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

Service Tax Appeal Nos. 40011 to 40014 of 2021

(Arising out of Order in Appeal No. 79 to 82/2020 (CTA – I) dated 9.10.2020 passed by the Commissioner of Central Excise (Appeals – I), Chennai)

With

Service Tax Appeal Nos. 40482 to 40485 of 2021

(Arising out of Order in Appeal No. 71 to 74/2021 (CTA – I) dated 6.5.2021 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

And

Service Tax Appeal Nos. 40890 and 40891 of 2023

(Arising out of Order in Appeal No. 307 to 311/2023 (CTA – I) dated 27.9.2023 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

Mahindra Holidays and Resorts India Ltd. **Appellant**
Mahindra Towers, 2nd Floor
17/18, Patullas Road
Chennai – 600 002.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri Harish Bindumadhavan, Advocate and
Ms. Vijayalakshmi R, Advocate for the Appellant
Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 41250-41259/2025

Date of Hearing: 29.10.2025
Date of Decision: 07.11.2025

Per M. Ajit Kumar,

All these appeals arise out of the rejection of refund of service tax statedly paid by the appellant, M/s Mahindra Holidays and Resorts India Ltd. **(MHR),** and hence they are taken up together for disposal

by this common order. The period of dispute and the refund amount involved are tabulated as under:-

S. No.	Appeal No.	Period of Dispute	Amount of Refund
1.	ST/40011/2021	July 2017	Rs.22,08,252.00
2.	ST/40012/2021	August 2017 to Dec. 2017	Rs.1,12,96,065.00
3.	ST/40013/2021	Jan. 2018 to March 2018	Rs.92,51,952.00
4.	ST/40014/2021	April 2018 to Sept. 2018	Rs.89,53,797.00
5.	ST/40482/2021	July 2017to March 2018	Rs.97,74,741.00
6.	ST/40483/2021	Oct. 2018 to March 2019	Rs.1,05,64,294.00
7.	ST/40484/2021	April 2019 to Sept. 2019	Rs.36,88,752.00
8.	ST/40485/2021	Oct. 2019 to March 2020	Rs.47,11,938.00
9.	ST/40890/2023	April 2018 to March 2019	Rs.21,59,463.00
10.	ST/40891/2023	April 2020 to March 2021	Rs.8,16,766.00

2. Brief facts of the case is that MHR is a public limited company engaged in timeshare business. They provide holiday and leisure services under the flagship brand 'Club Mahindra Holidays' in resorts to their club members by collecting one-time membership fees (Time share fees), the service tax on membership fee is stated to be paid on collection basis. The subscriber is also required to pay an Annual Subscription Fees (ASF) every year. ASF invoices to members are raised every year on accrual basis and applicable service tax is paid by the company on accrual basis, irrespective of whether the amount is collected from members or not. However, when any member defaults in their payment of ASF or the EMI towards the membership fees, for two or more years, MHR in terms of the Agreement with the subscriber, cancels the subscription contract. Thus, the appellant claims that they are eligible for refund of the service tax that was paid on accrual basis on the cancelled ASF invoices / membership contracts for which service was not rendered but tax paid. The appellant therefore filed the impugned 10 refund claims under section 11B(2) of the Central Excise Act, 1944 read with Sec. 142(5) of the

CGST Act, 2017. However, the said claims were rejected as being hit by the limitation of time in terms of the provisions to section 11B of Central Excise Act, 1944 inasmuch as all the claims were filed beyond the prescribed period of one year from the payment of service tax. The appeals preferred by the appellant were also rejected by the Ld. Commissioner (Appeals). Hence these present appeals.

3. The Ld. Advocate Shri Harish Bindumadhavan appeared for the appellant and Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent.

3.1 Shri Harish Bindumadhavan Ld. Counsel for the appellant submitted that in case of cancellation of membership, the manner in which refund of fee is granted in different scenarios is as below:

i) If the member has requested for the withdrawal of application within 10 days from the date of realization of the down payment of Timeshare fees, the member **receives the full refund of amount paid along with the service tax**.

ii) In all other cases, the Appellant refunds back only 40% of Entitlement fee [i.e., Onetime membership fee (time-share fees) or EMI] paid towards membership fee by the member, along with the service tax collected. Refund is calculated on a pro-rata basis from the date of membership to the date of termination of the membership.

iii) If the members default in payment of ASF for two or more consecutive years, the member's access to utilize the accommodation facility will be restricted till the time the dues are paid. The Company either cancels the ASF invoices or the membership contract for those members who default in payment of dues by issuing a credit note.

The Ld. Counsel stated that prior to the introduction of GST, in the event of cancellation of membership for the reasons mentioned above, the appellant was allowed to adjust the service tax paid on services which were cancelled towards the service tax liability in

subsequent month/quarter liability per the provisions of Rule 6(4A) of the Service Tax Rules 1994 read with Rule 6(3) the Service Tax Rules 1994. However, post introduction of the GST Law in India, in the event of cancellation of membership for the above-mentioned reasons, the appellant has no option to adjust the excess service tax paid against the tax liability in subsequent period. Therefore, post July 2017, the appellant has been filing refund of service tax paid on the services which were cancelled under Section 142(5) of the GST Act, 2017, which provides for refund of tax paid under the pre-GST regime in respect of services which were not provided. In this regard, the Ld. Counsel made the following submissions.

A) Refund Claim under Section 142(5) of the CGST Act cannot be rejected as time barred.

B) There is no unjust enrichment by the appellant.

C) Tax paid on services which were not rendered shall be treated as a "Deposit".

D) Lack of Consistency in passing orders.

(Details of the submissions made in the appeal memorandum, written and oral submissions shall be referred to, during discussions below). He hence prayed that the appeals may be allowed.

3.2 The Ld. Authorized Representative Shri Sanjay Kakkar made a spirited and comprehensive submission on behalf of revenue, addressing all major issues raised by the appellant supported by relevant case laws. He stated that the refund claimed by MHR was examined by the Proper Officer mainly on the grounds of time-bar and was not verified on its own merits. Hence the issue involved in this appeal relates to time-bar only. The impugned Orders passed by

the Commissioner (Appeals), rightly holds that the relevant date is the date of tax payment, as per Section 11B, and rejects the appellant's reliance on the date of cancellation. It notes that the tax was self-assessed and paid on ASF invoices, and the subsequent cancellation does not alter the statutory requirement. The detailed submissions made shall be referred to at the appropriate stages of the discussion below. The Ld. A.R prayed that the appeals may be rejected.

