

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70004 of 2025

(Arising out of Order-in-Appeal No.544-ST/APPL/LKO/2024 dated 30.08.2024
passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

M/s SAF Yeast Company Pvt. Ltd.,
(UPSIDC Industrial Area
Sandila, Hardoi-241127)

.....Appellant

VERSUS

**Commissioner of Central Excise &
CGST, Lucknow**
(Vibhuti Khand, Lucknow, U.P.)

....Respondent

APPEARANCE:

Shri S. R. Agrawal, Ms. Stuti Saggi, Shri Anand Bhattacharya & Shri
Sachin Shukla, Advocates for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70414/2026

DATE OF HEARING : 28.09.2026
DATE OF PRONOUNCEMENT : 01.10.2026

P. K. CHOUDHARY:

The Appellants have filed the present appeal assailing the
Order-in-Appeal No.544-ST/APPL/LKO/2024 dated 30.08.2024,
passed by the learned Commissioner (Appeals), CGST & Central
Excise, Lucknow.

2. The facts of the case in brief are that the Appellant is
manufacturer of yeast falling under chapter sub-heading
21022000 of the Central Excise Tariff Act, 1985. The yeast so
manufactured by the Appellant was exempt from payment of
Central Excise Duty vide Notification No.03/2006-CE dated
01.03.2006 unconditionally as superseded by Notification
No.12/2012-CE dated 17.03.2012 and remained exempt
unconditionally.

3. The Appellant is also registered under Service Tax having registration no. AADCS9080JST003 for payment of Service Tax under reverse charge in respect of services received under 'Goods Transport Agency Service' and 'Manpower Recruitment Agency Service'.
4. The Appellant paid the Service Tax on GTA Service received by them under mistake of law in as much as the transporter in almost all the cases was not covered under the GTA service since no consignment note was being issued by him. As such no Service Tax was payable *ab-initio* by the Appellant, service being non-taxable. This part has already been decided in favour of the Appellant vide the impugned order and is not the subject matter of this appeal.
5. The Appellants were also exempt from payment of Service Tax on GTA service by virtue of clause (21) (d) of Notification No.25/2012-ST dated 20.06.2012 as amended by Notification No.03/2013-ST dated 01.03.2013 which exempts food stuff (which includes yeast) from payment of Service Tax on GTA.
6. However, Ld. Commissioner (Appeals) rejected the refund of Rs.36,92,166/- to the Appellants. While rejecting the refund he has observed and held in Page 8 of the impugned order as under: -

*"It is pertinent to mention here that it is a well settled legal premise that **exemptions are exceptions**, and hence the **onus to prove** that they are eligible to claim the benefits emanating from an exemption notification **lies on the beneficiary**. If the beneficiaries find themselves eligible to avail the benefits of a particular notification, they can claim such benefits while making self-assessment of tax. However, in this case, the beneficiary i.e. the **appellant continued to self-assess and pay Service Tax as per their own ascertainment, for years together** and then through some court pronouncement, they purportedly came to know about the exemption in question. They should ideally have claimed the benefit of*

*this exemption (if they fulfilled all the conditions) in their periodical ST-3 returns, which is not the case here. Therefore, they could not avail of the benefits of the Notification in question on account of their own failure- to assess proper tax. It is well known legal aphorism that- 'ignorance of law is no excuse' and hence the failure of not mentioning the relevant exemption notification in the returns, to claim exemption, at the time of self-assessment cannot be legally condoned. Therefore, the **refund of the amount of Rs.36,92,166/- (which is Rs. 38,48,477 minus Rs.1,56,311) cannot be granted to the appellant.**"*

7. The Appellants are now before the Tribunal. The appellants are seeking the refund of Rs.36,92,166/- paid under mistake of law. The Appellants are also seeking the interest @12% from the date of respective deposit of the amount till the date of refund thereof.

8. The Appellant submits that no Service Tax was payable by them on the GTA services received by them. However, they have paid the Service Tax under mistake of law, in as much as they are eligible for the exemption from payment of Service Tax on GTA service by virtue of Clause (21) (d) of Notification No.25/2012-ST dated 20.03.2012 as amended by Notification No.03/2013-ST dated 01.03.2013, which exempts 'food stuff' (which includes yeast) from payment of Service Tax on GTA.

