CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

SERVICE TAX APPEAL NO. 51784 OF 2021

[Arising out of Order-in-Appeal No.161(CRM)CE/JDR/2021 dated 22.07.2021 passed by the Commissioner (Appeals), Central Goods & Service Tax and Central Excise, Jodhpur]

M/s. JK Tyre and Industries Ltd. **Appellant**

Jaykaygram, PO Tyre Factory,
Kankroli, District-Rajsamand,
(Rajasthan)-313342

Vs.

Commissioner, Central Excise & CGST
Commissionerate –Udaipur **Respondent**
(Rajasthan)

Appearance:
Present for the Appellant : Shri S.C. Vaidyanathan, Advocate
Present for the Respondent: Shri Rohit Issar, Authorised Representative

CORAM:
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:**18.08.2026**
Date of Decision:18.09.2026

Final Order No.51469/2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s. JK Tyres and Industries Ltd.[1], against the Order-in-Appeal No.161(CRM) CE/JDR/2021 dated 22.07.2021 passed by the Commissioner (Appeals), Central Goods & Service Tax and Central Excise, Jodhpur,

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1. The Appellant

wherein the demand of service tax of Rs.18,73,318/- along with interest of Rs.3,34,211/- was confirmed.

2. The brief facts are that the appellant is inter-alia engaged in the manufacture of automobile tyres, tubes, flaps and pre-cured tread materials ("finished goods"). For this purpose, the Appellant imports as well as domestically procures its inputs With respect to imported inputs, the Appellant procures them either on cost, insurance, freight ("CIF") basis or on free on board ("FOB") basis. In case of CIF imports, the exporter engages the shipping lines located in its country. The Appellant's records were audited by the department for the period April 2017 to June 2017 on 03.07.2018. During audit, the department raised an objection that the Appellant, being an importer of raw materials, had not paid service tax on ocean freight regarding CIF transactions. The Appellant deposited Rs.22,07,529/- as service tax of Rs.18,73,318/- and interest of Rs.3,34,211/- on ocean freight under reverse charge mechanism. Thereafter, the High Court of Gujarat in the case of SAL Steel Limited vs. UOI[2] took the view that service tax was not payable on such transactions. Hence, the Appellant filed a refund application on 23.09.2020 before the Assistant Commissioner in terms of provisions of Section 83 of the Finance Act, 1994 read with Section 11B of the Central Excise Act, 1944. Subsequent to the filing of the refund claim, Show Cause Notice No.V(25)/JKT/RFD/011/ 2020/992 dated 20.10.2020[3], was issued proposing to reject the refund on the ground that the same had been filed after one year from the date of payment of service tax and is therefore barred by limitation

2. 2020 (37) G.S.T.L.3 (Guj.)
3. SCN

under Section 11B of the Central Excise Act, 1944.The Adjudicating Authority, while rejecting the refund claim of Rs. 22,07,529/- held that with effect from 22.01.2017, services by way of transportation of goods by a vessel from outside India became taxable upon withdrawal of exemption under Sr. No. 34(c) of Notification No. 25/2012-ST vide Notification No. 1/2017-ST dated 12.01.2017, and vide Notification No. 3/2017-ST dated 12.01.2017, the liability to pay service tax on such transaction was cast upon the person receiving the service and that the refund claim filed by the Appellant was hit by the time limitation prescribed under Section 11B of the Central Excise Act. Being aggrieved, the Appellant filed an appeal before the Commissioner (Appeals), Jodhpur. The Commissioner (Appeals) vide the impugned order upheld the rejection of the refund claim. Being aggrieved by the impugned order, the Appellant has filed the present appeal.

3. Learned counsel submitted that the refund claim pertains to an amount paid by the Appellant during audit proceedings under pressure of the audit officers. The amount was sought on the ground that service tax is payable on ocean freight for goods imported on CIF basis. However, this levy has been held to be ultra vires by the Hon'ble Gujarat High Court in SAL Steel Limited (supra). He also submitted that the refund application was filed under Section 11B of the Central Excise Act, 1944 (made applicable to service tax vide Section 83 of the Finance Act, 1994). He submitted that it was pertinent to note that Section 83 makes the provisions of the Central Excise Act applicable to service tax matters only "so far as may be" - that is, to the extent they are relevant and applicable.

