GAHC010017902026

2026:GAU-AS:12410-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : C.Ex.App./1/2026

COMMISSIONER OF CGST AND CENTRAL EXCISE, DIBRUGARH
MILAN NAGAR, LANE F SETHI TRUST BUILDING, 5TH FLOOR, G.S. ROAD, BHANGAGARH GUWAHATI- 781005.

VERSUS

M/S OIL INDIA LIMITED
P.O.- DULIAJAN, DIST- DIBRUGARH, ASSAM - 786602

Advocate for the Petitioner : MR. S C KEYAL (SR. SC, CBIC CGST), KAUSHIK JAIN

Advocate for the Respondent : MR A SARMA (SC, OIL INDIA LIMITED),

Linked Case : C.Ex.App./4/2026

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX
DIBRUGARH
MILAN NAGAR
LANE F
SETHI TRUST BUILDING
5TH FLOOR
G.S. ROAD
BHANGAGARH
GUWAHATI-781005

VERSUS

M/S OIL AND NATURAL GAS COMMISSION LIMITED
SALES ACCOUNTS SECTION
FINANCE DEPARTMENT
ONGC COLONY
DIST- SIVASAGAR

ASSAM- 785640

Advocate for : MR. S C KEYAL (SR. SC
CBIC CGST)
Advocate for : A K GHOSE appearing for M/S OIL AND NATURAL GAS COMMISSION LIMITED

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 27.08.2026
(M. Zothankhuma, J)

1. Heard Mr. S. C. Keyal, learned Senior Counsel for the appellant and Mr. Lakshmi Narasimha, learned counsel for the respondents in the both the appeals.

2. The two appeals are being disposed of by this common order, in view of the fact that the issue to be decided in both the cases is the same.

3. The basic issue is whether Section 11B of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') bars the refund of Education Cess (EC) and Secondary and Higher Education Cess (SHEC), which had been mistakenly paid by the respondents to the appellant.

This Court admitted the appeal on the following two substantial questions of law, which are as follows:-

> "***(i)*** *Whether the provisions of Section 11B of the Central Excise Act, 1944, which prescribes a statutory time limit for claiming refund, are applicable in cases where tax or cess was paid under a mistake of law and whether refund claims in such circumstances are time barred even*

when the payment was made erroneously or without legal authority?

(ii) *Whether the Appellate Tribunal erred in law in ignoring the statutory presumption of unjust enrichment embedded in Section 11B of the Central Excise Act, 1944, and in granting refund on the basis of a mere CA certificate but without recording a categorical finding supported by substantive evidence, whereas the respondent has failed to produce tangible and corroborative evidence that the incidence of EC and SHEC has not been passed on to any other person?"*

4. The brief facts of the case is that the respondents are engaged in the exploration and production of petroleum crude, falling under CTH 2709 of the Central Excise Tariff Act, 1985. The crude oil produced by the respondents is chargeable to nil rate of excise duty. However, the respondents have been paying Natural Calamity Contingent Duty (NCCD), in terms of Section 136 of the Act, read with the 7th Schedule of the Finance Act, 2001. Section 91 read with Section 93 of the Finance Act, 2004 and Section 136 read with Section 138 of the Finance Act, 2007, provides for levy of Education Cess (EC), and Secondary & Higher Education Cess (SHEC) on all excisable goods, specified in the 1st Schedule to the Central Excise Tariff Act, 1985. The respondents were also required to pay Oil Industry Development (OID) Cess, which was levied under Section 15(1) of the Oil Industry (Development) Act, 1974, on the crude oil produced by them. The respondents were however not required to pay EC and SHEC on the OID cess, if the same had been paid to the Ministry of Oil and Natural Gas, Government of India. However, due to a mistaken notion that the same was required to be paid, the respondents had paid EC and SHEC to the appellant.