4. We have gone carefully through the written and oral submissions made by the rival parties. We examine the issues as raised by the appellant below.

5. Refund Claim under Section 142(5) of the CGST Act cannot be rejected as time barred.

5.1 Before taking up the submissions the provisions of Section 142(5) of the CGST Act is extracted below for ease of reference during the discussion to follow.

> *"Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided* ***shall be disposed of in accordance with the provisions of existing law*** *and any amount eventually accruing to him shall be paid in cash,* ***notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.***"*
>
> (emphasis added)

5.1 Submissions made by MHR

5.2 Section 142(5) of the CGST Act under which the refund claim has been filed provides that any amount of tax paid towards the services which were subsequently not provided, shall be refunded in cash notwithstanding anything to the contrary contained under the provisions of the existing law other than the provisions of sub-section

(2) of Section 11(B) of the Central Excise, 1944. A bare reading of the provision would go to show that it is worded in such a way that it frees the refund claims arising in the said circumstances from the fetters of limitation which is provided under sub-section (1) of Section 11B. The only thing that is not overridden is the requirement of fulfillment of unjust enrichment clause as provided under sub-section (2) of Section 11B. Reliance was placed on the following case laws in support of their stand:

(a) M/s. Lifecell International Pvt Ltd Vs. Commissioner of GST & Central Excise, Chennai – 2022 (6) TMI 1134 – CESTAT, Chennai.

(b) M/s. Chalet Hotels Ltd Vs. Commissioner of Central Tax Bengaluru – 2022 (8) TMI 640 – Karnataka High Court

(c) M/s. Wave One Private Limited Vs. Commissioner, Office of the Commissioner (Appeals-I), Central Goods and Service Tax and Central Excise, Delhi – 2023 (11) TMI 1078 – CESTAT New Delhi.

(d) M/s. Welldone Infrastructure Pvt Ltd. Vs. Commissioner of Customs, GST & Central Excise, Lucknow – 2024 (3) TMI 501 – CESTAT Allahabad.

5.3 Submissions made by Revenue

5.4 The appellant's interpretation of Section 142(5) of the CGST Act appears incorrect and contrary to the plain language of the statute. The phrase "*shall be disposed of in accordance with the provisions of existing law*" appearing in Section 142(5), means that the refund claim must comply with all provisions of the existing law, which includes the Central Excise Act, 1944 (made applicable to Service Tax

via Section 83 of the Finance Act, 1994). Section 11B of the Central Excise Act is the sole provision governing refunds of service tax under the pre-GST regime, and it mandates that a refund claim must be filed within one year from the relevant date (i.e. the date of payment of the tax, which, in the instant case is between September 2012 and June 2017). It is submitted that the latter part of Section 142(5) — "*notwithstanding anything to the contrary… other than the provisions of sub-section (2) of section 11B*" only means that if a refund claim is found eligible under the existing law (including the time limit under Section 11B(1) of CEA), the same shall be subject to the unjust enrichment check under Section 11B(2) of CEA. It does not exempt the claim from the time limit under Section 11B(1) of CEA. To interpret otherwise would render the phrase "*in accordance with the provisions of existing law*" meaningless, violating the principle of harmonious construction. The Ld. A.R submitted that the appellant's contention before the Commissioner (Appeals) that the provision starts with a non-obstante clause appears flawed since the said non-obstante clause appears only in the later part of Section 142(5) of CGST Act, after the payment in cash had eventually accrued. It is further submitted that in the erstwhile regime of Service Tax refunds towards payments of tax made from the Credit Ledger were re-credited to the same ledger. However, with the enactment of the new law, transitional provisions were put into place where, a refund in cash for payments made from Credit Ledger were permitted. The reference to compliance of Section 11B(2) of CEA in Section 142(5) of the CGST Act was made only as a matter of abundant caution to emphasize that the aspect of Unjust Enrichment should not get

overlooked when payments from Credit Ledger were being processed for a refund in cash, which was not permitted in the earlier regime. This caution however does not negate the application of other aspects of Section 11B of the CEA, specifically the time-limitation under Section 11B(1) of the CEA in any manner. The Ld. A.R. further stated that the words, '**disposed of**' and '**eventually'** appearing in Section 142(5) of the CGST Act are not meaningless and carry significance. He submitted that the word, '*disposed of*' is integrally connected and embedded with the '*provisions of existing law*'. Also, the word "***eventually***" refers to the final outcome of the process of adjudicating or disposing of a refund claim. The term signifies that any amount determined to be refundable to a claimant, after the claim has been processed and scrutinized in accordance with the provisions of the existing law will be paid in cash. However, only the amount that is legitimately refundable, after all checks and balances, will be paid in cash, overriding any conflicting provisions in the existing law. This includes:

a) Verification of the claim for time-limitation;

b) Verification of the claim for requisite documentation.

c) Scrutiny for compliance with the relevant existing law(s).

d) Ensuring the claimant meets conditions, such as proving that the tax was paid and the service was not provided or proving that it was a case of payment under 'mistake of law', etc.

Thus, the word, '***eventually'*** highlights the conditional nature of the refund, ensuring that only valid claims are honoured and indicates that only the amount that is deemed payable after the process be disbursed in cash. The Ld. A.R. submitted that from a harmonious

reading of Section 142(5) of the CGST Act the mandate of Section 11B is fully honoured.

5.5 Discussions on the submissions made.

5.6 The dispute before us pertains to time limit. The refund claim filed on 21.02.2020 relates to the Service Tax payments stated to have been made on ASF invoices raised during the period from September 2012 to June 2017 and cancelled. It is accepted by the parties, during the hearing, **that the refund claim has been filed beyond the period of one year of paying the service tax and also one year after the credit notes were reported to have been raised by the appellant.** [See Table at para 1 of the OIO]. It is revenue's view that the time limit prescribed under section 11B will be applicable to any refund claim filed under the Service tax law. [Provisions of Central Excise Act 1944 as made applicable to the Finance Act 1994]. The appellant on the other hand is of the view that because of the non-obstante clause in section 142(5) of the CGST Act, no time limit will apply.