3.1 Learned counsel further submitted that the refund application filed by the Appellant was under Section 11B of the Central Excise Act, 1944, as made applicable to service tax by Section 83 of the Finance Act. Section 11B provides that any person can claim refund of duty of excise and interest before the expiry of one year from the relevant date, wherein the relevant date has been defined as the date of payment of duty. He stated that the refund application has been filed under Section 11B of the Central Excise Act, 1944 by the Appellant due to lack of any provision for claiming refund of tax paid mistakenly or tax paid where it wasn't liable to be paid. Learned counsel further stated that merely because an application for refund has been filed under Section 11B, it would not mean that such application would also attract the limitation period prescribed therein, when the amount paid by the assessee is in the nature of an erroneous payment and does not qualify as "tax" or "duty" payable by the assessee. In this regard, learned counsel placed reliance on the decision in Mahindra World City Ltd. v. Commissioner of Central Excise, Jaipur[3], wherein it was held that since there is no provision in the notification for refund of amount erroneously paid as tax, the refund has to be examined in terms of Section 11B of the Excise Act. However, the Tribunal recognized that the mere use of the Section 11B channel does not convert the nature of the payment from "deposit" to "duty." The settled legal position is that if an assessee pays an amount which was not leviable as duty, the same has to be treated as a "deposit" with the Central Government,

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3. 2013(32) STR 93 (Tri-Del.)

and the provisions of Section 11B relating to time limitation are not attracted for refund of such deposit.

3.2. Learned Counsel placed reliance on the following decisions:

- **CCE** v. **Motorola India Pvt. Ltd.**[4]
- **Union of India** v. **ITC Limited**[5]
- **Natraj and Venkat Associates** v. **Asstt. Commr. of Service Tax, Chennai-II**[6]
- **G.B. Engineers** vs **Union of India**[7]
- **Tripura Cricket Association** v. **Union of India**[8]
- **Parijat Constructions** v. **Commissioner of Central Excise, Nashik**[9]
- **Tavrur Oils And Fats Pvt. Ltd**., **South India Krishna Oils and Fats Pvt. Ltd**. v. **Commissioner Central Goods And Service Tax &Anr.**[10]
- **Punj Lloyd Limited** v. **Commissioner of Central Tax/GST, New Delhi,** Final Order nos. 50100-50101/2024 in Service Tax Appeal No. 51705 of 2021 and Service Tax Appeal No. 51218 of 2022.
- **McCann Erickson (India) Pvt Ltd**. v. **Commissioner of CGST & CX GST, Delhi East Commissionerate** Final Order No. 50385/2026 in Service Tax Appeal No. 52352 of 2024.

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4. 2006 (206) ELT 90 (Kar.)
5. 1993(67) E.L.T. 3 (S.C.)
6. 2010(17) STR 3 (Mad)
7. 2016 (43) STR 345 (Jhar)
8. 2023(70) G.S.T.L. 259 (Tripura)
9. 2018(9) GSTL 8 (Bom)
10.2024:DHC:9757 - DB

- **Rattan India Power Ltd**. v. **Commissioner of Customs, Central excise & Central GST, Delhi**, Final order no. 50393/2022 in Service tax appeal no. 52244 of 2021.
- **Dexterous Products Pvt. Ltd**. vs. **Comm. of C.Ex & S.T. Indore**[11]**,**
- **Oriental Insurance Company Ltd**. v. **Commissioner of Central Excise & Service Tax New Delhi**[12]**,**