5. On the respondents coming to learn that they had mistakenly paid EC and

SHEC to the appellant, they prayed for a refund under Section 11B of the Act. The same being denied by the appellant, the respondents approached the Adjudicating Authority, which is the Assistant Commissioner of Central Excise. The claim for refund being rejected by the Adjudicatory Authority, an appeal was filed before the Appellate Authority, that is the Commissioner (Appeals), Custom, Central Excise and Service Tax (NER), Guwahati, vide Appeal No. 42/DIB/CE(A)/GHY/15.

6. The Commissioner (Appeals), Guwahati thereafter disposed of Appeal No. 42/DIB/CE(A)/GHY/15, vide order dated 31.03.2015, by holding that the respondents were liable to be given refund of EC and SHEC for the last 1 year, which was paid by mistake. However, the claim for refund was to be limited to the application for refund being made before expiry of one year prior to the relevant date, in terms of Section 11B of the Act. At the same time, the Commissioner (Appeals) also made a finding with regard to whether the respondents had passed on the liability of the payment of EC and SHEC to the consumers, by holding that the burden of EC and SHEC on the OID Cess had not been passed on to the consumers by the respondents.

7. The respondents, being aggrieved with the decision of the Commissioner (Appeals), only to the extent that it had not provided for refund of the EC and SHEC for applications made beyond the one year period of filing of the petition, made a challenge to the same, by way of Excise Appeal No.75720 of 2015, before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (hereinafter referred to as CESTAT). Excise Appeal No. 75720 of 2015 was disposed of, vide Final Order No. 75892/2025 on 16.04.2025, by holding that

the EC and SHEC, paid by the respondents under a mistake of law, the time limit prescribed in terms of Section 11B of the Act was not applicable. As such, the claim for refund made by the respondents beyond one year from the relevant date could not be dismissed as time barred.

8. The reasons given by the learned CESTAT for allowing the appeal was on the basis of various decisions of various High Courts, such as, the Karnataka High Court, Delhi High Court and Telangana High Court, wherein the common thread that ran through the decisions of the various Courts was that if a person was not liable to pay tax, the department could not retain the amount mistakenly paid and that the bar of limitation under Section 11B of the Act could not be affected, while making refund of the amount paid. In the case of ***Oil and Natural Gas Corporation Ltd. Vs. Union of India*** reported in ***2017 (354) ELT 577 (Guj),*** the Hon'ble Gujarat High Court held that since Oil Cess is not a duty of excise, the amount paid by the petitioner by way of Education Cess and Secondary and Higher Secondary Education Cess, cannot in any manner be said to be a duty of excise inasmuch as what was paid by the petitioner was not a duty of excise calculated on the aggregate of all the duties of excise as envisaged under the provisions of Section 93 of the Finance Act, 2004 and Section 138 of the Finance Act, 2007. Thus, the amount paid by the petitioner would not take the character of Education Cess and Secondary and Higher Secondary Education Cess but is simply an amount paid under a mistake of law. The provisions of Section 11B of the Central Excise Act, 1944 would, therefore, not be applicable to an application seeking refund thereof. The petitioner was therefore, wholly justified in making the application for refund under a mistake of law and not under Section 11B of the Central Excise Act, 1944.

Since the provisions of Section 11B of the Act are not applicable to the claim of refund made by the petitioner, the limitation prescribed under the said provision would also not be applicable and the general provisions under the Limitation Act, 1963 would be applicable. Section 17 of the Limitation Act inter alia provides that when a suit or application is for relief from the consequences of a mistake, the period of limitation would not begin to run until the plaintiff or applicant has discovered the mistake, or could, with reasonable diligence, have discovered it. Since the period of limitation begins to run only from the time when the applicant comes to know of the mistake, the application made by the petitioner was well within the prescribed period of limitation. Moreover, since the very retention of the Education Cess and Secondary and Higher Secondary Education Cess by the respondents is without authority of law, in the light of the decision of this Court in Swastik Sanitarywares Ltd. v. Union of India (supra) [2013 (296) E.L.T. 321 (Guj.)], the question of applying the limitation prescribed under Section 11B of the C.E. Act would not arise.