9. Since, the Appellants were not liable to pay Service Tax, the amount paid by them attains the nature of revenue deposit. Accordingly, the Appellants filed the refund claim of Service Tax paid under mistake of law. It has also been argued that provisions of Section 11B of the Central Excise Act, 1944 are not applicable in the instant case.

10. It was also pointed out that the Ld. Commissioner (Appeals) in the impugned order has also not disputed that the Appellants were eligible to avail the benefit provided under the said Notification No.03/2013-ST dated 01.03.2013 amending the

Mega Exemption Notification No.25/2012-ST dated 20.06.2012 to insert the words 'food stuff' (their product **yeast** being a food stuff).

11. It has also been agitated by Ld. Advocate that excess amount was collected by the Revenue without authority of law and therefore it must compensate by granting the interest from the respective date of excess deposit till the date of payment of refund thereof. The Ld. Advocate has also placed reliance on various case laws in support of his submissions.

12. It was further submitted that the amount was paid by the Appellants under mistake of law in as much as the payment of Service Tax on GTA service availed by the Appellants was exempt since 01.03.2013. Thus, the Revenue had no authority to collect and retain the amount so paid under mistake of law. It is also submitted that in such cases the provisions of Section 11B are inapplicable.

13. It was submitted by the counsel of the Appellants that when the provisions of Section 11B are inapplicable, the refund is admissible without the vice of limitation. It has also been argued that in such cases, interest @12% p.a. is also admissible. It was pointed out by the learned Counsel that in similar facts and circumstances of the case, the interest @12% p.a. has been granted to the Appellants by the Tribunal in their own case vide Service Tax Appeal No.70277/2026 Final Order No.70288/2026 dated 14.08.2026.

14. Learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

16. Following two issues arise for determination in the facts and circumstances of the case: -

(i) Whether the amount paid by the Appellants by mistake of law is refundable to the Appellants?

(ii) Whether the Appellants are also entitled to interest, and if yes at what rate?

17. To resolve these issues, it is relevant to take note of the settled legal position rendered by this Tribunal and the Hon'ble High Courts. It has not been disputed by the Ld. Commissioner (Appeals) that the Appellants were entitled for exemption from payment of Service Tax on GTA services availed by them by virtue of Notification No.25/2012-ST dated 20.06.2012 as amended by Notification No.03/2013-ST dated 01.03.2013, but since they have not claimed such exemption in the ST-3 returns filed by them under self-Assessment, their claim cannot be entertained. It can therefore be concluded that the Appellants were eligible for exemption from payment of Service Tax on GTA service availed by them during the disputed period i.e. 2013-14 and 2014-15. The Appellants made payment of Service Tax under reverse charge which was not payable. Thus, the payment made by the Appellants was admittedly under mistake of law.

18. I take support in this regard from the decision of Hon'ble Karnataka High Court in the case of Commissioner of Central Excise (Appeals), Bangalore Vs KVR Construction 2012 (7) TMI 22 - KARNATAKA HIGH COURT. In the said matter M/s KVR Construction were not liable to pay Service Tax on construction services rendered by them. However, they made the payments under mistake of law for which they filed refund claims contending that amount paid by them was not Service Tax, but was in the nature of deposit with the Department. The Adjudicating Authority rejected their refund claim on the grounds of limitation and the Appeal filed by M/s KVR Construction before the Commissioner (Appeals) was rejected. M/s KVR Construction filed an Appeal before the Hon'ble High Court. The Hon'ble High Court (Single Judge Bench) held that Section 11B is inapplicable and the amount deposited was not a duty and had to be considered as a deposit with the Department. Revenue filed a review petition before the Division Bench of Hon'ble High Court.

The Hon'ble High Court in Para 18 of their judgment observed as under: -

"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.

Further, in Para 23 and Para 26, the Hon'ble Court observed and held as under:-

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 no objection, 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.

26. Accordingly, the appeals are dismissed. The concerned appellant authorities 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."