3.3 Learned counsel contended that service tax was not leviable on ocean freight and hence the Appellant is eligible for refund of the amount erroneously paid. In this regard, He placed reliance on the landmark decision of the Hon'ble Gujarat High Court in SAL Steel Ltd. and Others (supra) wherein it was held that Notification Nos. 15/2017-ST and 16/2017-ST prescribing Rule 2(1)(d)(EEC) and Rule 6(7CA) of the Service Tax Rules, 1994 and inserting Explanation-V to Notification No. 30/2012-ST are ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994. He further contended that when goods are imported, customs duty is payable on the CIF value including the freight component under the Customs Valuation Rules, 2007.Imposing a separate service tax levy on the same freight component amounts to double taxation. He also submitted that Section 11BB of the Excise Act creates a statutory obligation upon the Department to pay interest when refund is not granted within three months of the application. This provision, borrowed into the service tax regime by Section 83 of the Finance Act, operates automatically once the three-month period expires. The refund application in the present case was filed on

11. 2019(28) GSTL 51 (Tri-Del)
12. [2020] 75 G S.T.R. 44 (CESTAT - Del)

23.09.2020 and therefore refund for the relevant period should be extended along with applicable interest from the date immediately after expiry of three months from 23.09.2020 i.e., from 24.12.2020 till the date of actual refund.

4. Learned authorized representative submitted that the appellant has agreed with the contention of the audit officers and voluntary deposited the due service tax amounting to Rs. 18,73,318/-along with the interest Rs.3,34,211/- vide challan dated 24.07.208. Whereas, they had filed the return claim on 23.09.2020 means almost after expiry of more than two years whereas section 11B provides that claim of refund may be filed before expiry of one year from the relevant date. The plea of appellant is an afterthought. Learned authorized representative also submitted that it has been categorically held by the Hon'ble Supreme Court in Mafatlal Industries Ltd., *supra*, that refund claim based on tax paid which is declared as *ultra vires* are maintainable only through Writ Petitions filed under Article 226/32 rather than statutory authorities like CESTAT.

5. I have heard Shri S.C. Vaidyanathan, learned counsel for the appellant and Shri Rohit Issar, learned Authorised Representative of the Department.

6. The primary issue before me is whether the said refund is hit by limitation as per Section 11B of the Central Excise Act, 1944 as applicable to Finance Act, 1994. In order to appreciate the submissions, the relevant section is to be referred. The same is reproduced below:

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

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such 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 dale 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 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 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 subsection (2) substituted by that Act;

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

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Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

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Explanation - For the purposes of this section,

(A) "refund" includes rebate of duly of excise on excisable goods exported out of India or on excisable materials manufacture of goods which are exported out of India;

(B) "relevant date " means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case maybe, the excisable materials used in the manufacture of such goods,

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the dale of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;

(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made there under, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgment. decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;

(f) in any other case, the date of payment of duty.”

6.1 I find that first ground taken by the adjudicating authority for rejection of refund claim was that the same was time barred in terms of Section 11B. I find that clause (f) of Explanation (B) of Section 11B of Central Excise Act 1944, as reproduced above, categorically mentions that the relevant date in respect of any amount paid towards duty/tax is the date of payment of duty. In the instant case, I find that the adjudicating authority has rejected the refund claim as time barred as the appellant had deposited Rs.22,07,529/- on 24.07.2018 as service tax towards ocean freight. I note that the refund claim was filed on 23.09.2020, i.e., after expiry of one year from the date of payment of duty. As noted above, Section 11B provides that claim of refund may be filed before expiry of one year from the relevant date. Hence, there is no infirmity in the order of the adjudicating authority.

6.2 The learned Counsel has submitted that the time bar of refund claim does not arise as the said levy was held as unconstitutional by the Gujarat High Court. He has relied on several judgments of the Tribunal in this regard. In the instant case, I note that the adjudicating authority, in the order in original has observed that the exemption to ocean freight was withdrawn w.e.f 22.1.2017 and the person liable to pay this tax was notified vide the explanation to inserted to Notification No. 30/2012-ST dated 23.4.2017. Hence, on pointing out by the Audit staff, the said amount was paid by the appellant as service tax on 24.07.2018. Hence, the said amount is clearly covered by the provisions of Section 11B. Consequently, I hold that there is no infirmity in the findings that the refund claim is time barred. As regards the submissions of the learned Counsel, that time bar aspect is not attracted as the entire levy was held to be unconstitutional, I note that the Hon'ble Supreme Court in its judgment in M/s Mafatlal Industries has itself preserved this exception. The said judgment held that Section 11B is a complete code for refunds under the Act, but carved out an exception in respect where the levy is unconstitutional or wholly without authority of law, as opposed to merely an erroneous levy under a valid taxing provision. The Hon'ble Court held that such claim falls outside the Act altogether and can be pursued under Article 226/Article 32, since Section 11B cannot oust the constitutional remedy for a tax collected without any legislative competence or sanction. The relevant para is reproduced below:

> "69. There is, however, one exception to the above proposition, i.e., where a provision of the Act whereunder the duty has been levied is found to be unconstitutional for violation any of the constitutional limitations. This is a situation not contemplated by the Act. The Act does not contemplate any of its provisions being declared unconstitutional and therefore it does not provide for its consequences. Rule 11/Section 11-B are premised upon the supposition that the provisions of the Act are good and valid. But where any provision under which duty is levied is found to be unconstitutional, Article 265 steps in. In other words, the person who paid the tax is entitled to claim refund and such a claim cannot be governed by the provisions in Rule 11/Section 11-B. 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. But, it does not follow from this that refund follows automatically. Article 265 cannot be read in

> isolation. It must be read in the light of the concepts of economic and social justice envisaged in the Preamble and the guiding principles of State Policy adumbrated in Articles 38 and 39 - an aspect dealt with at some length at a later stage. The very concept of economic justice means and demands that unless the claimant (for refund) establishes that he has not passed on the burden of the duty/tax to others, he has no just claim for refund. It would be a parody of economic Justice to refund the duty to a claimant who has already collected the said amount from his buyers. The refund should really be made to the persons who have actually borne its burden - that would be economic justice. Conferring an unwarranted and unmerited monetary benefit upon an individual is the very anti-thesis of the concept of economic justice and the principles underlying Articles 38 and 39. Now, the right to refund arising as a result of declaration of unconstitutionality of a provision of the enactment can also be looked at as a statutory right of restitution. It can be said in such a case that the tax paid has been paid under a mistake of law which mistake of law was discovered by the manufacturer/assesses on the declaration of invalidity of the provisions by the court. Section 72 of the Contract Act may be attracted to such a case and a claim for refund of tax on this score can be maintained with reference to Section 72. This too, however, does not mean that the taxes paid under an unconstitutional provision of law are automatically refundable under Section 72. Section 78 contains a rule of equity and once it is a rule of equity, it necessarily follows that equitable considerations are relevant in applying the said rule - an aspect which we shall deal with a little later. Thus, whether the right to refund of taxes paid under an unconstitutional provision of law is treated as a constitutional right following from Article 265 or as a statutory right/equitable right affirmed by Section 72 of the Contract Act, the result is the same - there is no automatic or unconditional right to refund."

6.3 It has also been submitted that the appellant has paid the said service tax on the direction of audit team and the same was paid under mistaken assumption of law. Therefore, the limitation under section 11B of the Central Excise Act 1944, wherein there is a time limit prescribed for filing of the refund claim. It is settled law that adjudicating authorities and the Tribunal possess only the powers expressly or by necessary implication conferred by the statute creating them. There is no inherent residency or common law jurisdiction that exists outside that grant. This implies that the original authority, appellate authority and the Tribunal can exercise only those powers which the statute expressly confers, plus such ancillary powers as are necessary implied to effectively discharge that jurisdiction. It cannot borrow jurisdiction from general notions of justice, equity or inherent powers of Civil Courts. In this context, I note that the Supreme Court in its judgment in Singh Enterprises vs. CCE, Jamshedpur[13] held that Commissioner (Appeals) and Tribunal, being creature of statute are vested with the jurisdiction to condone delay only to the extent the statute permits. In the instant case, it is on record that the claim was filed beyond payment of tax. Hence, the said claim is hit by limitation as prescribed under the Act.

7. In view of the above, I find that there is no infirmity in the impugned order, and the same is upheld. The appeal stands dismissed.

(*Order pronounced on* **18.09.2026**)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana

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13. 2008 (221) ELT 163 (SC)