5.7 We find that the issue of time bar revolves on the interpretation of section 142(5) of the CGST Act. The section contains a non-obstante clause "notwithstanding anything to the contrary", appearing in the middle of a section, whose interpretation has become a bone of contention between the parties. A non-obstante clause is a legislative device mainly seeking to confer overriding effect upon a particular provision/ enactment over other **conflicting** provisions/ enactment. It helps remove obstructions which may arise out of the provisions of any other law and is not a repealing clause. A three Judge Bench of the Hon'ble Supreme Court in **Chief**

Information Commissioner Vs High Court Of Gujarat [AIR 2020 SUPREME COURT 4333 / AIRONLINE 2020 SC 336], examined Section 22 of the RTI Act which specifically provides that the provisions of the RTI Act will have an overriding effect over other laws for the time being in force. It was submitted by the appellant that in the event of any conflict between the provisions of the RTI Act and any other laws made by the Parliament or a State Legislature or any other authority, the provisions of the RTI Act must prevail and therefore, the RTI Act would prevail over the rules framed by the High Court. The Hon'ble Court held that the non-obstante clause of the RTI Act does not mean an implied repeal of the High Court Rules and Orders framed under Article 225 of the Constitution of India; but only has an **overriding effect in case of inconsistency**. A special enactment or rule cannot be held to be overridden by a later general enactment simply because the latter opens up with a non-obstante clause, unless there is clear inconsistency between the two legislations. Hence non obstante clauses apply only in the event of inconsistency where the issue arises with respect to giving overarching status to one of the conflicting provisions. [See: **Synergy Fertichem Pvt. Ltd Vs State of Gujarat (Gujarat High Court)** - 2019 SCC OnLine Guj 6127 / 2019-TIOL-2950-HC-AHM-GST; **KAMAL ENVIROTECH PVT LTD Vs COMMISSIONER OF GST AND ANR** - 2025-TIOL-130-HC-DEL-GST]

5.8 Moreover a non obstante clause does not only mean that it is meant to allow a provision of law to prevail over other conflicting provisions/ law. The Hon'ble Supreme Court in **Dominion of India Vs Shrinbai A. Irani [**AIR 1954 SC 596, para 11], recognised that

even a non obstante clause can "be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature **by way of abundant caution** and not by way of limiting the ambit and scope of the operative part of the enactment". [Also see: **Jindal Stainless Ltd. Vs State of Haryana** - (2017) 12 SCC 1]

5.9 The Supreme Court in **Central Bank of India Vs State of Kerala** [(2009) 4 SCC 94, para 103], opined that while interpreting a non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. In **Indra Kumar Patodia Vs Reliance Industries Ltd** [(2012) 13 SCC 1], the Apex Court held:

> "18. It is clear that the non obstante clause has to be given restricted meaning and when the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself." (emphasis added)

5.10 Hence what comes out from the above judgments is that the clause has to be given a restricted meaning. There should be a clear inconsistency between the two provisions before giving an overriding effect to one provision over the other in the light of the non obstante clause. Hence there is no automatic repeal or a complete superseding of all the other provisions of law.

5.11 We find that section 142(5) of the CGST Act does not start with the non obstante clause. The section is broken down into segments below for easy understanding:

(a) Every claim filed by a person

(b) after the appointed day for refund of tax paid

(c) under the existing law in respect of services not provided

(d) shall be disposed of in accordance with the provisions of existing law

(e) and any amount eventually accruing to him shall be paid in cash,

(f) notwithstanding anything to the contrary contained under the provisions of existing law

(g) other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944."

No conflict has been raised by the rival parties to the provisions contained in segments (a) to (d) above. The segment (e) states that any amount eventually accruing to him (claimant) shall be paid in cash. The non obstante clause makes its appearance immediately after, in segment (f). The issue raised at this stage by revenue is that this clause is by way of an abundant caution and pertains to the payment of refund in cash, since under the earlier law payment of refund of duty paid through credit was to be paid as re-credit in the ledger only and not as cash. The appellant on the other hand reads the clause with segment (d) and is of the opinion that the clause overrides all other provisions of the erstwhile law in as much as it pertains to their refund claim and the benefit of the said segment i.e. 'other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944', removes the element of time limit provided for in sub-section (1) of section 11B.

5.12 We find that section 142(5) does not refer to overriding any particular provision and hence the non obstante clause has to be examined and given a restricted meaning limited to the context in

which it is used. Further unlike in cases where the protection of the non obstante clause is sought to be made all encompassing and the section itself starts with the non obstante clause, the clause in this case is embedded immediately after a specific reference is made to payment of amount in cash. This then appears, as stated by the Ld. A.R., in the context of the conflict between the previous provision and the present provision for payment of refund. Under the erstwhile regime of Service Tax, in cases of refunds for payments made from the Credit Ledger, the same were re-credited to the same ledger. However, with the enactment of the new law, transitional provisions were put into place where, a refund in cash for payments made from Credit Ledger were permitted. We agree with revenue that the reference to compliance of Section 11B(2) of CEA in Section 142(5) of the CGST Act was made as a matter of abundant caution to emphasize that the aspect of Unjust Enrichment should not get overlooked when payments from Credit Ledger were being processed for a refund in cash, which was not permitted in the earlier regime. This view is strengthened since in the case of time bar there is no inconsistency or conflict between the provisions, as the new provision does not explicitly attempt to do away, alter or set any new time limit that clashes with the erst while law. This is in line with the principle gathered from the above judgments. Our view is also fortified by the settled principle that legislature is deemed to know the existing law when it enacts the new provisions and as such will not enact a law that does violence to the existing provision, which in this case would be the time limit which already stood prescribed under the existing law in Section 11B.

5.13 The issue can be stated differently. When the erstwhile law had provided for a time limit in filing a refund claim, the transition provision cannot be stated to have done away with that provision without explicitly having stated so.

