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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 14.07.2026	Delivered On: 10.08.2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MRS. JUSTICE N. MALA

C.M.A.No.3249 of 2019
& C.M.P.No.18640 of 2019

The Commissioner of Service Tax,
(now redesignated as)
Principal Commissioner of GST & CE,
Chennai North Commissionerate,
121, Nungambakkam High Road,
Chennai – 600 034. … Appellant
Cause Title accepted vide Court order date 09.08.2019 made in C.M.P.No.17119/2019 in C.M.A.SR.No.79606 of 2019 (VKJ & CVKJ)

vs.

M/s.Hardy Exploration & Production (India) Ltd.,
Floor 5, Westminster Building,
105, Dr.Radhakrishnan Salai,
Chenni – 600 004. … Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35 of Central Excise Act, 1944, against the Final Order No.43135/2018 (ST/632/2011-DB), dated 15.11.2018 and received on 23.01.2019 on the file of the CESTAT, South Zonal Bench, Chennai.

For Appellant : Mr.A.P.Srinivas, Senior Standing Counsel

For Respondent : Mr.P.S.Raman, Senior Advocate,
for M/s.Thriyambak J. Kannan.

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JUDGMENT

(Order of this Court made by Dr. G. Jayachandran, J.)

The Civil Miscellaneous Appeal has been filed under Section 35 of Central Excise Act, 1944, is preferred by the Commissioner of Service Tax, being aggrieved by the final order dated 15.11.2018 passed by the CESTAT, South Zonal Bench, Chennai.

2. The facts of the case are as follows:-

M/s.Hardy Exploration & Production (India) Ltd., the respondent herein, in the course of executing production sharing contract with ONGC for the extraction of crude oil had entered into an agreement with M/s.Aban Offshore Ltd., for the supply and operation of floating Rigs for use in its petroleum exploration activities. M/s.Aban Offshore Ltd., has charged service tax from M/s.Hardy Exploration & Production (India) Ltd., for supply and operation of floating Rigs under the head "Mining Services" and in turn paid to the department. The payment of service tax to the Department by M/s.Aban Offshore Ltd., is not in dispute.

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3. The respondent, from whom the service tax was collected had sought for refund of the tax on the ground that service tax for supply of floating rigs is taxable only with effect from 16.05.2008 under the category of "Supply of Tangible Goods Service." Therefore, the service tax collected erroneously by M/s.Aban and remitted to the Department for the period 01.06.2007 to 15.05.2008 ought to be refunded.

4. The Original Authority rejected the claim on the ground that M/s.Aban Offshore Ltd., which had remitted the service tax under the head "Mining Service," had not raised any classification dispute. Further, the judgment relied by the respondent, rendered by the Bombay High Court in ***Indian National Ship Owners Association & Others vs. Union of India,*** is *sub judice* before the Hon'ble Supreme Court. That apart, the Original Authority also questioned the refund claim on the ground of limitation is respect of the period covering 05.04.2007 to 05.04.2008 and rejected the refund claim.

5. Above all, the Original Authority had recorded that the assessee had not produced any documentary evidence to show that the incidence of duty had been passed on to the assessee and the service receiver had not produced

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any disclaimer certificate from the service provider, namely, M/s.Aban Offshore Ltd.

6. However, on appeal to the Commissioner, the respondent succeeded. The Appellate Authority held that the supply of floating Rigs by M/s.Aban Offshore Ltd., (Service Provider) to the respondent (service receiver) for post-extraction work is squarely covered under the category of "Supply of tangible goods service." Hence, the respondent is liable to pay service tax only from 16.05.2008 and entitled for refund of tax paid prior to that period.

7. The Revenue, being aggrieved by the order in Appeal No.146/2011 (MST) dated 25.08.2011, preferred appeal before the CESTAT in Appeal No.ST632/2011. The Tribunal confirmed the view of the Appellate Authority regarding the classification. It upheld that the supply of floating rigs would be covered under "Supply of tangible goods service" and not under "Mining Service".

