IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75088 of 2022

(Arising out of Order-in-Appeal No.191/ST-I/Kol/2017 dated 18.08.2017 passed by Commissioner (Appeals) of CGST & Central Excise, Kolkata)

M/s Sry Real Estate Private Limited
[2nd Floor, Unitech Commercial Tower II, Arya Samaj Road, Block B, Greenwood City, Sector 45, Gurugram-122003]

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPERANCE :

Shri Rohit Tiwari, Advocate for the Appellant
Shri Desh Dulal Chatterjee, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76092/2026

DATE OF HEARING : 18 AUGUST 2026

DATE OF PRONOUNCEMENT : **20 AUGUST 2026**

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the refund claim has been rejected.

2. The facts of the case are that the appellant had entered into a contract with NTPC Limited in FY 2010-11 for development and operation of the Pakri Barwadih Coal Project in Jharkhand.

2.1 Out of ₹280 crores of the project value, an advance of Rs.56 crores was duly received, out of which Service Tax amounting to ₹5,16,18,632/- was paid by the appellant.

2.2 The Advance was reflected in the Financial Statements for year Ended 31 March 2012 also a "Advance from Customers" of Rs.56 Crores. Schedule 15 of the Project Agreement expressly provides that the mobilisation advance would be adjusted progressively only upon achievement of the agreed contractual milestones.

2.3 Subsequently the contract was terminated on 7th May 2014 prior to commencement and the entire advance was recovered by NTPC through encashment of bank guarantee from HSBC for default and non-performance of service.

2.4 Thereafter, the appellant filed the refund claim on 08.04.2015. The service tax was paid on advance received from the customers, which was returned to NTPC. A deficiency memo was issued on 25.05.2015 to the appellant. The appellant has clarified the said deficiency on 24.06.2015 by their submissions made.

2.5 Thereafter, a show-cause notice was issued on 04.01.2016 for rejection of their refund claim.

2.6 The appellant filed a reply to the show-cause notice, but refund claim was rejected on 02.04.2016.

2.7 The appellant filed an appeal against the said order before the ld.Commissioner (Appeals), who dismissed their appeal.

2.8 Against the said order, the appellant has filed this appeal before this Tribunal.

3. The ld.Counsel for the appellant submits that the refund claim has been rejected on the ground that as the service tax was paid by the appellant on 5.11.2011 and the refund claim was filed on 08.04.2015, which is beyond the time limit prescribed under Section 11B of the

Central Excise Act, 1944, therefore, the refund claim is barred by limitation.

3.1 He further submits that as the appellant has not provided any service, therefore, the refund claim was filed on 08.04.2015 on the grounds that the tax paid on services which are not provided is refundable under Section 6(3) of the Service Tax Rules, 1994, that such payment is in the nature of deposit and not governed by limitation under Section 11B of the Central Excise Act, 1944 and that unjust enrichment is also not applicable as the incidence of tax was borne by the appellant.

3.2 It is further submitted that the deficiency memo issued in May, 2015, alleging that the supporting documents were not provided and non-issuance of credit note despite satisfaction of Rule 6(3) of the Service Tax Rules, 1994, which was duly complied with by submission of invoices, cenvat document and the NTPC termination letter. However, a show-cause notice dated 04.01.2016 proposed rejection of refund on the ground of limitation and contradiction statement in ST-3 Returns and the claim was, therefore, rejected on the ground of determination of point of tax under Rule 6 of Point of Taxation Rules, 2011 and on the ground of limitation and denying the characterization of deposit.

3.3 He further submits that the amount is disclosed as an “Advance from Customers” in the financial statements, invoice issued by the appellant, incorrect disclosure in the ST-3 Returns, arising out of a clerical mistake, cannot by itself create a service tax liability. To support his contention, he relies on the decision of this Tribunal in the case of Park Hospital Vs. Commissioner of Service Tax, Kolkata vide Final Order No.75282/2025 dated 11.02.2025.