5.14 The appellant has also submitted that the refund claimed under section 142(5) cannot be bound by the time limit under section 11B(1), as the relevant provision of the "existing law" applicable to the case of the appellant is Rule 6(3) of the Service Tax Rules read with section 142(5) of the CGST Act. Per contra revenue has stated that the appellant filed a refund claim citing Section 11B, the only provision under the CEA for claiming a refund of tax in cash, but has now sought to invoke Rule-6(3) to escape the compliance of mandatory timelines prescribed under Section 11(B). Further Rule 6(3) does not govern cash refunds from the government; it pertains to self-adjustment of tax liability. However in the case of the appellant the refund claim of the appellant is hit by laches as per their own making. The ASF Invoices were raised in 09/2012 and in case of non-payment by Members of the Time-Share Agreement, the Agreements were to be terminated after default in payment in full or part for two consecutive years. However, Credit Notes for the said Invoices came to be issued much later as late as 01/2018. Further the Refund claims were filed as late as on 21.02.2020.

5.15 We find that the term 'existing law' pertains to the law under which the tax has been charged and paid i.e. Finance Act 1994 and not the Service Tax Rules, which is part of a sub-ordinate legislation and is procedural in nature. Rule 6(3) was a procedural facility which ceased to be law by the time the refund claim was filed by the

appellant and cannot be revived without a specific enabling provision. The Hon'ble Supreme Court in **M/S. Ispat Industries Ltd Vs Commissioner Of Customs, Mumbai** [AIRONLINE 2006 SC 69 / (2006) 202 ELT 561 (SC)] held as under:

> "28. In our country this hierarchy is as follows:
>
> (1) The Constitution of India;
>
> (2) The Statutory Law, which may be either Parliamentary Law or Law made by the State Legislature;
>
> (3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.;
>
> (4) Administrative orders or executive instructions without any statutory backing.
>
> 29. The Customs Act falls in the second layer in this hierarchy whereas the rules made under the Act fall in the third layer. Hence, if there is any conflict between the provisions of the Act and the provisions of the Rules, the former will prevail."

Hence the 'existing law' refers to the Finance Act, 1994 as its provision will override the Rules in the case of a conflict over time limit and the appellant's claim for refund has to be examined under section 142(5) of the CGST Act which in itself also invokes the provision of section 11B of the Central Excise Act only.

5.16 As regards the delay of the appellant in filing the claims, it is seen that they have not shown sufficient cause and have not satisfactorily explained the reasons for delay in filing the claim, when time lines for cancellation etc. were built into the agreement with their subscribers. The doctrine of laches is based on the Latin maxim '*Vigilantibus Non Dormientibus Aequitas Subvenit'* is an essential doctrine of constitutional law, which means that "Equity aids the vigilant, not the ones who sleep over their rights". It states that the

Courts will not help people who sleep over their rights and help only those who are aware and vigilant about their rights. However, with the time limit built into section 11B, the same has to be strictly adhere to and even sufficient cause will not help their claim filed after a long delay.

5.17 We may now examine the judgments cited by the appellant in support of their stand:

In **M/s. Lifecell International** (supra) passed by a Single Member, the appellant sought a refund of tax on the grounds that no service was provided by the foreign company to them. The order after examining section 142(5) of the CGST Act, came to a finding that the said section "**expressly** states that the **limitation** provided in sub-section (1) of section 11B is not applicable". This categorical legal terminology on time limit is not found from a plain reading of the section. Judgments and orders interpret the provisions of law and cannot add anything to it. A **Constitution Bench** of the Supreme Court in the case of **Commissioner of Sales Tax, U.P. Vs Modi Sugar Mills Ltd**., AIR 1961 SC 1047 observed thus:

> "In interpreting a taxing statute, equitable consideration are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of which is clearly expressed; it cannot imply anything which is not expressed it cannot import provisions in the statute so as to supply any assumed deficiency." (emphasis added)

Further the judgments of Constitutional Court on the principles involved in applying the non obstante clause, some of which are discussed above, were not placed before the Bench nor were they independently perceived and discussed; hence the Order came to be

passed sub-silentio. Moreover, the decision of a Single Member Bench is not binding on a Bench of larger quorum. This being so the Order does not have any precedential value.

(b) The Hon'ble Karnataka High Court in **M/s. Chalet Hotels Ltd** (supra), examined the question whether the Tribunal was correct in law in rejecting the claim for refund of Service Tax paid against service to be provided which was not so provided when the advances were returned to the customers, the appellant was eligible to take credit of the said amount in terms of rule 6(3) of the Service Tax Rules 1944 and was eligible for refund of such credit in cash in terms of the transitional provision contained in section 142(3) and (5) of the CST Act 2017? All other questions of law were not pressed. No specific question of time bar was involved. The Hon'ble Court stated that the provisions of section 142(5) make it clear that the claim for refund must be processed notwithstanding anything contrary contained in section 11B of the Central Excise Act. The judgment does not help the appellant's specific cause related to time bar.

(c) The Single Member Order in the case of **M/s. Wave One** (supra) also relied on M/s. Lifecell International and stated that section, 142(5) of the CGST Act "expressly states that the limitation provided in sub-section (1) of section 11B is not applicable", which as seen is not supported by a plain reading of the section and hence just like in the case of **M/s. Lifecell International** does not bind us.

(d) The Single Member Order in the case of **M/s. Welldone Infrastructure** relies on M/s. Wave One to hold that the time limit prescribed under section 11B of the Central Excise Act 1944 cannot

be invoked to reject a refund claim filed under section 142(5) of the CGST Act 2017. The Order accordingly cannot be relied upon.

5.18 For the reasons discussed we find that the averment of the appellant that their refund claim under Section 142(5) of the CGST Act cannot be rejected as time barred, merits rejection.

6. **There is no unjust enrichment by the Appellant.**

6.1 Submissions made by MHR

It is submitted that as per Section 142(5) of the CGST Act, the only restriction imposed for refund of tax paid on services not provided is the restriction under Section 11B(2) of the Central Excise, 1944, which is that there should be no unjust enrichment. The appellant pursuant to the cancellation of membership, issued credit notes to the customers along with proportional service tax amount. In support of this, the appellant submitted ST Return, Copy of invoices and credit notes, bank statements/remittance details on sample basis evidencing refund to customers. The appellant's customers could not availed Cenvat Credit on the membership of the club as the club membership has been clearly excluded from the definition of "input services" under Rule 2(l)(c) of the Cenvat Credit Rules, 2004.