8. The judgment of the Bombay High Court in ***Indian National Shipowners Association (INSA) v. Union of India*** *reported in* ***2008 SCC***

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Online Bom 1187*,* on appeal to the Hon'ble Supreme Court by the Union of India, been affirmed by the Hon'ble Supreme Court in favour of the assessee. In ***Union of India vs. INSA*** *reported in* ***2011 (21) S.T.R 3 (SC)***, the Hon'ble Supreme Court held that the classification of the service under "supply of tangible goods" has to be affirmed since there is no infirmity in the finding of the Appellate Authority. Having held so, following the judgment of the Madras High Court in ***Micromax Informatics Ltd vs. Principal Commissioner of Customs, Chennai,*** *reported in* ***2017 (358) ELT 38 (Mad.)*** as well as the judgment of the Delhi High Court in ***Micromax Informatics Ltd vs. Union of India,*** *reported in* ***2016 (335) ELT 446 (Del.).,*** it held that there need not be challenge to the assessment order by M/s.Aban Offshore Ltd., (service Provider), who had collected service tax due to misinterpretation of classification. The service receiver, to whom tax had been passed on, has right to claim refund.

9. Regarding the question of limitation, the Tribunal on relying upon the judgment of the Madras High Court rendered in ***3E Infotech v. CCE,*** *reported in* ***2018 (7) TMI 276*** and the judgment of the Bombay High Court in ***Parijat Construction v. CCE, Nashik*** *reported in* ***2018 (19) G.S.T.L 8 (Bom.),***

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held that the issue whether limitation prescribed under Section 11B of the Central Excise Act, 1944, applies to refund claimed in respect of service tax paid under the mistake of law, is no longer *res integra*. The limitation prescribed under Section 11B is not applicable to refund claims for service tax paid under mistake of law, as held by the Hon'ble Supreme Court in case of ***Collector of C.E., Chandigarh v. Doaba Co-operative Sugar Mills***. Further, the Tribunal also held that refusal to refund the service tax collected wrongly would go against the mandate of Article 265 of the Constitution of India, which prohibits levy or collection of tax except by authority of law. With the above conclusion, the appeal filed by the Revenue dismissed, thereby confirming the order passed by the Appellate Authority in favour of the assessee/respondent.

10. Being aggrieved, the Revenue has preferred the Civil Miscellaneous Appeal and had raised the following substantial questions of law.

> *"(i) Whether the Tribunal is right in holding that assessee, as a service recipient, is eligible for refund of Service Tax paid under Mining Service, when assessment under said service was not at all in dispute by the service provider?*

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(ii) Whether the Tribunal is justified in overlooking that per Sec.83 of the Finance Act, 1994 read with Explanation (B)(e) to Sec.11 B of the Central Excise Act, 1994, the purchaser ought to have filed the claim for refund within 1 year from the date of receipt of service and therefore the assessing officer had rightly rejected the claim for the period prior to 05/05/2008 as barred by limitation?

(iii) Whether the respondent has discharged the burden of proof of "no unjust enrichment" in the present case?

(iv) Whether the Tribunal is right in simply relying on the certificate issued by CPCL and the invoices issued by respondents to CPCL to conclude that the respondent had demonstrated that it had not passed on the burden of service tax and unjust enrichment is not applicable in the present case?

(v) Whether the Tribunal is right in overlooking the decision of Apex Court in the case of Mafatlal Industries [1997 (89) ELT 247 (SC)], that such refund claim can be made either by way of Civil Suit or by way of Writ Petition only and therefore the lower appellate authorities have no jurisdiction to grand such relief?