3.4 He further submits that Rule 2(e) of Point of Taxation Rules, states that the "Point of Taxation" is the date when service shall be deemed to be have been rendered. He submits that Rule 6 is not the charging provision but is merely a collection of tax provision as per Section 66 of the Finance Act, 1994.

3.5 It is further submitted that at the time of issuance of invoice and receipt of advance amount of Rs.56 Crores from NTPC, Rule 6 of the Point of Taxation Rules, 2011, was in force and governed the determination of the point of taxation in cases of continuous supply of service.

3.6 From the plain reading of Rule 6 of the Point of Taxation Rules, 2011, makes it abundantly clear that the said Rule merely prescribes the point in time, at which service tax becomes payable in respect of an amount received towards the provision of taxable service. The Rule neither creates the levy of service nor enlarges the scope of taxable consideration under Section 66 of the Finance Act, 1994 and Rule 6 of the Point of Taxation Rules, 2011, makes it evident that Rule 6 merely determines the point in time at which service tax becomes payable and does not itself create the charge of tax. The charging provision under the Finance Act, 1994,is contained exclusively in Section 66, which authorizes the levy of service tax only on the value of taxable services.

3.7 It is further submitted that the amount of Rs.56 Crores received from NTPC under the Project Agreement was merely a contractual advance secured by an unconditional Bank Guarantee and was consistently reflected as a Current Liability in the audited books of account of the Appellant. The said amount was never recognised as revenue nor treated as consideration for any taxable service. The Project Agreement was terminated before any services could be rendered and, consequently, no part of the advance was ever adjusted against any running account bill or contractual performance. Instead, the entire amount stood recovered by NTPC by invocation of the Bank Guarantee. To support of his contention, he relies on the decision of this Tribunal in the case of Shankaranaryana Constructions Pvt. Ltd. Vs. Commissioner of Central Excise, Bengaluru vide Final Order No.21103/2023 dated 13.10.2023.

3.8 He further submits that Section 11B of the Central Excise Act, 1944 cannot be mechanically applied to Service Tax paid on contractual advances.

3.9 It is further submitted that the amount received from NTPC was a advance secured by an unconditional Bank Guarantee and was subsequently restored in its entirety upon termination of the contract. Since the taxable service was never rendered and the underlying consideration itself stood extinguished, the payment originally made to the Government ceased to possess the character of Service Tax. In that circumstances, the limitation contained in Section 11B, a provision designed for refund of excise duty on completed taxable events, cannot be invoked to defeat the appellant's claim. Therefore, he submits that the amount paid against subsequently refunded mobilization advance constitutes a deposit. Therefore, the provisions of Rule 11B are not applicable to the peculiar facts of this present case. In support of his contention, he relies on the decision of this Tribunal in the case of Commissioner of Central Excise & Service Tax, Bhavnagar Vs. Madhvi Procon Pvt. Ltd. reported in 2015 (38) STR 74 (Tri.-Ahmd.). He also relies on the decision of this Tribunal in the case of Lancor Holdings Vs. Commissioner of GST & Central Excise reported in 2020 (43) GSTL 399 (Tri.Chennai).

3.10 He further submits that without prejudice, the refund claim is within the period of limitation as the cause of action arose only upon refund of the contractual advance. To support of his contention, he relies on the decision of this Tribunal in the case of Commissioner of Central Excise, Kolhapur Vs. Pratibha Constructions Engineers & Contractors (India) Pvt. Ltd. reported in 2014 (32) STR 18 (Tri.-Mumbai).

3.11 He also relies on the Circular No.188/20/2022-GST dated 27.12.2022 wherein it is held that the cancellation of the underlying contract constitutes the relevant event giving rise to the refund claim.

3.12 He, therefore, prays that the impugned order is to be set aside and the refund claim be allowed.

4. The ld.A.R. for the Revenue submits that as the appellant has paid the service tax on advance received by them as service tax in the year, 2011, the refund claim has been filed on 08.05.2014, which is beyond the period prescribed under Section 11B of the Central Excise Act, 1944, therefore, they are not entitled to take the refund claim thereof. Accordingly, the impugned order is to be upheld.

