Chaitanya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3587 OF 2022

India Yamaha Motor P. Limited,
having its factory at Plot No. VV-I, SIPCOT Industrial Park, Vallam Vadagal Village, Sriperumbudur Taluk, Kanchipuram – 602 105. … **Petitioner**

Versus

1. **The Union of India**
   through the Secretary, Ministry of Finance, Department of Revenue, 128-A/North Block, New Delhi – 110 001.

2. **Principal Commissioner RA**
   & Ex-officio Additional secretary to the Government of India 8th Floor, World Trade Centre, Cuff Parade, Mumbai – 400 005.

3. **The Commissioner of CGST & Central Excise,**
   Chennai Outer Commissionerate, No.2054-I, II Avenue, 12th Main Road, Newry Towers, Anna Nagar, Chennai – 600 034.

4. **The Assistant Commissioner of GST & Central Excise,**
   Sriperumbudur Division, Chennai Outer Commissionerate, C-48, TNHB Building, Anna Nagar, Chennai – 600 040. … **Respondents**

Mr. V. Sridharan, Senior Advocate a/w Ms. Payal Nahar, Mr. Shanmuga Dev i/b Mr. Sriram Sridharan, for the Petitioner.

Mr. Karan Adik a/w Mr. Ram Ochani, for the Respondents.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.
RESERVED ON : 04 NOVEMBER 2025
PRONOUNCED ON : 10 NOVEMBER 2025

JUDGMENT: *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately, at the request and with the consent of the learned counsel for the parties. In any event, by order of 11 November 2024, the matter was posted on 22 November 2024, for final disposal subject to any overnight part-heard matters.

THE CHALLENGE

3. The Petitioner challenges the order dated 17 January 2022 made by the 2nd Respondent denying the Petitioner a rebate totalling Rs. 3,26,17,188/- and interest thereon under Section 11 B(b) of the Central Excise Act, 1944 ("said Act") and seeks a writ of mandamus to direct the 2nd Respondent to forthwith grant and pay the same. The challenge arises in the facts and circumstances set out hereafter.

RELEVANT FACTS AND CIRCUMSTANCES.

4. The Petitioner manufactures motorcycles and scooters falling under Chapter 87 ("final products"). These attract a levy of Basic Excise Duty ("BED") under Section 3 of the said Act and the National Calamity Contingent Duty ("NCCD") under Section 136 of the Finance Act, 2001. The inputs used in the manufacture of the final products attracted only BED and not NCCD.

5. The Petitioner's case is that, in terms of Rule 1 of the Cenvat Credit Rules, 2004 ("CCR, 2004"), BED and NCCD paid on the inputs are admissible as CENVAT credit. Accordingly, the Petitioner availed such CENVAT credit paid on such inputs. Further, up to 29 February 2016, in terms of Rule 3(4)(a) of CCR, 2004, CENVAT credit was allowed to be utilised for payment of any duty of excise, including NCCD, on any final product.

6. However, by Notification No.13/2016- CE(NT) dated 01 March 2016, a fifth proviso was introduced in Rule 3(4) of CCR, 2004, which reads as follows:

> *"Provided also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof shall not be utilized for payment of the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14*

of 2001)";

7. Thus, with effect from 01 March 2016, CENVAT credit of BED on inputs could not be utilised for payment of NCCD on the final products or the output. Only the CENVAT credit of NCCD on the inputs, if any, could be utilised for payment of NCCD on the final product or the output.

8. The Petitioner admits that it failed to comply with the requirement of the fifth proviso to Rule 3(4) of CCR, 2004, for some time during the period from 01 March 2016 to June 2017. This means that even during this period, the Petitioner utilised CENVAT credit of BED for payment of both BED and NCCD. The Petitioner claims that this was done in oversight and without any intention whatsoever to breach the law.

9. The Petitioner submitted that this was evident from the Petitioner's conduct of making good this unintentional lapse by paying an amount of Rs. 22.31 crores in cash towards the discharge of liability under the BED and NCCD during the relevant period from March 2016 to June 2017, under protest.