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11. The Learned Standing Counsel appearing for the appellant referring to the judgment of the Hon'ble Supreme Court in ***Collector of Central Excise, Kanpur vs. Flock (India) Private Limited*** *reported in* ***2000 (120) E.L.T 285 (S.C.),*** submitted that the claim for refund of duty paid if denied by order of the adjudicating authority, such order is appealable under the statute, the parties aggrieved have to exercise this statutory right by filing appeal. It is not open to the parties to question the correctness of the order passed by the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing its order. The observations of the Hon'ble Supreme Court, which reads as below is relied by the Learned Counsel for the Appellant:-

> *"**10.** Coming to the question that is raised, there is little scope for doubt that in a case where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal, it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing its order. If this position is accepted then the*

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provisions for adjudication in the Act and the Rules, the provision for appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant. This position, in our view, will run counter to the scheme of the Act and will introduce an element of uncertainty in the entire process of levy and collection of excise duty. Such a position cannot be countenanced. The view taken by us also gains support from the provision in sub-rule (3) of Rule 11 wherein it is laid down that where as a result of any order passed in appeal or revision under the Act, refund of any duty becomes due to any person, the proper officer may refund the amount to such person without his having to make any claim in that behalf. The provision indicates the importance attached to an order of the appellate or revisional authority under the Act. Therefore, if an order which is appealable under the Act is not challenged then the order is not liable to be questioned and the matter is not to be reopened in a proceeding for refund which, if we may term it so, is in the nature of execution of a decree/order. In the case at hand it was specifically mentioned in the order of the Assistant Collector that the assessee may file appeal against the order before the Collector (Appeals) if so advised."

12. The Learned Senior Standing Counsel for the appellant submitted that, in this case, M/s.Aban Offshore Ltd., (service provider) had not sought for

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refund of tax by challenging the assessment order before the appropriate authority. Instead, the service recipient had straight away filed refund application, which is not maintainable.

13. To buttress his submission further, the Learned Senior Standing Counsel relies upon the judgment of the Hon'ble Supreme Court in ***Priya Blue Industries Ltd vs. Commissioner of Customs (Preventive)*** reported in ***2004 (172) ELT 145 SC***, wherein the Hon'ble Supreme Court, following its earlier decision in ***Flock (India) Pvt. Ltd*** *cited supra,* observed as below:

> "**6.** *....Once an order of assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an appeal, that order stands. So long as the order of assessment stands the duty would be payable as per that order of assessment. A refund claim is not an appeal proceeding. The officer considering a refund claim cannot sit in appeal over an assessment made by a competent officer. The officer considering the refund claim cannot also review an assessment order."*

14. Insofar as the applicability of limitation prescribed under Section 11B of the Central Excise Act, 1994, the Learned Standing Counsel appearing

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for the appellant relies on the judgment of this Court rendered in ***Assistant Commissioner of S.T., Chennai*** *vs.* ***Nataraj and Venkat Associates,*** *reported in* ***2015 (40) S.T.R 31 (Mad)***, wherein the Division Bench of this Court has observed as below:-

> *"**8.** From the materials available on record, it is seen that the amounts were credited to the Revenue under the Head of Account "0044-Service Tax" through TR-6 challans, which are purported for payment of Service Tax only and as such, the claim of the respondent that the payment was only deposit and not Service Tax, cannot be sustained. Further, a tax, be it, direct or indirect, is intended for immediate expenditure for the common good of the state and it would be unjust to require its repayment after it has been in whole or in part expended, which would often be the case in most payment of such sort. Therefore, it is impracticable for the authorities to refund applications that are filed beyond time even it is paid under a mistake of law. Therefore, the authorities have rightly rejected the claim of the respondent and this aspect has not been taken note of by the learned single Judge."*

15. For denying refund, yet another judgment of the Hon'ble Supreme Court in ***Western Coalfields Ltd vs. Commissioner of Central Excise, Trichy,***