9. It is an admitted fact in both the cases that the payment of EC and SHEC has been made by the respondents to the appellant due to a mistake.

10. In the case of ***Union of India vs. S.R. Dhingra***, reported in ***(2008) 2 SCC 229***, the Supreme Court has held that a mistake does not confer any right on any party and can be corrected. In the case of ***Basawaraj and Anr. vs. the Spl. Land Acquisition Officer,*** reported in ***(2013) 14 SCC 81***, the Supreme Court has held that a wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision.

11. The extract of Section 11B (1) & (2) of the Act provides as follows:-

"***Section 11B- Claim for refund of duty and interest, if any, paid on such duty*** *. -*

(1) Any person claiming refund of any [1] [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [2] [duty and interest, if any, paid on 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 documents referred to in section 12A) as the applicant may furnish to establish that the amount of [1] [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [2] [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

Provided *that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :*

Provided *further that the limitation of one year shall not apply where any [2] [duty and interest, if any, paid on such duty] has been paid under protest.*

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the [1] [duty of excise and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided *that the amount of [1] [duty of excise and interest, if any, paid on such duty] as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -*

12. A reading of the above provision shows that a person claiming refund of any duty of excise and interest, which has been paid, may make an application for refund before the expiry of one year from the relevant date and if the said

duty has not been passed on by the said person to any other person.

13. In relation to C. Ex. App. 4/2026, the decision of the Commissioner (Appeals), which is to the effect that the EC and the SHEC has not been passed on to the consumer, has attained finality. In C.Ex. App. 1/2026, the issue of unjust enrichment was not an issue raised by the appellant before any forum. The only issue remaining to be decided, is whether Section 11B of the Act bars the refund of the EC and SHEC mistakenly paid by the respondents to the appellant, for claims made after expiry of one year from the relevant date. On a simple understanding of the issue and by following the decisions of the Hon'ble Supreme Court, we are of the view that a mistake does not confer any right on any person, especially when the same can be corrected.

14. In the case of ***Commissioner of C.Ex.(Appeals), Bangalore vs. K.V.R. Construction***, reported in ***2012(26) STR 195 (Kar)***, the Division Bench of the Karnataka High Court had, on considering a similar matter, held that a reading of Section 11B of the Act only refers to claim for refund of duty of excise and it does not refer to any other amounts, collected without authority of law. As such, the amount sought for, as refund, which had been paid under a mistaken notion, would have to be paid back and Section 11B of the Act could not be a bar, for refunding the said amount. Thus, once duty was paid, which was not payable in law, there was no authority for the Department concerned, to retain such amount, as the said paid duty would not attract Section 11B of the Act and was outside the purview of the Act. This decision of the Karnataka High Court was put to challenge before the Hon'ble Supreme Court, vide Special Leave to Appeal (Civil) No. cc 10732 - 10733 of 2011. The same was dismissed

by the Hon'ble Supreme Court on 11.07.2000. Similar decisions on same/similar issue have been made by other High Courts, such as ***Oil and Natural Corporation Limited vs. Union of India***, 2017 (354) ELT 577 (Guj), ***Hind Agro Industries Limited vs. Commissioner of Customs***, 2008 (221) ELT 336 (Del) and ***Commissioner of Service Tax, Kolkata vs. Electrosteel Castings Limited***, 2025 (393) E.L.T. 36 (Cal).

