 to 5.7 of the impugned order wherein the interest from the date of deposit till the date of refund was held payable @12% p.a. However, the Commissioner (Appeals) has abruptly held that the period of computation of interest has rightly been taken by the

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<sup>1</sup> SCN

Adjudicating Authority and that the interest @12% p.a. granted by Hon'ble High Courts are not applicable in all cases in rem.

13. It has also been agitated by the Ld. Advocate that excess amount was collected by the Revenue without authority of law and therefore it must compensate by granting the interest from the respective date of excess deposit till the date of payment of refund thereof. The Ld. Advocate has also placed reliance on many case laws of this Tribunal and various Appellate High Courts and Supreme Court.

14. Shri Prashant Kumar and Shri Abhishek Mukherjee learned Authorized Representatives on behalf of the Revenue justified the impugned order. They have relied on the decision of Hon'ble High Court of New Delhi in the case of M/s. Goldy Engineering Works and Others vs. Commissioner of Central Excise & ANR in W.P. (C) No.4332/2022 dated 14.07.2023. They have argued that Hon'ble High Court has provided that the interest on refund of duty is governed by Section 11B and Section 11BB of the Act, 1944.

15. On the contrary, the Learned Advocate for the Appellant pointed out that the facts in the present case are distinct from the facts involved in the case relied upon by the Revenue.

16. A written submission has been made by the Revenue as well as by the Appellants. A chronological event has been tabulated in the written submissions filed on behalf of the Revenue. It has been submitted that in the instant matter, the Central Excise Duty was deposited by the Appellants. In addition to the decision of the Hon'ble High Court in the case of M/s. Goldy Engineering Works (supra) the Revenue has also relied upon other case laws. The Revenue has also submitted that the claim of interest @12% p.a. is contrary to the express provisions of Section 11BB of the Central Excise Act, 1944.

17. In their rejoinder submissions, the Appellants have submitted that as already submitted during the course of hearing, the Assistant Commissioner while processing the claim of interest on delayed refund was duty bound to follow the order of the Commissioner (Appeals) dated 07.02.2025 as per the

principle of judicial discipline. It can be observed that the order of the Commissioner (appeals) 07.02.2025 was unambiguous to the extent that interest on delayed refund is payable from the respective date of excess deposit of the amount till the date of refund thereof. Thus, the Assistant Commissioner has gone beyond his jurisdiction. They also pointed out that Hon'ble High Court in the matter of M/s Goldy Engineering Works (supra), being relied upon by the Revenue, has also in Para 30 of the decision have clearly held that **"A levy of interest on refund must undoubtedly follow where it is found that the amount has been unjustifiably retained or remitted with undue delay. The respondents cannot be permitted to retain moneys which are otherwise not due or are otherwise liable to be returned."**

[Emphasis Supplied]

18. It has also been stated by the Appellants in their rejoinder that the amount deposited by them was never payable by them inasmuch as it was not any determined liability and the payment was admittedly under protest since beginning. Whereas in the case of M/s Goldy Engineering Works *ibid*, the amount was deposited after issuance of the SCN and the said SCN resulted into confirmation of demand of duty. The amount deposited by the Appellants attains the nature of revenue deposit. The matter is therefore clearly distinguishable from the facts and circumstances of the case law relied upon by the Authorized Representative for the Revenue.

19. Heard both the sides and perused the appeal records.

20. The following two issues arise for determination in the present appeal:-

**(i)** Whether interest on the delayed refund is payable from the respective date of deposit of the excess amount under protest, or from the expiry of three months after the date of filing the refund application?

(ii) Whether the Appellants are entitled to interest at the rate of 12% per annum instead of the 6% *per annum* sanctioned by the lower Authorities?

21. To resolve these issues, it is relevant to take note of the settled legal position rendered by the jurisdictional High Court of Allahabad in Principal Commissioner, Central Goods and Service Tax vs. M/s Parle Agro Private Limited on appeal filed by the revenue against the decision of this Tribunal in the case of M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, Central Goods & Service Tax, Noida reported in 2018 (360) E.L.T. 1005 (Tri.-All.), as well as the concurrent rulings of this Tribunal in M/s T.T. Limited vs. Commissioner, Central Goods & Service Tax, Meerut 2026 (2) TMI 1077- CESTAT Allahabad and M/s Hindustan Mint & Agro Products Pvt. Ltd. vs. Commissioner of Central Excise & CGST, Gautam Budh Nagar Excise Appeal No.70434 of 2022 (Final Order No.70030/2026 dated 03.02.2026).

