

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

**SERVICE TAX APPEAL No. 51323 of 2023**

(Arising out of Order in [Appeal No. 239 \(RLM\)ST/JPR/2022 dated 17.11.2022](#) passed by the [Commissioner \(Appeals\)](#), Central Excise & Central Goods and Service Tax, Jaipur (Raj.) – 302 005)

**M/s. Rajendra Mittal Construction  
Company Pvt. Ltd.**

**...Appellant**

210-211, Optus Corporate Suites,  
Vasundhara Nagar,  
Bhiwadi Distt.  
Alwar (Raj.)-301 019.

**Versus**

**Commissioner of CGST, Alwar (Raj.)**

**....Respondent**

**APPEARANCE:**

Mr. Ajay K. Mishra, Advocate for the appellant

Mr. V.J. Saharan, Authorized Representative for the Respondent

**CORAM : HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)**

Date of Hearing: **23.05.2023**

Date of Decision: **05.07.2023**

**FINAL ORDER No. 50831/2023**

**DR.RACHNA GUPTA**

Present appeal has been filed against order in appeal No.239/2022 dated 17.11.2022. The facts succinctly are as follows:-

That the appellants have been registered for providing work contract services and construction other than residential complex services. During the audit, Department observed that work contract services have been provided by the appellant in the capacity of a sub-contractor of M/s. NBCC. The appellant however, had not paid any service tax on the belief that the services were

exempted vide entry at Sl. No.12A of Notification No.25/2012-ST dated 20.06.2012. On demand, the appellant deposited part amount of his service tax liability of Rs.12,00,290/- with the interest of Rs.35,342/- vide challans dated 09.08.2015. It is there after that the appellant was served with three Show Cause Notices i.e. No. 1914 of 31.03.2006, 4603 of 19.02.2019 and 5630 dated 28.03.2019 for demanding service tax of Rs.21,72,592/- for a period of February, 2015 to May, 2015; April 2016 to May, 2017 and for June, 2017 respectively alongwith the interest and imposition of penalty. Though the said proposals of **three of the Show Cause Notices** were initially confirmed by the Original Adjudicating Authority vide Order No.19-20 dated 21.08.2019. However, the appeals against the said order were allowed by Commissioner (Appeals) vide order No.28-29/2021 dated 18.01.2021.

2. Pursuant to those orders that the appellant filed the refund claim dated 22.01.2021 of Rs.12,00,290/- alongwith the interest of Rs.35,342/- as was deposited vide challans dated 09.08.2015 alongwith the refund of RS.18,39,238/-, the amount of pre-deposit paid on 18.10.2009. The Department, however, observed that out of the aforesaid amount of refund the amount of Rs.12,00,290/- with interest of Rs.35,342/- was deposited after being pointed out by the Audit. Also the claim is barred by time. Accordingly, the refund claim to that extent was initially rejected vide Order-in-Original No.30/19-20 dated 19.08.2021 and the appeal against the said order has been dismissed vide the impugned Order-in-Appeal

under challenge. Being aggrieved the appellant is before this Tribunal.

3. We have heard Shri Ajay K. Mishra, Id. Counsel for the appellant and Shri V.J. Saharan, Id. Authorised Representative for the Revenue.

4. Ld. Counsel for the appellant has mentioned that the amount of Rs.12,00,290/- is an amount which was paid during the investigation when the audit tem impressed upon for the discharge of the liability. The said amount was paid as a partial discharge of the liability. It is impressed upon that the amount paid pending investigation has been held to be an amount as paid under protest and it is nothing but a revenue deposit. Hence, Section 11B which is about the refund of duty will not be applicable to the aforesaid amount. The another provision for refund is section 35 F of Central Excise Act. Accordingly the later section only will be applicable to this amount as well. The refund of Rs.12,00,290/- is therefore alleged to have wrongly been rejected. Ld. Counsel has placed reliance upon the decision of this Tribunal in the case of **Parle Agro Pvt. Ltd. Vs. Commissioner reported as 2022 (380) ELT 219 (Tri.), Continental Engines P. Ltd. Vs. Commissioner reported as 2022 (382) ELT 522 (Tri.-Del.) & Instrument Transformers vs. Commissioner (Appeals), CGST, Indore reported as 2021 (78) ELT 238 (Tr.-Del.)** and has prayed for the appeal to be allowed.