5. Heard both the parties and considered the submissions.

6. We find that in this case the facts are not in dispute that the appellant has paid the service tax on advance received by them under contractual obligation on 5.11.2011 and the said contract was terminated on 07.05.2014 and advance given the appellant was recovered by way of encashment of the Bank Guarantee given by the appellant. Therefore, whole of the service tax paid by the appellant is borne by themselves and they have filed refund claim on 08.04.2015, which is within one year from the date of encashment of bank guarantee or refund of the advance received by them. In fact, the cause of action has arisen on refund of amount only on 07.05.2014 when the contract was terminated. Therefore, Section 11B of the Central Excise Act, 1944, is not applicable to the present facts and circumstances of this case as held by this Tribunal in the case of Pratibha Constructions Engineers & Contractors (India) Pvt. Ltd. (supra), wherein this Tribunal has held as under :

> "***6.*** *In the impugned case the facts are not in dispute that the respondent has not provided any service to their clients against which they have made an advance payment of service tax to the department. So in that case, it is not disputed that the respondent is not entitled to get the refund of the amount paid by them as service tax. The refund claim is rejected only on the ground that the same has been filed beyond the 1 year of the date of payment of service tax to the department and the learned DR is relying on the decision of Brite Neon Signs (supra) saying that the service tax deposited by the respondent as service tax through TR-6 challan, hence the Section 11B is applicable. In that event, the claim is barred by limitation. The case law cited by the learned DR is somehow on different facts. In*

> *fact, in that case the service had been provided by displaying hoarding/neo signs by the assessee. The only dispute was of that as per the direction of Hon'ble Apex Court the hoarding/neo signs were to be removed and it is also not coming from the facts that whether the assessee has returned the amount of service tax to their client or not? In fact, in the case of KVR (supra) the Hon'ble High Court of Karnataka has held that as the petitioner is not held liable to pay service tax in respect of civil structures constructed and put to use, the amount paid by the assessee to the Revenue be treated as deposit at the hands of the Government and the provisions of Section 11B have no bearing, the limitation of one year are not applicable. Following the decision of the Hon'ble Karnataka High Court in the case of KVR Constructions (supra), in this case, it is also not disputed that the amount which have been deposited by the respondent as service tax with the department, no service has been provided for the same. Hence, the same may be treated as deposited for that the respondent is entitled for the refund claim without invoking the provisions of Section 11B of the Central Excise Act, 1944. Accordingly, the respondents is entitled for the refund claim hence, the impugned order is upheld. Appeal filed by the Revenue is rejected."*

7. Further, this Tribunal, in the case of Concord India Pvt.Ltd. Vs. Commissioner of Service Tax, Bangalore vide Final Order No.20046/2018 dated 11.01.2018, has observed as under :

> *"5. After considering the submissions of both the parties and perusal of material on record, I find that the findings of the Commissioner (Appeals) that the claim is barred by limitation is not sustainable in law as the lower authority has already held that the refund claim is not barred by limitation by relying upon the decision of the Karnataka High court in the case of KVR*

Construction cited supra. Further I find that the Revenue has not challenged the finding of the original authority that the refund is not barred by limitation. Further I also find that the appellant's case is squarely covered by Notification No.25/2012 which exempts service tax levy on advocate services received by business entities with turnover of less than Rs. 10 lakhs. Once an activity is exempted under Section 66B in terms of Exemption Notification 25/2012, the question of invoking Notification No. 30/2012 issued under Section 68(2) dealing with reverse charge mechanism does not arise at all. This issue has been settled by the Bombay High Court in the case of P.C. Joshi Vs. Union of India 2015 (37) S.T.R. 6 (Bom.) wherein in para 61 and 62, the High Court has categorically observed that Notification No. 30/2012 does not override Notification No. 25/2012 and that the exemption from levy of service tax is very much available to small entities with turnover of less than Rs. 10 lakhs in respect of the advocate services. Relevant paras 61 and 62 are reproduced below:

> *61. Now it is time to refer to the further amendments made to the Finance Act firstly by Mega Notification No. 25/2012, dated 20th June, 2012. That mega Notification proceeds to exempt the taxable services mentioned therein from the whole of the Service Tax leviable thereon under Section 66B of the said Act. The said Notification supersedes the earlier notification, dated 17th March, 2012. Now, services provided by an Arbitral Tribunal to any person other than a business entity or a business entity with a turn over up to Rs. 10 lakhs in the preceding financial year are exempted from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act. Similarly, services provided by an individual as an advocate or a partnership firm of advocates by way of legal services to an advocate or partnership firm of advocates, to any person other than a business entity or a business entity with a turnover up to Rs. 10 lakhs in the preceding financial year and services*

provided by a person represented to an Arbitral Tribunal were exempted. This exemption takes care of apprehension of Mr. Thacker that services provided by individual advocates or a firm of advocates to small time traders or businessmen would be taxable. Now, the services provided by individuals as an advocate or a partnership firm of advocates by way of legal services to any person other than a business entity or a business entity with a turnover up to Rs. 10 lakhs in the preceding financial year are exempt from the whole of the Service Tax leviable thereon under Section 66B of the Finance Act. Therefore, the small businessman, petty traders and persons carrying on business in individual capacity would be able to afford the services of individual advocates or a partnership firm of advocates. In such circumstances and when the term business entity has been understood to include a individual he will not be deprived of quality legal services if his turnover in the preceding financial year is within the limits specified above.

62. The next Notification is No. 30/2012, dated 20th June, 2012 and that while superseding the earlier Notifications of 31st December, 2004 and 17th March, 2012 proceeds to notify the taxable service and the extent of Service Tax payable thereon by the person liable to pay Service Tax for the purpose of Section 68(2). Now, the taxable services provided or agreed to be provided by an Arbitral Tribunal or an individual advocate or a firm of advocates by way of support services to any business entity located in the taxable territory are brought within the net and stand covered by the Finance Act. However, this Notification does not touch, far from superseding the Mega Notification No. 25/2012 of the same date, namely, 20th June, 2012. All that it states is that the taxable services provided or agreed to be provided by an Arbitral Tribunal or an individual advocate or a firm of advocates by way of support services *to any business entity located in the taxable territory are liable to Service Tax. However, if the services are legal services, then, the recipient of the service or service receiver has to bear the brunt and will pay the tax at 100%. This Notification merely recognizes the fact that rendering of such services, namely, legal and support to business entities is the trend of the day. Even an Arbitral Tribunal is not placed in the same position as it was and in the initial stages when Arbitration Act, 1940 was in force. The position and role of a arbitrator was very succinctly discussed in a earlier judgment of the Hon ble Supreme Court in Food Corporation of India v. Joginderpal Mohinderpal and Anr. reported in AIR 1989 SC 1263. Hon ble Mr. Justice Sabyasachi Mukherji as my Lord the Chief Justice of India, then was and known for his erudition and learning in arbitration and commercial law, observed as under:*

6.In India, there is a long history of arbitration. Arbitration is a mode of settlement of disputes evolved by the society for adjudication and settlement of the disputes and differences between the parties apart from the courts of law. Arbitration has a tradition, it has a purpose. Arbitration, that is a reference of any particular dispute by consent of the parties to one or more persons chosen by the parties with or without an umpire and an award enforceable by the sovereign power were generally unknown to ancient India. Hindus recognised decisions of Panchayats or bodies consisting of wealthy, influential and elderly men of the community and entrusted them with the power of management of their religious and social functions. The sanction against disobedience to their decision was excommunication, or ostracism and exclusion from the religions and social functions of the community. An agreement to abide by the decision of a Panchayat and its decision with regard to the line of boundary was held not to be conclusive, since a reference to arbitration and award *properly so-called did not exist. See the observations in Mukkuduns of Kimkunwady v. Inamdar Brahmins of Soorpal, (1841-46) 3 Moo Ind App 383. See also Bachawats Law of Arbitration at page 1.*