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reported in ***2019 (365) ELT 849 (S.C.)***, is relied by the Learned Standing Counsel for the appellant. The claim of refund of duty under Section 11B of Central Excise Act, 1944, in respect of duty paid under protest by the manufacturer and the refund claim made by the buyer after six months prescribed period been considered by the Hon'ble Supreme Court in the *Western Coalfields Ltd case*. After narrating the factual background of the case in paragraph 12, in nutshell, the Hon'ble Supreme Court held as follows:

> "*12. It is not disputed that the excise duty was paid by the manufacturer M/s Fenner (India) Ltd. under protest to the department and the dispute with regard to the classification of the product finally came to be decided by this Court in Fenner (India) Ltd. [Fenner (India) Ltd. v. CCE, 1995 Supp (2) SCC 567] and the manufacturer M/s Fenner (India) Ltd. never moved any application for refund of the excise duty at any given point of time. The appellant herein is the buyer and purchased conveyor beltings from the manufacturer M/s Fenner (India) Ltd. during the period 20-7-1988 to 15-1-1994 indicated in Civil Appeal No. 7625 of 2005. The period for which the refund of excise duty has been claimed differs but in all the cases, applications have been filed by the appellant buyer much after the period of limitation which was six months from the date of purchase of goods at the*

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time of filing of the application to claim refund under Section 11-B of the Act.

13. *Section 11-B deals with the claim of refund of duty as paid on his own accord by any person for refund of such duty to the competent authority before the expiry of six months from the relevant date as prescribed but where the duty was paid under protest in terms of the 2nd proviso to Section 11-B(1), the period of limitation may not apply. Although the buyer can also apply for refund provided the duty of excise is borne by the buyer and he had not passed on the incidence of such duty to any other person as referred to under Section 11-B(2)(e) and the application has been moved within the period of six months from the relevant date of purchase of the goods by such person in terms of Section 11-B(5)(B)(e) of the Act. The scheme of Section 11-B makes a distinction between right of the manufacturer to claim refund from right of the buyer to claim refund treating them separate and distinct for making an application for refund exercising their right under Section 11-B of the Act and it has been examined by the three-Judge Bench of this Court in CCE* v. *Allied Photographics (India) Ltd. [CCE* v. *Allied Photographics (India) Ltd., (2004) 4 SCC 34] as under: (SCC p. 51, para 13)*

> *"13. ... Therefore, Section 11-B(3) stated that no refund shall be made except in terms of Section 11-B(2). Section 11-B(2)(e) conferred a right on the buyer to claim*

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refund in cases where he proved that he had not passed on the duty to any other person. The entire scheme of Section 11-B showed the difference between the rights of a manufacturer to claim refund and the right of the buyer to claim refund as separate and distinct. Moreover, under Section 4 of the said Act, every payment by the manufacturer whether under protest or under provisional assessment was on his own account. The accounts of the manufacturer are different from the accounts of a buyer (distributor). Consequently, there is no merit in the argument advanced on behalf of the respondent that the distributor was entitled to claim refund of "on-account" payment made under protest by the manufacturer without complying with Section 11-B of the Act."

It was further held as under: [Allied Photographics (India) Ltd. Case [CCE v. Allied Photographics (India) Ltd., (2004) 4 SCC 34], SCC p. 53, para 16].

"16. Having come to the conclusion that the respondent was bound to comply with Section 11-B of the Act and having come to the conclusion that the refund application dated 11-2-1997 was

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time-barred in terms of Section 11-B of the Act, we are not required to go into the merits of the claim for refund by the respondent who has alleged that it has not passed on the burden of duty to its dealers."

14. It may be appropriate to notice that the view earlier expressed by the two-Judge Bench of this Court in National Winder v. CCE [National Winder v. CCE, (2003) 11 SCC 361] was held to be per incuriam in CCE v. Allied Photographics (India) Ltd. [CCE v. Allied Photographics (India) Ltd., (2004) 4 SCC 34].