6.2 Submissions made by revenue

6.3 Reliance is placed on the 7-Member Larger Bench Hon'ble Supreme Court judgement - **Mafatlal Industries Vs Union of India** [1997 (89) E.L.T. 247 (S.C.)] which held that all refund claims, except where the levy is unconstitutional, must be filed and adjudicated under Section 11B, subject to its time limit and unjust enrichment provisions. The appellant's claim does not challenge the

constitutionality of the levy but seeks a refund due to subsequent cancellations, which falls squarely within Section 11B's ambit.

6.4 Discussion on the submissions

6.5 The issue of unjust enrichment is a mixed question of fact and law. The question of limitation involves a question of jurisdiction [See: **Simplex Infrastructure Ltd. Vs Commissioner of Service Tax, Kolkata** [(2016) 42 STR 634 (Calcutta)]. Further the ultimate incidence of an indirect tax generally does not lie on the person who collects and pays the tax but is on the ultimate consumer of the good or service on whom the tax comes to rest. As per section 12B of the Central Excise Act 1944, the presumption is that the incidence of duty has been passed on to the final buyer. The said section has been made applicable to Service Tax from 01.07.1994. Both parties agree that the refund is subject to the provisions of section 11B and that the question of unjust enrichment needs to be verified. The appellant has sought to justify their claim stating that no unjust enrichment was involved in the light of the credit notes issued to the customers along with proportional service tax amount. Their customers could not have availed Cenvat Credit on the membership of the club as the club membership has been clearly excluded from the definition of "input services" under Rule 2(l)(c) of the Cenvat Credit Rules, 2004. We find that the refund claim was not verified for unjust enrichment by the Original Authority since at the thresh hold the claim appeared time barred. The Hon'ble Supreme Court has in a catena of cases held that once it is held that the demand is time barred, there would be no occasion for the Tribunal to enquire into the merits of the issues. [See: **State Bank of India Vs. B.S. Agricultural**

Industries - AIR 2009 SUPREME COURT 2210; **Commissioner Of Customs, Mumbai vs M/S B.V. Jewels And Ors** - AIR 2005 SUPREME COURT 1231]. Further the presumption in law is that every businessman will arrange his affairs in his best interest and pass on costs which are not his to bear. No prudent businessman will repay to the customer and absorb a tax which he is not required, in the ordinary course to do, only to seek a refund from government later. This is a rebuttable presumption. Hence the claim of the appellant to have promptly issued credit notes to the customers, including the tax element on the cancellation of the subscription cannot be taken at face value. It may require sample verification from the credit note recipients, by the Original Authority and may not be passed based on documents alone, if such an occasion arises. We hence refrain from examining this point involving fact and law at this stage when the matter is not a core issue of the impugned orders.

7. **Tax paid on services which were not rendered shall be treated as a "Deposit".**

7.1 Submissions made by MHR

7.2 As an alternate submission, MHR has submitted that the service tax paid on services which are eventually not rendered is only a "deposit" collected without any authority of law. It is outside the ambit of the Statute and as such the limitations imposed (such as time-limit and unjust enrichment) for claiming the refund of tax under the Statute will not be applicable. They have drawn reference to the decision of the Hon'ble Madras High Court in the case of M/s. **3E Infotech Vs. Customs, Excise & Service Tax Appellate**

Tribunal, Commissioner of Central Excise (Appeals-I) 2018 (7) TMI 276 – Madras High Court, wherein it has been held that:

> *"13. On an analysis of the precedents cited above, we are of the opinion that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court, and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs. 4,39,683.00/- cannot be barred by limitation and ought to be refunded."*

7.3 Submissions made by revenue

7.4 The following submissions were made by the Ld. A.R.:

i) Service tax was paid by the appellant on accrual basis for ASF invoices as per the self-assessment provisions of the Finance Act, 1994. The appellant treated the amount as "service tax" and paid it under the appropriate head of account, as admitted by them in the Statement of Facts.

ii) In the present case, the appellant's timeshare services were taxable under the Finance Act, 1994, and the tax was paid on accrual basis as required by the law at the time. The subsequent cancellation arises from a business decision and does not render the initial payment "without authority of law." It is not a case of any tax collected without any enabling legal provision.

iii) The appellant has not challenged the constitutionality of the levy but seeks a refund due to subsequent cancellations, which falls squarely within Section 11B's ambit.

iv) The 'relevant date' for a refund claim as per Section 11B of the CEA is the date of payment of the tax, not any subsequent event such as any date for issue of Credit Notes, as claimed by the Appellant-claimant. Even so, even if the date of Credit Notes is

reckoned, the claim is hit by the time-limitation provided under Section 11B of CEA.

v) The appellant's argument that retaining the amount would violate Article 265 of the Constitution is without merit. The service tax was levied and collected under the authority of the Finance Act, 1994, at the time of payment. The Hon'ble Supreme Court in **Mafatlal Industries** case clarified that Article 265 is not violated when tax is paid under a valid law, even if a refund is later sought due to subsequent events.

vi) From the foregoing, it emerges that the amount paid by the appellant was "service tax" under the Finance Act, 1994, at the time of payment was tax and not a "deposit."

vii) Hon'ble Supreme Court decision in the case of **UoI & Ors. Vs VKC Footsteps India Pvt Ltd.** [2021 (9) TMI 626 - Supreme Court] wherein it was held that refund is not a constitutional right but a statutory right and therefore, the legislature, in its wisdom, and through statute, can decide how the refund is to be granted

7.5 Discussions on the submissions

7.6 The alternate plea taken by the appellant is that the amount paid is not duty but a 'deposit'. It is the appellant's view that once tax is paid but the service was not rendered it amounts to tax having been collected without the authority of law and is hence only a 'deposit'. Per contra revenue is of the opinion that Service tax was paid by the appellant on accrual basis for ASF invoices as per the self-assessment provisions of the Finance Act, 1994. The appellant treated the amount as "service tax" and paid it under the appropriate head of account, as admitted by them in the Statement of Facts.