7. When power came to the East India Company, they framed Regulations in exercise of the power

vested in them by the British Government. Some of these Regulations were fouching arbitration. Bachawat gives arbitration as a mode for settlement of disputes between the parties, has a tradition in India. It has a social purpose to fulfil today. It has a great urgency today when there has been an explosion of litigations in the Co the of law established by the sovereign power. New rights created, or awareness of these rights, the erosion of faith in the intrinsic sense of fairness of men, intolerant and uncompromising attitudes are all the factors which block our courts. The courts are full of litigations, which are pending for long time. Therefore, it should be the endeavour of those who are interested in the administration of justice to help settlement by arbitration, if possible. It has also a social efficacy being the decision by the consent of the parties. It has greater scope of acceptance today when there is a certain erosion of faith in view of the failure to appreciating the functions of the courts of law. It has also the advantage of not quickness of decision but of simplicity of procedure. But in proceedings of arbitration these must be adherence to justice, equity, law and fair play in actions. However, the proceedings of arbitration must adhere to the principles of natural justice and must be in consonance with such practice and procedure which will lead to a proper resolution of the dispute and create confidence of the people for whose benefit these processes are resorted to. It is, therefore, the function of courts of law to oversee that the arbitrators act within the norms of justice. Once they do so and the award is clear, just and fair, the courts should, as *far as possible, give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator.*

6. Further I find that the Commissioner (Appeals) has wrongly held that the appellant has not filed the original invoices and original challans whereas in the Order-in-Original the original authority has observed that the copies of invoices and the payment challans have been indeed submitted. Further 1 also find that the Education Guide dated 20.06.2012 issued by CBEC has also stated that exemption is available to business entities with less than turnover of Rs. 10 lakhs in respect of service tax payable under reverse charge mechanism. In view of my discussion above, I find that the impugned order is not sustainable in law and therefore, I set aside the impugned order by allowing the appeal of the appellant. For the purpose of sanctioning the refund, the original authority will verify the documents before sanctioning the refund claim and thereafter sanction the refund claim in accordance with law. Appeal is allowed."

8. Further, in the case of Commissioner of Central Excise (Appeals), Bangalore Vs., KVR Construction reported in 2012 (26) STR 195 (Kar), the Hon'ble Karnataka High Court, has examined the provisions of Section 11B of the Act and observed as under :

"***17.*** *If this Court ultimately concludes that Section 11B of the Act is applicable to the facts of the present case, then, the argument of the learned Counsel for the appellant that Writ Petition was not maintainable would merit consideration. Therefore, at this stage, we will not consider the matter regarding maintainability of the Writ Petition, as first we have to look to the provisions of 11B of the Act and then decide whether Section 11B is applicable to the facts of the case as finding thereon would* *have bearing for considering the issue of maintainability of Writ Petition. Section 11B of the Central Excise Act reads as under :*

"11B. Claims for refund of duty : *(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the document referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person."*

18. *From the reading of the above Section, it refers to claim for refund of duty of excise only, it does not refer to any other amounts collected without authority of law. In the case on hand, admittedly, the amount sought for as refund was the amount paid under mistaken notion which even according to the department was not liable to be paid.*

19. *According to the appellant, the very fact that said amounts are paid as service tax under Finance Act, 1994 and also filing of an application in Form-R of the Central Excise Act would indicate that the applicant was intending to claim refund of the duty with reference to Section 11B, therefore, now it is not open to him to go back and say that it was not refund of duty. No doubt in the present case, Form-R was used by the applicant to claim refund. It is the very case of the petitioner that they were exempted from payment of such service tax by virtue of circular dated 17-9-2004 and this is not denied by the Department and it is not even denying the nature of construction/services rendered by the petitioner was exempted from to payment of Service Tax. What one has to see is whether the amount paid by petitioner under mistaken notion was payable by the petitioner. Though under*

Finance Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was exemption to pay such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority lacked authority to levy and collect such service tax. Incase, the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. If we look at the converse, we find mere payment of amount, would not authorize the department to regularise such payment. When once the department had no authority to demand service tax from the respondent because of its circular dated 17-9-2004, the payment made by the respondent company would not partake the character of "service tax" liable to be paid by them. Therefore, mere payment made by the respondent will neither validate the nature of payment nor the nature of transaction. In other words, mere payment of amount would not make it a "service tax" payable by them. When once there is lack of authority to demand "service tax" from the respondent company, the department lacks authority to levy and collect such amount. Therefore, it would go beyond their purview to collect such amount. When once there is lack of authority to collect such service tax by the appellant, it would not give them the authority to retain the amount paid by the petitioner, which was initially not payable by them. Therefore, mere nomenclature will not be an embargo on the right of the petitioner to demand refund of payment made by them under mistaken notion.