22. In M/s TT Limited (*supra*), this Tribunal faced an identical controversy where the Revenue sought to apply Section 11BB of the Central Excise Act to cap the interest rate at 6% per annum and defer its commencement point to three months post-application. This Tribunal, relying upon the Hon'ble Allahabad High Court's affirmation in the Parle Agro case, held that once an amount is deposited under protest during investigation, adjudication, or provisional stages where no legal duty liability pre-exists, such payments cannot be characterized as "duty" under the Central Excise Act. Instead, they retain the character of a "revenue deposit".

23. With respect to the first issue, concerning the commencement point for calculation of interest, the Appellant has contended that interest is payable from the date of respective deposit of the amount, whereas the Revenue has argued that interest, if any, can be granted only after the expiry of three months from the date of filing of the refund application, by placing reliance on section 11BB of the Central Excise Act. So, first, it is important to understand the applicability of Section

11BB of Act in this case. I reproduce below the relevant portion of Section 11BB, for the sake of reference:-

**"SECTION [11BB. Interest on delayed refunds. —** *If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :*

**Provided** *that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty."*

24. After due perusal of Section 11BB of the Central Excise Act, it is very clear that the interest on delayed refunds of duty paid under Section 11B, the Central Excise Act will be applicable through this provision, only when the matter of concern is "**refund of duty**". The applicability of Section 11BB of the Central Excise Act, therefore, hinges upon the determination as to whether the amount refunded in the present case is in the nature of "duty" under Section 11B of the Central Excise Act or merely a "deposit".

25. I have also examined the facts involved in the case of M/s. Godly Engineering Works (supra) and I observe that the facts involved in the present case are different and distinguishable.

The case law relied upon by the Authorized Representative is therefore not applicable in the facts and circumstances of the instant case. Similarly, the other case laws referred by the revenue in their written submissions are not of much help to the revenue in the facts and circumstances of the case.

26. On this aspect, the Appellants have consistently maintained that the amount was paid under protest, during the course of provisional assessment, and prior to any adjudication or confirmation of demand. It has been emphasized that unless such an amount is appropriated towards a confirmed demand through a valid adjudication order, it does not acquire the character of duty and continues to remain a deposit, retained without the authority of law.

27. I find considerable force in the aforesaid submission. It is an admitted position that at the time of deposit of the amount, there was neither any quantified demand nor any adjudication determining duty liability. The Revenue itself has subsequently acknowledged that the levy was unsustainable and has sanctioned refund of the entire amount. Once it is accepted that no duty was legally payable, the amount deposited under protest cannot be treated as "duty" so as to attract the provisions of Sections 11B and 11BB of the Central Excise Act.

28. This legal position finds authoritative support from the judgment of the Hon'ble Meghalaya High Court in the case of **M/s Green Valley Industries Pvt. Ltd. 2023 (7) TMI 1176 - Meghalaya High Court**, wherein it has been categorically held that a deposit made at a stage when no quantified demand exists cannot be equated with duty under Section 11B, and consequently, the limitation and interest provisions under section 11BB are not applicable to such deposits. A similar view has been taken by the Tribunal in **M/s Churchit International vs. Commissioner of Customs (Exports), New Delhi [Customs Appeal No.51301 of 2023 dated 06.09.2024]**, wherein it has been held that amounts deposited during investigation or adjudication proceedings are in

the nature of deposits under protest and interest thereon is payable from the date of deposit till the date of refund.

29. The issue is no longer *res integra* in view of the decision of this Tribunal in **Parle Agro (supra)**, which has been affirmed by the Hon'ble Allahabad High Court. It has been conclusively held therein that Section 11B/11BB of the Central Excise Act applies only to refunds of duty and has no application to refunds of revenue deposits. Consequently, the restriction contained in Section 11BB regarding commencement of interest after expiry of three months from the date of filing of the refund application cannot be imported into cases involving refund of revenue deposits. Therefore, the Appellate Authority, while passing the Impugned OIA, has failed to examine the applicability of Section 11BB of the Central Excise Act in the correct legal perspective and has mechanically denied interest from the date of deposit by treating the amount as duty, without recording any finding as to how the amount acquired the character of duty.

30. This position was further emphasized by this Tribunal in M/s Hindustan Mint & Agro Products Pvt. Ltd. (supra), wherein it was observed that under the provisions of the Central Excise Act, 1944, duty is payable on self-assessment or after determination by a proper officer. Where an amount is deposited during the investigation phase without any self-assessment or official adjudication order confirming a demand, such a payment is strictly an amount deposited by the assessee to avoid harassment, and cannot be equated to "duty". Because the amount never partakes the character of duty, there is no legitimacy in applying the restrictive interest conditions of Section 11BB. The deposit is to be treated as an amount retained by the Department, and interest must be paid from the date of the actual deposit.