7.7 The authority to tax, is traceable to the Constitution. As stated by a 9 Judge Bench of the Apex court in **Mafatlal Industries Ltd.** (supra), **Article 265** does not itself lay down any criteria for testing the validity of a statute, **when it speaks of 'law', it refers to a valid law but the validity has to be determined with reference to other provisions of the Constitution.** For an understanding of the issue, some of the Articles of the Constitution where a reference to 'law' has been made are listed below:

> **Article 265**. **Taxes not to be imposed save by authority of law** - No tax shall be levied or collected except by authority of law.
>
> +++++
>
> **Article 13. Laws inconsistent with or in derogation of the fundamental rights**
>
> *****. *****. *****
>
> (3) In this article, unless the context otherwise requires,-
>
> (a)"**law" <u>includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;</u>**
>
> <u>(b)</u>**<u>"laws in force" includes laws passed or made by Legislature or other competent authority</u>** in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
>
> +++++
>
> **Article 366. Definitions.**
>
> *****. *****. *****
>
> (10) **"existing law"** means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;

7.8 Hence the concept of law is quite wide and is not limited to Constitution or statute law. A tax collected under a statute by misconstruction or wrong interpretation of the provisions of the Act, Rules or Notifications or by an erroneous determination of the relevant facts cannot be held to be a collection of tax without the authority of law. A seven judge Constitutional Bench of the Supreme Court in **Smt. Ujjam Bai v. State of Uttar Pradesh,** [1962 AIR 1621/ 1963 SCR (1) 778/ 1961 1 SCR 778] had an occasion to examine the binding force of a decision which is arrived at by a taxing authority by misconstruction or wrong interpretation of law. It held as under;

> "..A taxing authority, which has the power to make a decision on matters falling within the purview of the law under which it is functioning is undoubtedly under an obligation to arrive at a right decision. But the liability of a tribunal to err is an accepted phenomenon. The binding force of a decision which is arrived at by a taxing authority acting within the limits of the jurisdiction conferred upon it by law cannot be made dependent upon the question whether its decision is correct or erroneous. For, that would create an impossible situation. Therefore, though erroneous, its decision must bind the assessee. Further, if the taxing law is a valid restriction the liability to be bound by the decision of the taxing authority is a burden imposed upon a person's right to carry on trade or business. This burden is not lessened or lifted merely because the decision proceeds upon a misconstruction of a provision of the law, which the taxing authority has to construe. Therefore, it makes no difference whether the decision is right or wrong so long as the error does not pertain to jurisdiction." (emphasis added)

Thus any refund arising out of a wrong assessment made has to be dealt with under section 11B of the Central Excise Act only.

7.9 As held by Constitutional Courts while the power to levy taxes is an attribute of sovereignty, exercise of that power is controlled by the Constitution. The collection of tax by the authority of law must hence be understood to mean by a valid law. A 7 Judge Bench of the Apex Couret in **JINDAL STAINLESS LTD.& ANR. VS. STATE OF**

HARYANA & ORS. NEW DELHI, [CIVIL APPEAL NO. 3453/2002, Dated: 11/11/2016], examined the power to levy taxes. The Court held:

> **Power to Tax : an Attribute of sovereignty**
> 14. Power to levy taxes has been universally acknowledged as an essential attribute of sovereignty. Cooley in his Book on Taxation – Volume-1 (4th Edn.) in Chapter-2 recognises the power of taxation to be inherent in a sovereign State. The power, says the author, is inherent in the people and is meant to recover a contribution of money or other property in accordance with some reasonable rule or apportionment for the purpose of defraying public expenses. The following passage from the book is apposite:
>
> > "57. Power to tax as an inherent attribute of sovereignty. The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government. It is possessed by the government without being expressly conferred by the people. The power is inherent in the people because the sustenance of the government requires contributions from them. In fact the power of taxation may be defined as "the power inherent in the sovereign state to recover a contribution of money or other property, in accordance with some reasonable rule or apportionment, from the property or occupations within its jurisdiction for the purpose of defraying the public expenses." **Constitutional provisions relating to the power of taxation do not operate as grants of the power of taxation to the government but instead merely constitute limitations upon a power which would otherwise be practically without limit.** This inherent power to tax extends to everything over which the sovereign power extends, but not to anything beyond its sovereign power. Even the federal government's power of taxation does not include things beyond its sovereign power." (emphasis added)

7.10 The dispute in this case pertains to an order of self-assessment made by the appellant under an intra vires statute and not under a statute which is held ultra vires the Constitution. Hence the assessment has the protection of law, having being done under the authority of a valid law. The fact that the appellant paid the Service Tax first and subsequently did not offer any service will not make the

taxes paid to the exchequer a 'deposit'. In fact, as per Section 73A of the Finance Act 1994, reproduced below, **any amount collected as Service Tax, in any manner** shall forthwith be paid to the credit of the Central Government. Hence excess collection of tax is also governed by the Act and **is as per the authority of law.**

> 73A. Service Tax Collected from any person to be deposited with Central Government
>
> (1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made thereunder from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.
>
> (2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.
>
> (emphasis added)

Once the amount is collected as Service Tax as per the authority of law and is deposited to Government any refund can be claimed only as per the provisions of the said Act. As stated in the **Mafatlal industries** judgment (supra), even a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier. It further stated:

> "Section 11B of Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law."
> (emphasis added)

The Finance Act 1994, as per the provisions of which the tax was collected from their subscribers/ customers and paid to the exchequer, is a valid law. The claim of the appellant that the payment

was a 'deposit' collected without any authority of law and outside the ambit of the particular statute, hence must be rejected. Any excess paid duty has to be claimed as a refund under section 11B only.

7.11 The refund of taxes arising from an 'unconstitutional levy' and 'illegal levy', under the indirect tax laws came to be examined by the Hon'ble Supreme Court in **Mafatlal Industries** (supra), decided by a majority of 8:1. Hon'ble Justice B.P. Jeevan Reddy, J. speaking for himself and on behalf of four other judges delivered the main majority opinion. The passage relevant to the issue under discussion, though referred to in parts, merits being reproduced *in extenso* below;