[Emphasis Supplied]

19. I also take note that this Tribunal in the case of M/s Jagdish Saran Versus Commissioner, Service Tax, Lucknow 2026 (7) TMI 765 - CESTAT ALLAHABAD where M/s Jagdish Saran was not liable to pay Service Tax but paid by mistake, filed refund claim. The said refund claim was rejected on the ground of limitation. The Appeal filed before Commissioner (Appeals) was also rejected. On an appeal filed by the Assessee, the Tribunal held as under: -

"12. It has been held in a number of cases as above that any amount paid under the mistaken notion of law, shall not take the colour of duty, but remains only a deposit, and consequentially, the principle of unjust enrichment does not apply. The interest being a corollary to such payment, the interest is also required to be treated as a deposit. Revenue cannot keep such deposit in an unlawful manner and the same has to be refunded. As it is not to be treated as duty, the provisions of Section 11B are not attracted. In fact, CBEC Circulars state that the deposit made under Section 35F can be refunded on a simple application. Payment of interest also is like a deposit. It appears from circulars that the Department recognizes refunds which are not governed by Section 11B. Therefore, we are of the considered opinion that the provisions of Section 11B are not attracted as far as the refund of interest paid is concerned. Therefore, the limitation is also not applicable. Therefore, we find that the appellants are eligible for refund of interest as requested."

[Emphasis Supplied]

20. It is apparently clear in the facts and circumstances of the case and in the light of the decisions of the Hon'ble High Court and this Tribunal that the payment was made by the Appellants under a mistaken belief and thus the amount was paid under mistake of law. The Revenue has no authority to retain the said

amount as per provisions of Article 265 of the Constitution of India. Following these principles, **the issue no. (i) is answered in favour of the Appellants that refund of the amount paid is admissible to them.**

21. Now the second issue for consideration relates to the interest on the amount paid under mistake of law.

22. I take support in this regard from the decisions of the following cases: -

22.1 Gajendra Singh Sankhla, M/s I.P. Singh Construction Co. and M/s P.S. Builders Vs Commissioner of CGST, Jodhpur (Raj.) 2025 (5) TMI 482- CESTAT New Delhi.

In this matter, Service Tax was deposited by the Appellants by mistake on construction of Individual/ Independent houses during the period 2012-13 and 2014-15 by mistake of law which activities were non-taxable/ exempted services. The Tribunal framed the question for determination in Para 6 of the referred decision as under: -

"6. On hearing the arguments advanced by both the sides, the sole issue arises is that in the case where service tax is paid by mistake of law, whether the provision of Section 11B was not applicable for grant of refund or not and what should be rate of interest applicable 6% or 12%."

The issue was decided in Para 8 and Para 9 of the decision: -

"8. On going through the above judicial pronouncement of the case laws relied upon by both the sides, I am of the considered view that it is admitted fact that appellant had paid service tax by mistake which is not payable at all and same shall be treated as Revenue deposit not service tax paid by the appellant. Therefore, the provision of Section 11B of the Act is not applicable. The same view has been affirmed by the Hon'ble Apex court in the case of KVR

Constructions Ltd. (supra). As provision of Section 11B are not applicable to the facts of the present case, in that circumstances, determining the rate of interest under Section 11BB of the Act is not applicable. Therefore, the Notification No. 67/2003 – CE (NT) dated 12.09.2003 also not applicable to the facts of the case.

9. In that circumstances, relying on the decision of further in the case of Indus Towers Limited vide Final Order No. 60101 of 2025 dated 24.01.2025, wherein the interest @ 12% has been granted to the appellant. Therefore, following the judicial pronouncement, I hold that the appellant are entitled interest @ 12% on delayed refunds. Accordingly, the Revenue is directed to pay interest @ 12% per annum to the appellant. All appeals are allowed by modifying the impugned orders granting refund along with interest @ 12%.”

[Emphasis Supplied]

22.2 M/s Meenu Builders Vs The Commissioner of Central Excise, Central Goods & Service Tax, Jaipur and M/s Nahar Singh Versus The Commissioner of Central Excise, Central Goods & Service Tax, Jaipur 2025 (5) TMI 574-CESTAT New Delhi.

The facts of the case are that the Appellants were engaged in construction of single houses on the basis of work order issued by Rajasthan Housing Board. The Appellants were paying Service Tax since 01.07.2008 onwards which was exempted under Notification No.25/2012-ST dated 20.06.2012 and Notification No.30/2012-ST dated 20.06.2012. Thereafter, on realizing that the Appellants were not liable to pay Service Tax, the Appellants filed refund claim of the Service Tax paid by them during the period 01.10.2008 to 31.03.2016. It was decided that the activity undertaken by the Appellant is not liable to Service Tax and that the Service Tax paid by the Appellant by mistake of law and therefore time limit prescribed under Section 11B of the Central Excise Act, 1944 is not applicable to the facts of the

case. In these circumstances, on the refund claim sanctioned to the Appellant, **whether the Appellants are entitled to the interest or not, if yes then at what rate.** It was finally decided in Para 14 and 15 of the order.