20. *In the case of Hind Agro Industries Ltd. v. Commissioner of Customs reported in 2008 (221) E.L.T. 336 (Del.), it was the case where cess amount was paid under protest by the appellants. In that case after referring to Mafatlal Industries case (supra), the lordships of Delhi High Court have held that in Mafatlal Industries* *case, Hon'ble Supreme Court was dealing with the case of refund of duty payable within the meaning of either the Central Excises and Salt Act, 1944 or the Customs Act, 1962 as the case may be, wherein they have held that all claims for refund ought to be filed only in accordance with the Customs Act. Therefore, it did not include the payment made under some other enactment, which for some reason had erroneously been made to the Customs authorities. Even otherwise by referring to paragraph 137 of Mafatlal Industries case, one has to see whether the amount claimed is unconstitutional and outside the provisions of Section 11B of the Act.*

21. *In the case of Nataraj and Venkat Associates (supra), this was pertaining to service tax wherein petitioner company was dealing in architectural services and paid service tax for the construction of the building carried on at Sri Lanka and contended it would not have attracted levy of service tax. In other words, there was an application for refund of said tax and the question that arose therein was what is the relevant date for the commencement of the period of limitation for the purpose of Section 11B and was held that it would be the date of payment of duty. It was held in the paid case that amounts paid cannot be taken to be duty of excise, therefore bar of limitation under Section 11B cannot be applied because such limitation would come in the way of any person claiming refund of any duty of excise and interest.*

22. *In the case of Commissioner of Central Excise, Bangalore v. Motorola India Pvt. Ltd. (supra) the Division Bench of this Court considered similar issue. It was a case where excess amount was paid over duty under Central Excise Act on the direction of the Department. There was an application for refund of amount and the same came to be rejected by the Assistant Commissioner on the ground of lapse of time. It was confirmed by both the Appellate Authority and also the Tribunal. Aggrieved by the order* *of the Tribunal, revenue came up before the High Court. Their lordships of the Division Bench held that order of the Tribunal to allow the claim on the basis that amount paid by mistake cannot be termed as duty in the said case was justified and therefore applying the law laid down in the decision of Apex Court in the case of India Cements Ltd. v. Collector of Central Excise - 1989 (41) E.L.T. 358, dismissed the appeal.*

23. *Now we are faced with a similar situation where the claim of the respondent/assessee is on the ground that they have paid the amount by mistake and therefore they are entitled for the refund of the said amount. If we consider this payment as service tax and duty payable, automatically, Section 11B would be applicable. When once there was no compulsion or duty cast to pay this service tax, the amount of Rs. 1,23,96,948/- paid by petitioner under mistaken notion, would not be a duty or "service tax" payable in law. Therefore, once it is not payable in law there was no authority for the department to retain such amount. By any stretch of imagination, it will not amount to duty of excise to attract Section 11B. Therefore, it is outside the purview of Section 11B of the Act.*

24. *The learned Counsel for the appellant has also contended that when the order of refund was rejected, the respondent could have approached this Court instead of filing the appeal choosing a wrong forum, could not be a deficit coming in the way to claim refund.*

25. *However, the petitioner has not approached the Tribunal after the order passed by 1st appellate authority and they have approached this Court. Therefore, even the provisions of Section 35B(1)(b) would not be applicable. From the facts of the case as discussed herein above, it emerges that petitioner has approached this Court contending that Section 11B is not applicable as there was no duty cast on them to pay "service tax" and they have paid such amount under mistaken notion. Viewed*

> *from nay angle, we are of the opinion that the learned Single Judge was justified in setting aside that portion of the order which rejected the claim of refund and accordingly same is confirmed.*
>
> ***26.*** *Accordingly, the appeals are dismissed. The concerned appellant authority is directed to refund the amounts as directed by the learned single judge within an outer limit of six weeks from the date of receipt of copy of this order.*

The said decision has been affirmed by the Hon'ble Apex Court.