10. The Respondents issued a show cause notice dated 04 April 2018 to the Petitioner, alleging a breach of the 5th proviso to Rule 3(4) of the CCR, 2004, during the period March 2016 to June 2017, and proposing to recover an amount of Rs. 22,31,16,229/- from the Petitioner. As noted earlier, the Petitioner, under protest and without prejudice, paid the entire demanded amount in June 2018. However, the

Petitioner did not pay any interest or penalty, as, according to the Petitioner, they were not payable.

11. Claiming the Petitioner had paid the demanded amount under protest and without prejudice, the Respondents adjudicated the show cause notice and, vide order dated 05 December 2019, confirmed the demand of Rs. 22,31,16,229/- with interest and penalty.

12. In the meantime, the Government, vide Chapter V of the Finance (No. 2) Act 2019, introduced a scheme called the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS), which came into effect from 01 September 2019. This scheme allowed taxpayers to settle their disputes by paying a specified percentage of the outstanding tax dues. Upon such payment, the taxpayer was to be immune from the recovery of the balance tax, full interest, and full penalty.

13. By application/declaration in Form SVLDRS-1 made in the prescribed form on 28 December 2019, the Petitioner applied for the benefits under the SVLDRS in respect of the demands in the order dated 05 December 2019. In the Application, the Petitioner pointed out that the amount demanded by the order in original dated 05 December 2019 was already paid in cash by the Petitioner and that the same be adjusted against the dues payable under SVLDRS.

14. The Petitioner's Application under SVLDRS and the proposal contained therein were accepted, and a discharge

certificate in Form SVLDRS-4 was issued to the Petitioner. The legal effect of this Form was that the Petitioner was discharged from payment of any further duty, interest or penalty in respect of the final products cleared domestically and for exports during the relevant period of March 2016 to June 2017. Further, no NCCD, interest or penalty was liable to be paid by the Petitioner for the said period.

15. The Petitioner's case is that, once the Petitioner made the cash payment of Rs. 22,31,16,229/- in June 2018, the Petitioner was entitled to the restoration of the CENVAT credit, which the Petitioner had utilised to make payments towards BED and NCCD during the relevant period. The Petitioner's case is that such restoration would have been done as a matter of routine but for the introduction of the GST regime in 2017. This regime abolished the CENVAT credit register and excise duty payments.

16. Therefore, the Petitioner, by invoking the provisions of Section 142(3) of the CGST Act 2017, applied for a refund of the amount of Rs. 22,31,16,229/- with the Respondents. This claim was rejected, and the Petitioner questioned the rejection before the CESTAT at Chennai at the time of institution of this Petition. By filing an additional affidavit, this fact regarding Excise Appeal No. 41585 of 2019 was disclosed. The Petitioner contends that this aspect of the matter is not the subject matter of this Petition.

17. At the time of the final hearing of this petition, Mr. Adik, learned Counsel for the Respondent, produced before us the CESTAT order dated 23 April 2025, dismissing the Petitioner's Excise Appeal No. 41585 of 2019, seeking refund of the amount of Rs. 22,31,16,229/- for the relevant period, i.e., March 2016 to June 2017.

18. The Petitioner filed 63 rebate claims on 31 October 2017 under Rule 18 of the Central Excise Rules, 2002, read with Notification No. 19/2004-CE (NT) dated 16 September 2004, asserting that these related to the payment of BED and NCCD on final products exported outside India. The Respondents granted rebates to the extent that they covered the payment of BED on final products exported outside India. However, the Respondents opposed granting a rebate for the payment of NCCD on the Petitioner's exported final products, mistakenly utilising the CENVAT credit of BED.

19. The Petitioner has time and again contended that the subject matter of this petition is only the refund of the rebate amounting to Rs. 3,26,17,188/-, along with appropriate interest thereon, in respect of the payment of NCCD on the final products exported by the Petitioner outside India. The Petitioner has time and again asserted that the entire claim of rebate amounting to Rs. 22,31,16,229/- is not the subject matter of this petition.