15. In the instant case, undisputedly the application was filed by the appellant as a buyer of the goods (conveyor belts) from M/s Fenner (India) Ltd. who paid the duty under protest much after a period of limitation (six months) as prescribed under the mandate of law disentitles the claim of refund to the appellant as prayed for in view of the judgment of this Court in CCE v. Allied Photographics (India) Ltd. [CCE v. Allied Photographics (India) Ltd., (2004) 4 SCC 34] case holding that the purchaser of the goods was not entitled to claim refund of duty made under protest by the manufacturer without complying with the mandate of Section 11-B of the 1944 Act."

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16. Insofar as the expression "any person" used in the statute for seeking refund is concerned, the Learned Counsel for the department contends that this expression should be given restrictive meaning and its scope cannot be enlarged.

17. For the above said preposition, the Learned Counsel relies upon ***ITC Limited vs. Commissioner of Central Excise, Kolkata-IV**, reported in **2019 (368) E.L.T 216 (S.C)***, wherein it has been held as below:-

> *"43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression "Any person" is of wider amplitude. The Revenue, as well as the assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of reassessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of*

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reassessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts [Escorts Ltd. v. Union of India, 1994 Supp (3) SCC 86].

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or reassessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated. Reassessment is permitted only under Sections 17(3), (4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will

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virtually amount to an order of assessment or reassessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India [Hero Cycles Ltd. v. Union of India, 2009 SCC OnLine Bom 801 : (2009) 240 ELT 490 (Bom)] though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. [Priya Blue Industries Ltd. v. Commr. of Customs, (2005) 10 SCC 433 : (2004) 172 ELT 145].

45. Reliance was also placed on a decision of the Rajasthan High Court with respect to service tax in Central Office Mewar Palace Organisation v. Union of India [Central Office Mewar Palace Organisation v. Union of India, 2008 SCC OnLine Raj 868:(2008) 12 STR 545]. In view of the aforesaid discussion, we are not inclined to accept the reasoning adopted by the High Court, that too is also not under the provisions of the Customs Act.

46. The decision in Intex Technologies (India) Ltd. v. Union of India [Intex Technologies (India)

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Ltd. v. Union of India, 2016 SCC OnLine Del 6620] has followed Micromax [Micromax Informatics Ltd. v. Union of India, 2016 SCC OnLine Del 6621]. The reasoning employed by the High Courts of Delhi and Madras does not appear to be sound. The scope of the provisions of refund under Section 27 cannot be enlarged. It has to be read with the provisions of Sections 17, 18, 28 and 128.

18. Per contra, the Learned Senior Counsel appearing for the respondent basically harps upon *Article 265 of the Constitution of India* and the judgment of the Hon'ble Supreme Court in ***Mafatlal Industries vs. Union of India*** reported in ***(1997) 5 SCC 536.***

Article 265 of the Constitution of India reads as below:-

"***265. Taxes not to be imposed save by authority of law:***

No tax shall be levied or collected except by authority of law."

In ***Mafatlal Industries vs. Union of India***., the claim of refund been classified under three broad categories, namely;

(i) Unconstitutional levy,

(ii) Illegal Levy, and

(iii) Mistake of law.

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and the Hon'ble Supreme Court has said:-

> *"Rule 11/Section 11B are premised upon the supposition that the provisions of the Act are good and valid. But where any provisions under which duty is levied is found to be unconstitutional, Article 265 steps in. In other words, the person who had paid the tax is entitled to claim refund and such claim cannot be governed by the provisions in Rule ll/Section 11B. The very collection and/or retention of tax without the authority of law entitles the person, from whom it is collected, to claim its refund. A corresponding obligation upon the state to refund it can also be said to flow from it. This can be called the right to refund arising under and by virtue of the constitutional provisions viz., Article 265."*

19. The subsequent judgments of the Hon'ble Supreme Court as well as various High Courts in India, which have followed the principle laid down in ***Mafatlal Industries*** *cited supra* had granted relief to the assessee seeking refund of tax paid due to mistake of law without any reference to the limitation prescribed under Section 11B of Central Excise Act.