> "68. Re. : (I) : Herein before, we have referred to the provisions relating to refund obtaining from time to time under the Central Excises and Salt Act. Whether it is Rule 11 (as it stood from time to time) or Section 11B (as it obtained before 1991 or subsequent thereto), they invariably purported to be exhaustive on the question of refund. Rule 11, as in force prior to August 6, 1977, stated that "no duties and charges which have been paid or have been adjusted....shall be refunded unless the claimant makes an application for such refund under his signature and lodges it to the proper officers within three months from the date of such payment or adjustment, as the case may be". Rule 11, as in force between August 6, 1977 and November 17, 1980 contained sub-rule (4) which expressly declared: "(4) Save as otherwise provided by or under this rule, no claim of refund of any duty shall be entertained". Section 11B, as in force prior to April, 1991 contained sub-section (4) in identical words. It said:
>
> "(4) Save as otherwise provided by or under this Act, no claim for refund of any duty of excise shall be entertained". Sub-section (5) was more specific and emphatic. It said: "Notwithstanding anything contained in any other law, the provisions of this section shall also apply to a claim for refund of any amount collected as duty of excise made on the ground that the goods in respect of which such amount was collected were not excisable or were entitled to exemption from duty and no court shall have any jurisdiction in respect of such claim." It started with a non-obstante clause; it took in every kind of refund and every claim for refund and it expressly barred the jurisdiction of courts in respect of such claim. Sub-section (3) of Section 11B, as it now stands, is to the same effect - indeed, more comprehensive and all-encompassing. It says, "(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder or in any law for

the time being in force, no refund shall be made except as provided in sub-section".

The language could not have been more specific and emphatic. The exclusivity of the provision relating to refund is not only express and unambiguous but is in addition to the general bar arising from the fact that the Act creates new rights and liabilities and also provides forums and procedures for ascertaining and adjudicating those rights and liabilities and all other incidental and ancillary matters, as will be pointed out presently. This is a bar upon a bar - an aspect emphasised in Para 14, and has to be respected so long as it stands. The validity of these provisions has never been seriously doubted. Even though in certain writ petitions now before us, validity of the 1991 (Amendment) Act including the amended Section 11B is questioned, no specific reasons have been assigned why a provision of the nature of sub-section (3) of Section 11B (amended) is unconstitutional. Applying the propositions enunciated by a seven-Judge Bench of this Court in Kamala Mills, it must be held that Section 11B [both before and after amendment] is valid and constitutional. In Kamala Mills, this Court upheld the constitutional validity of Section 20 of the Bombay Sales Tax Act (set out hereinbefore) on the ground that the Bombay Act contained adequate provisions for refund, for appeal, revision, rectification of mistake and for condonation of delay in filing appeal/revision. The Court pointed out that had the Bombay Act not provided these remedies and yet barred the resort to civil court, the constitutionality of Section 20 may have been in serious doubt, but since it does provide such remedies, its validity was beyond challenge. To repeat - and it is necessary to do so - so long as Section 11B is constitutionally valid, it has to be followed and given effect to. We can see no reason on which the constitutionality of the said provision - or a similar provision - can be doubted. It must also be remembered that Central Excises and Salt Act is a special enactment creating new and special obligations and rights, which at the same time prescribes the procedure for levy, assessment, collection, refund and all other incidental and ancillary provisions. As pointed out in the Statement of Objects and Reasons appended to the Bill which became the Act, the Act along with the Rules was intended to "form a complete central excise code". The idea was "to consolidate in a single enactment all the laws relating to central duties of excise". The Act is a self-contained enactment. It contains provisions for collecting the taxes which are due according to law but have not been collected and also for refunding the taxes which have been collected contrary to law, viz., Sections 11A and 11B and its allied provisions. Both provisions contain a uniform rule of limitation, viz., six months, with an exception in each case. Sections 11 and 11B are complimentary to each other.

To such a situation, Proposition No. 3 enunciated in Kamala Mills becomes applicable, viz., where a statute creates a special right or a liability and also provides the procedure for the determination of the right or liability by the Tribunals constituted in that behalf and provides further that all questions about the said right and liability shall be determined by the Tribunals so constituted, the resort to civil court is not available - except to the limited extent pointed out therein. Central Excise Act specifically provides for refund. It expressly declares that no refund shall be made except in accordance therewith. The Jurisdiction of a civil court is expressly

barred - vide sub-section (5) of Section 11B, prior to its amendment in 1991, and sub-section (3) of Section 11B, as amended in 1991. It is relevant to notice that the Act provides for more than one appeal against the orders made under Section 11B/Rule 11. Since 1981, an appeal is provided to this Court also from the orders of the Tribunal. While Tribunal is not a departmental organ, this court is a civil court. In this view of the matter and the express and additional bar and exclusivity contained in Rule 11/Section 11B, at all points of time, it must be held that any and every ground including the violation of the principles of natural justice and infraction of fundamental principles of judicial procedure can be urged in these appeals, obviating the necessity of a suit or a writ petition in matters relating to refund. Once the constitutionality of the provisions of the Act including the provisions relating to refund is beyond question, they constitute "law" within the meaning of Article 265 of the Constitution. It follows that any action taken under and in accordance with the said provisions would be an action taken under the "authority of law", within the meaning of Article 265.

In the face of the express provision which expressly declares that no claim for refund of any duty shall be entertained except in accordance with the said provision, it is not permissible to resort to Section 72 of the Contract Act to do precisely that which is expressly prohibited by the said provisions. In other words, it is not permissible to claim refund by invoking Section 72 as a separate and independent remedy when such a course is expressly barred by the provisions in the Act, viz., Rule 11 and Section 11B. For this reason, a suit for refund would also not lie. Taking any other view would amount to nullifying the provisions in Rule 11/Section 11B, which, it needs no emphasis, cannot be done. It, therefore, follows that any and every claim for refund of excise duty can be made only under and in accordance with Rule 11 or Section 11B, as the case may be, in the forums provided by the Act. No suit can be filed for refund of duty invoking Section 72 of the Contract Act. So far as the jurisdiction of the High Court under Article 226 - or for that matter, the jurisdiction of this court under Article 32 - is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.

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 of any of the constitutional limitations. This is a situation not contemplated by the Act. . . . . "

****

"PART - IV

99. The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.

(i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff - whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter - by mis-interpreting or mis-applying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by mis-interpreting or mis-applying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactment before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 - and of this Court under Article 32 - cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. **The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.**

The said enactments including Section 11B of Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are self-contained enactments providing for levy, assessment, recovery and refund of duties, imposed thereunder. Section 11B of the Central Excises and Salt Act and Section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a claim of refund and cannot form a basis for maintaining a suit or a writ petition. **All refund claims except those mentioned under Proposition (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be.** It is necessary to emphasise in this behalf that Act provides a complete mechanism for correcting any errors whether of fact or law and that not only an appeal is provided to a Tribunal - which is not a departmental organ - but to this Court, which is a civil court.

ii) Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition. . . . ."