5. While rebutting these submissions, Id. D.R. has mentioned that the amount, the refund whereof has been rejected, was deposited by the appellant in the year 2015 whereas the refund application for the said amount was filed in January, 2021 i.e. after a period of more than 5 years had elapsed. The only section in the Central Excise Act for the refund of amount is section 11B of the act. One year limitation is prescribed under the said provision to reckon from the date of deposit. As per general law of limitation also the period of limitation for seeking refund cannot be more than 3 years from date of the deposit. Id. D.R. has relied upon the decision of Hon'ble Supreme Court in the case of **Commissioner of Central Excise vs. Evershine Marbles & Exporters Pvt. Ltd. [2009 (240) ELT 239 (Tri.-Delhi), M/s. Veer Overseas Ltd. Vs.CCE, Panchkula [2018 (4) TMI 910-CESTAT Chandigarh LB & Miles India Limited.** Appeal is accordingly, prayed to be dismissed.

6. Having heard the parties at length and perusing the record, I observe and hold as follows:-

That the amount in question i.e. of Rs.12,00,290/- alongwith interest of Rs.35,342/- was deposited by the appellant on 09.08.2015, at the stage of investigation itself towards the partial discharge of the liability pointed out by the audit team. Hon'ble Apex Court in **Mafatlal Industries vs. Union of India reported as 1997 (89) ELT 247 (S.C.) (para 83)** has held that the amount paid pending investigation is nothing but the amount paid under protest. The said decision has been followed by this Tribunal

in the case **Dugger Fibers Pvt Ltd. Vs. Commissioner, CE, CGST, Delhi reported as 2021 (378) ELT 291** wherein it was held that the amount paid during the investigations *ipso facto*, is deemed to be paid under protest. There have been several decisions holding that such an amount cannot be called as an amount of duty, it is merely a revenue deposit, as has also been held by this Tribunal in the case **Parle Agro Pvt. Ltd. Vs. Commissioner reported as 2022 (380) ELT 219 (Tri.)**.

7. I observe that the ground of rejecting this amount is that the same cannot be an amount covered under section 35F of Central Excise Act. Hence, section 11 B of the Act shall be applicable for refund of this amount. This section provides a period of limitation and the refund claim is beyond the said period of limitation. I further observe that the refund claim was filed for total amount of Rs.3039528/- (Rs.18,39,238/- the pre-deposit with respect to the appeal against OIO dated 21.08.2019 and Rs.1,62,938/- as pre-deposit for the appeal against OIO dated 05.01.2018) and Rs.12,00,290/- alongwith interest of Rs.35,342/- was the partial discharge of alleged duty. The amount of pre-deposit being an amount under section 35 F that the refund thereof under section 35 FF has been ordered by the adjudicating authorities below. However, the amount of Rs.12,00,290/- with interest is not an amount of pre-deposit. But in the light of discussion above, it was the amount of Revenue deposit paid under protest. No doubt, Hon'ble Apex Court in the case of **Mafatlal Industries (supra)** has held that no claim of refund of any duty shall be entertained

except in accordance with the provisions of the statute and every claim of excise duty can be made only under and in accordance with section 11 B in the forms provided by the Act. But present is observed to not to be the case of refund of the duty. The Department cannot retain the same and the amount has to be refunded alongwith the interest to the assessee.

8. I further observe that even if seen through the prism of section 11B of Central Excise Act the period of one year mentioned therein has to reckon from the relevant date. Explanation B in Clause (5) of Section 11B of the Act defines Relevant Date. Sub-clause (ec) thereof clarifies that where the duty becomes refundable as a consequence of judgement decree order or direction of appellate authority Appellate Tribunal or any Court, the date of such judgement decree, order or direction shall be the relevant date. In the present case the refund claim was filed pursuant to the order passed by the Commissioner (Appeals) dated 18.01.2021. The claim was filed on 25.01.2021 i.e. within less than a week of the aforesaid order. It is not the case of Department that said order was ever appealed against by the Department. Seen from this perspective the refund is otherwise well within the reasonable period. Accordingly, I hold that refund of Rs. 12,00,290/- with interest of Rs.35,342 has wrongly been rejected. Department is held liable to refund the said amount also alongwith the interest. Relying upon the decision of this Tribunal in the case of **Parle Agro Pvt. Ltd. (supra) and Dugger Fibers Pvt Ltd. (supra)** the Department is directed to grant interest on the

said amount at the rate of 12% from the date of deposit till the date of payment.

9. With the above findings, the impugned Order is hereby set aside. Consequent thereto, the appeal stands allowed.

[Pronounced in the open Court on 05.07.2023]

**(DR.RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

Anita