20. The supply of floating rigs in the course of oil extraction held to be "Supply of tangible Goods Service" only after 16.05.2008. Since then same is not brought under the taxable net. The Bombay High Court, in the case of

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Indian National Shipowners Association (INSA) vs. Union of India, later confirmed by the Hon'ble Supreme Court has held that the supply of floating rigs is to be classified as "Supply of Tangible Goods Service" and not as "Mining services." The floating rigs are directly involved in the mining activities. M/s.CPCL., with whom the assessee had entered into production sharing contract, certified that floating rigs is directly involved in the mining of crude oil.

21. Taking into consideration the certificate issued by CPCL dated 15.07.2011, the Appellate Authority as well as the Tribunal held in favour of the respondent. On being satisfied about the fact that the usage of floating rigs as tangible goods service. The payment of service tax by M/s.Aban Offshore Ltd., (service Provider) *vide* certificate dated 01.03.2011 confirms the payment of service tax amounting to Rs.13,88,47,930/- is paid to the Department, the certificate by the respondent (service receiver) prove the payment. Therefore, pray for dismissal of the appeal and an order for refund.

> ***(i) Whether the Tribunal is right in holding that assessee, as a service recipient, is eligible for refund of Service Tax paid under Mining Service, when***

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assessment under said service was not at all in dispute by the service provider?

Insofar as the question of limitation is concerned, the judgments cited and relied by the Tribunal as well as the Appellate Authority have dealt the issue whether the limitation prescribed under Section 11B will apply to cases of mistake of law. The misclassification and payment of service tax erroneously can never carry the character of lawful levy of tax to satisfy the mandate of Article 265 of Constitution of India. The amount collected from the respondent as service tax and remitted to the Government by M/s.Aban Offshore Ltd., by passing on the tax liability on the respondent, cannot be withheld by the Government either citing limitation or on technical grounds.

Hence, we conclude that the creation of new entry for "Supply of tangible goods service and the conclusive finding of the Hon'ble Supreme Court in the matter of *Indian National Shipowners Association.,* lead to the irresistible conclusion that the Tribunal was right in holding that the respondent, as service recipients, eligible for refund of service tax paid erroneously under the classification of "Mining Service." Therefore, the first substantial question of law is answered in the affirmative, favour of the respondent.

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(ii) Whether the Tribunal is justified in overlooking that per Sec.83 of the Finance Act, 1994 read with Explanation (B)(e) to Sec.11 B of the Central Excise Act, 1994, the purchaser ought to have filed the claim for refund within 1 year from the date of receipt of service and therefore the assessing officer had rightly rejected the claim for the period prior to 05/05/2008 as barred by limitation?

Section 83 of the Finance Act, 1994, read with Explanation (B)(e) to Section 11B of Central Excise Act, 1994, prescribes one-year limitation from the date of receipt of service to claim refund. Relying upon these provisions, the Original Authority has held that the respondent is not entitled to claim refund covering the period from 05.09.2007 to 05.04.2008, as it is hit by limitation. This contention been overruled by the Appellate Authority and confirmed by the Tribunal in the Second Appeal by holding that the rigor of section 11B of Central Excise Act is not applicable to an application for seeking refund when mistake of law pleaded and found correct. The classification by ignorance which has forced the assessee to pay service tax voluntarily squarely hit by Article 265 of the Constitution. An unconstitutional collection of tax cannot be justified by citing the limitation prescribed. It is profitable to re-collect the observation of this Court in ***M/s.3E Infotech vs. CCE*** *reported in*

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2018 (7) TMI 276 *cited supra* wherein it has held that any amount paid by way of tax 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. In such claims, the authority concerned is duty-bound to refund such amount, as retention of such amount would be hit by Article 265 of Constitution of India. We hasten to add tax paid out of ignorance, if retained by the Department, it will squarely fall under the principle of unjust enrichment.