9. Further, in the case of Shravan Banarasilal Jejani Vs Commissioner of Central Excise, Nagpur reported in 2014-VIL-388-CESTAT-Mum-ST, this Tribunal found that as the appellant was not required to pay service tax, but the appellant paid the service tax erroneously and the same is not disputed by the Department, in that circumstances, the time limit prescribed under Section 11B of the Central Excise Act, 1944, is not applicable and this Tribunal has observed as under :

> *"6. It is an admitted fact that the appellants were not required to pay service tax but the appellants have paid the service tax erroneously and the same has not been disputed by the department. In that circumstances, as per the Circular 108/2/2009-S.T., dated 29-1-2009, the department is not legally allowed to calculate the service tax and if they do so, the same is unconstitutional. Merely a payment made by the appellant erroneously, does not authorize the department to retain the same. Therefore, the provisions of Section 11B of the Central Excise Act, 1944 are not applicable as held by the Hon'ble High Court of Karnataka in the case of KVR Construction (supra)."*

10. The Hon'ble Bombay High Court in the case of M/s Parijat Construction Vs. Commissioner of Central Excise reported in 2018 (359) ELT 113 (Bom.), has further observed as under :

> ***"5.****We are of the view that the issue as to whether limitation prescribed under Section 11B of the said Act applies to a refund claimed in respect of service tax paid under a mistake of law is no longer res integra. The two decisions of the Division Bench of this Court in Hindustan Cocoa (supra) and Commissioner of Central Excise, Nagpur v. M/s. SGR Infratech Ltd. (supra) are squarely applicable to the facts of the present case.*
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> ***6.****Both decisions have held the limitation prescribed under Section 11B of the said Act to be not applicable to refund claims for service tax paid under a mistake of law. The decision of the Supreme Court in the case of Collector of C.E., Chandigarh v. Doaba Co-Operative Sugar Mills (supra) relied upon by the Appellate Tribunal has in applying Section 11B, limitation made an exception in case of refund claims where the payment of duty was under a mistake of law. We are of the view that the impugned order is erroneous in that it applies the limitation prescribed under Section 11B of the Act to the present case were admittedly appellant had paid a Service Tax on Commercial or Industrial Construction Service even though such service is not leviable to service tax. We are of the view that the decisions relied upon by the Appellate Tribunal do not support the case of the respondent in rejecting the refund claim on the ground that it was barred by limitation. We are, therefore, of the view that the impugned order is unsustainable.*
>
> ***7.****We accordingly allow the present appeals and quash and set aside the impugned order, insofar as it is against the appellant in both appeals. We fully allow refund of Rs. 8,99,962/- preferred by the appellant. We direct that the respondent shall refund the*

amount of Rs.8,99,962/- to the appellant within a period of three months. There shall be no order as to costs."

11. Admittedly, in this case, the appellant is not liable to pay service tax as they have not provided any service to NTPC. Therefore, as the service tax paid on advance received from NTPC, which was refunded to them by way of encashment of bank guarantee , the appellant was not liable to pay service tax. As the service tax is not payable by the appellant, therefore, the provisions of Section 11B of the Act are not applicable to the facts and circumstances of the case. As the appellant has borne the incidence of service tax paid by them, therefore, the same is to be refunded to them.

12. In view of this, we hold that the provisions of Section 11B of the Act, are not applicable to the facts and circumstances of the case, therefore, the refund claim cannot be held time barred and the same cannot be rejected.

13. Accordingly, we hold that the appellant is entitled to get refund claim with consequential relief. We direct the concerned authority to sanction the refund claim with consequential relief within 30 days of the receipt of this order.

14. In view of this, the appeal is allowed.

(Pronounced in the open court on **20.08.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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