"14. In view of this, I hold that the appellants are entitled for refund of service tax paid by them was under mistake of law, therefore, the appellants are entitled for refund claim along with interest @ 12% as provisions of Section 11B and 11BB of the Act are not applicable.

15. In view of this, I hold that the appellants are entitled for refund claim of the amount paid by the appellants and service recipient along with interest @ 12%."

[Emphasis Supplied]

22.3 M/s. Jeet Construction Co. and M/s. C.D. Construction Company Vs Commissioner of CGST Central Excise, Jodhpur 2025 (12) TMI 877-CESTAT New Delhi.

The facts of the case are that the Appellants have constructed residential houses as per work orders given by Rajasthan Housing Board (RHB) for EWS Society and LIG Society. The Appellants claimed refund of Service Tax on the ground that construction of such houses for EWS and LIG was exempt as per S. No. 14 I of Notification No.25/2012-ST dated 20.06.2012. The Tribunal reiterated the observations and findings in the case of Gajendra Singh Sankhla *ibid* and observed as under: -

"8. On going through the above judicial pronouncement of the case laws relied upon by both the sides, I am of the considered view that it is admitted fact that appellant had paid service tax by mistake which is not payable at all and same shall be treated as Revenue deposit not service tax paid by the appellant. Therefore, the provision of Section 11B of the Act is not

applicable. The same view has been affirmed by the Hon'ble Apex court in the case of KVR Constructions Ltd. (supra). As provision of Section 11B are not applicable to the facts of the present case, in that circumstances, determining the rate of interest under Section 11BB of the Act is not applicable. Therefore, the Notification No. 67/2003 – CE (NT) dated 12.09.2003 also not applicable to the facts of the case.

9. In those circumstances, relying on the decision of further in the case of Indus Towers Limited vide Final Order No. 60101 of 2025 dated 24.01.2025, wherein the interest @ 12% has been granted to the appellant. Therefore, following the judicial pronouncement, I hold that the appellant are entitled interest @ 12% on delayed refunds. Accordingly, the Revenue is directed to pay interest @ 12% per annum to the appellant. All appeals are allowed by modifying the impugned orders granting refund along with interest @ 12%”.

[Emphasis Supplied]

Thus, I find that the Tribunal has allowed interest @ 12% for the amount refunded. The same view has been taken in the case of Berger Paints India Ltd. vs. Commissioner of Customs vide Final order No.75927 of 2026 dated 22.07.2026 relying upon the decision of Hon'ble Calcutta High Court in the case of Madura Coats Pvt. Ltd. vs. Commissioner of Central Excise, Kolkata-IV reported in 2012 (285) E.L.T. 188 (Cal.). The said decision of Hon'ble High Court has been upheld by Hon'ble Supreme Court in Commissioner of Central Excise-IV, Kolkata Vs Madura Coats Ltd. 2014 (301) E.L.T. 161 (S.C.).

23. I also take note that in the Appellant's own case, interest @ 12% has been considered by the Division Bench of this Tribunal in Service Tax Appeal No.70277/2026 Final Order No.70288/2026 dated 14.08.2026 as reported in 2026 (8) TMI 1001- CESTSAT Allahabad.

24. I find that the ratio of the decision cited supra is squarely applicable to the facts and circumstances of the case and I hold that the Appellant is eligible for interest @ 12% from the date of deposit of the amount till the date of payment of the refund.

25. In view of the following discussions, the impugned Order-in-Appeal No.544-ST/APPL/LKO/2024 dated 30.08.2024 is hereby set aside. The revenue is directed to refund the amount of Rs.36,92,166/- alongwith the interest @ 12% p.a. from the date of respective deposits till the date of refund of the amount. The amount of refund alongwith interest shall be sanctioned and disbursed to the Appellants in accordance with law within a period of 03 months from the date of receipt of copy of this order. The appeal filed by the Appellant is allowed in the above terms.

(Order pronounced in open court on - **01.10.2026**)

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

LKS