31. Applying this legal framework to the facts of the present case, the Appellants were forced to make excess payments on a pro-rata basis on the higher side during provisional assessment. These payments were made explicitly "under protest". The final adjudication by this Tribunal, as affirmed by the Hon'ble

Supreme Court, conclusively established that the product was Branded Chewing Tobacco and that the higher duty demanded under zarda scented tobacco was never legally payable.

**32. Accordingly, Issue No. (i) is answered in favour of the Appellant.**

33. Now the second issue for consideration relates to the appropriate rate of interest payable on the refunded amount. The Appellants have contended that, since the amount refunded is in the nature of a deposit made under protest and not duty paid under the Central Excise Act, interest at the rate of 12% per annum is payable, in accordance with settled judicial judgments wherein it has been held that any amount that is deposited during the pendency of the adjudication proceedings or investigation is in the nature of deposit made under protest, and so, the assessee is entitled to claim interest from the date of payment of the initial amount till the date of its refund at the rate of 12% where the refund is delayed. The Revenue, however, has sought to sustain the grant of interest at the rate of 6% per annum, by placing reliance on the rates prescribed under Section 11BB of the Central Excise Act.

34. As already discussed, while dealing with Issue No. (i), it stands established that the amount deposited by the Appellants was not duty of excise, but a deposit made under protest during the course of investigation and prior to any adjudication or confirmation of demand. Once it is held that the refunded amount does not partake the character of "duty", the statutory provisions governing refund of duty, including Sections 11B and 11BB of the Central Excise Act, cease to have any application.

35. It is also undisputed that the Central Excise Act does not contain any specific provision prescribing the rate of interest payable on refund of revenue deposits. In such circumstances, the rate of interest has been consistently determined by judicial precedents, based on principles of equity, fairness and reasonableness.

36. This issue is squarely covered by the decision of this Tribunal in **M/s Parle Agro (supra)**, wherein, after examining

the statutory scheme and the absence of any prescribed rate of interest for refund of revenue deposits, this Tribunal held that interest at the rate of 12% per annum is appropriate. The aforesaid decision of this Tribunal has been expressly affirmed by the Hon'ble Allahabad High Court in **Principal Commissioner, Central Goods and Service Tax vs. M/s Parle Agro Private Limited (supra)**. The Hon'ble High Court has approved the grant of interest at the rate of 12% per annum in cases involving refund of revenue deposits, thereby lending authoritative approval to the said rate.

37. I also find support for this view from the judgments relied upon by the Appellants, wherein interest at the rate of 12% per annum has been granted on refund of amounts deposited during investigation or adjudication, on the ground that such amounts were not legally payable as duty or tax. Therefore, the reliance of the Revenue on the provisions of Section 11BB of the Central Excise Act and the corresponding Notification No.67/2003-C.E. (N.T.) dated 12.09.2003, which prescribe a rate of interest at 6% per annum on delayed refunds of duty, are wholly inapplicable in the Appellant's case, since the amount retained was never legally due as duty and was wrongfully withheld without authority of law.

38. Retaining a citizen's money without statutory backing or lawful authority directly offends Article 265 of the Constitution of India, which mandates that no tax shall be levied or collected except by authority of law. This view was also upheld by this Tribunal in M/s Hindustan Mint and Agro Products Pvt. Ltd. (supra), wherein it was observed that as per Article 300A of the Constitution of India, no person shall be deprived of his property, save by authority of law, and that any interest accrued or due on money wrongfully withheld remains the property of the owner. Allowing the state to retain such funds and deny rightful interest would amount to unjust enrichment at the expense of the citizen. Consequently, the Revenue's reliance on 6% interest rate is wholly inapplicable.

39. Issue No. (ii) is answered in favour of the Appellants, holding that the Appellants are entitled to interest at the rate of 12% per annum from the respective dates of deposit till the date of actual credit.

40. In view of the foregoing discussions, the impugned Order-in-Appeal No.01/ST/APPL/ALLD/2026 dated 15.01.2026 is hereby set aside. The Revenue is directed to re-calculate the interest at the rate of 12% *per annum* from the respective dates of deposit of the excess amount till 11.03.2024 (the date of actual refund), after adjusting the interest amount of Rs.56,25,137/- already sanctioned and paid. The balance interest shall be sanctioned and disbursed to the Appellants in accordance with law within a period of 60 days. Appeal is allowed in these terms.

(Order pronounced in open court on - **25.06.2026**)

**Sd/-**  
**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

LKS