15. As has already been shown in the earlier paragraph, the Gujarat High Court in the case of ***Oil and Natural Gas Corporation Limited (Supra),*** had already held that since EC and SHEC were not a duty of excise, the same had to be refunded and section 11B of the Act was not applicable. In the case of ***Hind Agro Industries Limited Vs. Commissioner of Customs*** reported in ***2008 (221) ELT 336 (Del),*** the Delhi High Court was seized of a matter wherein, the cess payable on meat products, had been withdrawn on 17/01/2001, which the Industrial Unit came to learn only on February, 2002. Thereafter, the Industrial Unit made a claim for refund on 17/05/2002, under section 27 of the Customs Act, 1962. It may be stated here that the payment of cess had been made in the meantime under protest, by the Industrial Unit. Section 27 of the Customs Act, 1962, provided for refund of any duty in the case of any import before the expiry of one year, and in any other case, before the expiry of six months. The refund being denied in terms of section 27 of the Customs Act, 1962, the issue landed up before the Delhi High Court, wherein the Delhi High Court held that there can be no manner of doubt that the Custom Authorities were bound to refund the cess erroneously paid by the Industrial Unit for the period from the withdrawal of the cess, which was made under a mistake of law. The Delhi High Court had based its decision pursuant to the judgment passed by the Supreme Court in the case of ***Mafatlal Industries Limited vs.***

Union of India reported in ***1997 (89) ELT 247 (SC)*** and the judgment of the Supreme Court in ***Salonah Tea Company Ltd. Vs. Superintendent of Taxes*** reported in ***1988 (33) ELT 249 (SC)***. Sarah 13 of the judgment of the Delhi High Court in ***Hind Agro Industries Limited (Supra)*** is reproduced herein below as follows.

> "*13. It is clear that in Mafatlal Industries the Hon'ble Supreme Court had only talked of refund of duty payable within the meaning of either the Central Excises and Salt Act, 1944 (Excise Act) or the Customs Act, 1962, as the case may be. In other words when the Hon'ble Supreme Court said that all claims for refund ought to be filed only in accordance with the Customs Act or Excise Act. It obviously did not include payment made under some enactment, which for some reason, had erroneously been made to the Customs authorities. Nowhere did Mafatlal Industries talk of a situation where the refund of a cess paid under the Cess Act, 1985 albeit erroneously, was required to be made under the Excise Act or the Customs Act and under no other enactment. Consequently, the observation in para 4 of the judgment of the Hon'ble Supreme Court in Anam Electrical Manufacturing Co. has also to be understood in the same manner. Para 4 of the said judgment it has been explained that the rules pertaining to refund would not apply where refund is sought of a duty levied and recovered under an unconstitutional provision. It was explained that the period of limitation in such cases would be in terms of the law laid down in Mafatlal Industries. It is obvious that when the Hon'ble Supreme Court talked of 'duty levied and recovered under an unconstitutional provision the reference was not to a duty of customs or excise. Therefore, to rely upon either Mafatlal Industries or Anam Electrical Manufacturing Co. to deny the claim of the Appellants in this case is entirely misconceived.*"

16. On considering all the above judgments, we are in respectful agreement with the decisions taken therein and the finding that the limitation period provided in Section 11B of the Act for refund is not applicable to the case in hand. As such, Section 11B of the Act cannot be a bar to refund the EC and SHEC that has been paid mistakenly by the respondents to the appellant.

Further, the mentioning of 11B of the Act by the respondents, on claims for refund, does not bar the making of the refund by the appellant to the respondents, as in fact, section 11B is not attracted, as the cess was collected/accepted by the appellant without any authority of law.

Article 265 of the Constitution provides as follows:-

> "*265. Taxes not to be imposed save by authority of law*
>
> *No tax shall be levied or collected except by authority of law."*

17. As the EC and SHEC has been paid on a mistaken notion by the respondents and as the same cannot be collected by the appellant in the absence of any authority of law, the retention of the same does not arise. Accordingly, the appellant would have to refund the EC and SHEC that has been mistakenly paid to the appellant.

18. Though the issue in both the 2 appeals are the same, for deciding these two appeals, the particulars pertaining to C. Ex. App. 4/2026 has been applied for easy disposal of the two appeals.

19. In view of the reasons stated above, we do not find any merit in the appeals. The appeals are accordingly dismissed.

JUDGE **JUDGE**

Comparing Assistant