(emphasis added)

As per the judgment, a refund arises on two grounds;

i) where the charging section of a statutory provision ("law") is itself challenged by an assessee for an **unconstitutional levy** as it is violative of some provision of the Constitution

and succeeds then the claim for refund arises outside the provisions of the Act. [See para 17 of judgment]

ii) where the tax is collected by the authorities under a statute by misconstruction or wrong interpretation of the provisions of the Act, Rules or Notifications or by an erroneous determination of the relevant facts, i.e., an **illegal levy**. In this class of cases, the claim for refund arises under the provisions of the Act. In other words these are situations contemplated by and provided for by the Act and the Rules. [See para 18 of judgment]

As per the judgment tax collected under an illegal levy are also collected under the authority of law and are situations contemplated by and provided for by the Act and the Rules. Hence, **all refund claims except that of an unconstitutional levy must be filed and adjudicated under the refund provisions of the Central Excises and Salt Act 1944 or the Customs Act 1962, as the case may be.** 7.12 We shall now examine some of the judgments cited by the appellant. They appellant has drawn reference to the decision of the Hon'ble Madras High Court in the case of **M/s. 3E Infotech** (supra), wherein it was held that when service tax is paid by mistake a claim for refund cannot be barred by limitation. However as pointed out by the Ld. A.R. the **Hon'ble Madras High Court in Natraj and Venkat Associates** [2015 (40) S.T.R. 31 (Mad.)] a later day judgment, held that -

> From the materials available on record, it is seen that the amounts were credited to the Revenue under the Head of Account "0044-Service Tax" through TR-6 challans, which are purported for payment of Service Tax only and as such, the claim of the respondent that the payment was only deposit and not Service Tax, cannot be sustained. Further, a tax, be it, direct or indirect, is intended for immediate expenditure for the common good of the state and it would be unjust to require its repayment after it has been in whole or in part expended, which would often be the case in most payment of such sort. Therefore, it is impracticable for the authorities to refund applications that are filed beyond time even it is paid under a mistake of law. Therefore, the authorities have

> rightly rejected the claim of the respondent and this aspect has not been taken note of by the learned single Judge.

The court noted that taxes are intended for immediate expenditure for the common good, and it would be unjust to require repayment after such funds have been expended. It was thus emphasized by the jurisdictional High Court that amounts paid as service tax, even if later found to be not payable, remain subject to Section 11B's time limit for purposes of refund. Further the Constitutional Courts judgment in **Mafatlal Industries** (supra), itself **lays down the law** in this matter that all refunds of Central Excise duty, (as made applicable to the Finance Act 1994, in this case), except that of an unconstitutional levy has to be dealt with under the provisions of section 11B only. The law declared by the Hon'ble Supreme Court is binding on all courts and judicial bodies. Hence we do not propose to discuss individually the judgements cited by the appellant. Moreover as stated by the Apex Court in **UoI & Ors. Vs VKC Footsteps India Pvt Ltd**. [2021 (9) TMI 626 - Supreme Court], refund is not a constitutional right but a statutory right and therefore, the legislature, in its wisdom, and through statute, can decide how the refund is to be granted. Further this is a case where the appellant has self-assessed the duty but has failed to file the refund claim in time. Hence this is not a situation where the refund is sought to be denied to them. While they may (after verification of the claim) be found to have a right to the refund, the remedy of processing the refund is not available because of their own negligence in not claiming the refund in time. It is trite law that limitation bars the judicial remedy, while it does not extinguish the right.

8. Lack of Consistency in passing orders

8.1 Submissions by MHR

8.2 The appellant submits that although all the refund claims pertain to the same issue, in certain cases, the Respondent held that the Refund claim is hit by time-limit whereas in certain other cases, the Respondent held that the Refund claim is hit by unjust enrichment as well as time-limit. The appellant relied on the following decision of the Supreme Court stating that the Courts upholding the doctrine of consistency have held that Revenue cannot take a different stand when facts are almost identical:

A) **Birla Corporation Ltd. Versus Commissioner Of Central Excise** - 2005 (7) TMI 104 - Supreme Court

B) **Indian Oil Corporation Ltd. Versus Collector Of C. Ex., Baroda** - 2006 (8) TMI 8 - Supreme Court

C) **Bharat Sanchar Nigam Ltd. And Anr. v. Union of India and others** reported in (2006) 3 SCC 1

8.3 Discussions on submissions

8.4 We find that the appeal in this case pertains to multiple refund claims over a period of time, resulting in multiple SCN's. Minor inconsistencies or additional grounds taken in the orders over a period of time which are not of a diametrically opposite nature and are only in addition to the core question of time bar cannot be held to be a case of inconsistency. Government cannot be held to be bound in perpetuity by the stray decision of one of its officers. Further the Apex Court in **State of Bihar Versus Upendra Narayansingh** [CIVIL APPEAL NO.1741 OF 2009, (Arising out of S.L.P. (C) 16871 of 2007)] held as under:

> *"34.. . . By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order - Chandigarh Administration and another v. Jagjit Singh and another [(1995) 1 SCC 745], Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others [(1997)1 SCC 35], Union of India [Railway Board] and others v. J.V. Subhaiah and others [(1996) 2 SCC 258], Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459], State of Haryana v. Ram Kumar Mann [(1997) 1 SCC 35],Faridabad CT Scan Centre v. D.G. Health Services and others [(1997) 7 SCC 752], Style (Dress Land) v. Union Territory, Chandigarh and another[(1999) 7 SCC 89] and State of Bihar and others v. Kameshwar Prasad Singh and another[(2000) 9 SCC 94],Union of India and another v. International Trading Co. and another[(2003) 5 SCC 437] and Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others* [(2007) 4 SCC 737]."
>
> (emphasis added)

We hence do not find any substance in the submissions made by the appellant.

9. Based on the discussions above we find that the impugned orders have taken a view which is reasonable, legal and proper. We hence reject the appeals and disposed it of accordingly.

(Order pronounced in open court on 07.11.2025)

sd/-	sd/-
(**AJAYAN T.V.**)	(**M. AJIT KUMAR**)
Member (Judicial)	Member (Technical)

Rex