Similarly, in ***Parijat Construction Vs CCE, Nashik*** *reported in* ***2018 (19) GSTL 8 (Bom),*** the Bombay High Court has held that the limitation prescribed under Section 11B of the Central Excise Act is not applicable for refund claims for service tax paid under mistake of law. The said view of the Madras and Bombay High Courts was affirmed by the Hon'ble Supreme Court in ***Collector of C.E., Chandigarh v. Doaba Co-operative Sugar Mills***. Hence, the second substantial question regarding limitation is answered against the Department.

(iii) Whether the respondent has discharged the burden of proof of "no unjust enrichment" in the present case?

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On facts, the certificate issued by the M/s.Aban Offshore Ltd., (service provider) and the certificate issued by CPCL regarding the usage of floating rigs as tangible goods service been considered by the Appellate Authority as well as the Tribunal. Concurrent finding of fact by both the authorities that the service tax collected by M/s.Aban Offshore Ltd., had been passed on to the respondent-assessee does not warrant interference. Therefore, the refund of the tax to the respondent would not amount to unjust enrichment. Contrarily, if the Department retains the money which was paid by mistake of law and received by the Government without constitutional validity, will not only tantamount to unjust enrichment by the Government but also unconstitutional. Therefore, the third question of law is answered in favour of the assessee.

> ***(iv) Whether the Tribunal is right in simply relying on the certificate issued by CPCL and the invoices issued by respondents to CPCL to conclude that the respondent had demonstrated that it had not passed on the burden of service tax and unjust enrichment is not applicable in the present case?***

The certificate issued by M/s.CPCL not challenged before the Appellate Authority or the Tribunal. The validity of these certificates are

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questions of fact. In such circumstances, the Department cannot raise suspicion over the certificate given by the CPCL regarding the passing of service tax on the assessee. Hence, the fourth substantial question of law is answered in affirmative, against the department.

> ***(v) Whether the Tribunal is right in overlooking the decision of Apex Court in the case of Mafatlal Industries [1997 (89) ELT 247 (SC)], that such refund claim can be made either by way of Civil Suit or by way of Writ Petition only and therefore the lower appellate authorities have no jurisdiction to grand such relief?***

Since we have held that the very payment of tax was due to ignorance and mistake of law and the Department has no legal sanctity to collect service tax on supply of floating rigs. It is needless to relegate the parties to file civil suit or a writ petition when there is factual finding in favour of the assessee and there is no dispute regarding the classification of the floating rigs used in the mining operations, as well as the passing of the tax liability on the respondent. It would be a futile exercise to drive the respondent to file civil suit or writ petition. The Lower Appellate Authority as well as the Tribunal have jurisdiction to decide the grave error in classification and to order refund in

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cases of payment of tax due to mistake of law. Hence, the fifth substantial question of law is held against the Department.

We further reiterate that, the factual matrix involved in ***Mafatlal Industries vs. Union of India,*** *reported in* ***1997 (89) ELT 247 (SC),*** is different from facts of the case in hand. Here, the appeal of the assessee was entertained and allowed by the First Appellate Authority and the order of the First Appellate Authority was affirmed by the Tribunal based on the facts of the instant case. Therefore, the authorities below have rightly exercised jurisdiction to grant relief, since the collection of tax and retention of tax is against the spirit of the Constitution.

22. In the result, the Civil Miscellaneous Appeal filed by the Department stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(**Dr. G.JAYACHANDRAN, J.**) & (**N. MALA, J.**)
10-08-2026

Index :Yes.
Neutral Citation :Yes/No.
Internet :Yes.
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Dr. G.JAYACHANDRAN, J.
&
N. MALA, J.
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To,
The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Chennai.

Pre-Delivery judgment made in
C.M.A.No.3249 of 2019
& C.M.P.No.18640 of 2019

Judgment delivered on
10-08-2026

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