20. Regards some obvious overlap, Mr. Shridharan, the

learned Counsel for the Petitioner, clarified that under no circumstances was the Petitioner seeking any duplicate payments, and that if the Petitioner were to receive rebate to the extent of Rs. 3,26,17,188/-, then the Petitioner would make necessary deductions from the Petitioner's claim of refund, which the CESTAT has now rejected in the proceedings challenging the CESTAT's order dated 23 April 2025.

21. By separate 63 orders-in-original issued between 31 July 2018 and 16 October 2018, the Respondents adjudicated the show cause notices issued, and the Petitioner's rebate claim in respect of NCCD paid on the final products exported was rejected. However, neither the show cause notices nor, consequently, these orders-in-original disputed the rebate of BED on goods exported by the Petitioner by utilizing the CENVAT credit of BED.

22. The Petitioner appealed the above orders-in-original. However, the Commissioner (Appeals), vide orders-in-appeal dated 30 October 2018 and 31 December 2018, upheld the rejection of the rebate claim in respect of the NCCD amounts paid by the Petitioner by utilizing the CENVAT credit of BED.

23. The Petitioner filed a revision application against the orders-in-appeal before the second Respondent. Vide additional submissions dated 28 October 2021, the Petitioner apprised the second Respondent about the proceedings settled

under the SVLDRS. Finally, by the impugned common order dated 17 January 2022, the second Respondent upheld the rejection of the Petitioner's rebate claim towards NCCD paid on the final products exported outside India, primarily on the following grounds: -

> *(i) The Petitioner has failed to pay interest on the amount of NCCD paid subsequently in cash.*
> *(ii) The rebate sought by the Petitioner was of debits made, albeit incorrectly, through the Cenvat credit account and hence, the rebate claims that had been rejected in this case, have to be treated as lapsed in terms of proviso to Section 142(4) of the CGST Act, 2017.*
> *(iii) Since NCCD discharged in cash has been considered as the amount paid against Order-in-Original dated 5.12.2019 for settlement of the proceeding under SVLDR Scheme, the same cannot be either rebated or refunded in terms of Section 130(1) of the Finance (No.2) Act, 2019.*

24. Mr Adik, learned Counsel for the Respondents, pointed out that in addition to the above grounds, the Petitioner's rebate claim was rejected because the Petitioner paid the entire demanded amount of Rs. 22,31,16,229/- "under protest", thereby forcing the Respondents to adjudicate the show cause notices and pass the orders thereon.

25. Mr Shridharan explained that this was done under protest and without prejudice, solely to prevent the

Respondents from arguing that the payments were voluntary. This was also necessary because it was the Petitioner's case that they were not liable to pay any BED or NCCD on the final products exported outside India, or, in any event, that they were entitled to a refund of BED and NCCD paid on such exports. He maintained that this was not one of the reasons reflected in the impugned common order and, in any event, such a reason would be misconceived.

PETITIONER'S CONTENTIONS.

26. Mr. Shridharan, while assailing the impugned common order dated 17 January 2022, firstly submitted that no interest was payable on the alleged delayed payment of NCCD. He relied on **India Carbon Ltd. & Ors. Vs. State of Assam**[1], **Mahindra & Mahindra Ltd. (Authomotive Sector) Vs. UOI**[2] **and CEE Vs. Ukai Pradesh Sahakari Khand Udyog Mandli Ltd**[3] to support this contention.

27. Mr. Sridharan also relied upon Section 136 of the Finance Act, 2001, and the 2001 amendment to this Section and pointed out that the provision of levy of interest on delayed payment of NCCD was introduced only in 2021, and that such a substantive amendment has not been given any retrospective effect to cover the period between March 2016 and June 2017. He submitted that this was an additional

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1 1997 (6) SCC 479

2 (2023) 3 Centax 261 (Bom.)

3 2011 (271) ELT 32 (Guj.)

reason why no interest way payable on allegedly delayed NCCD.

28. Mr. Sridharan submitted that the proviso to Section 142(4) of the CGST Act was not applicable in the instant case. He submitted that claim for refund was never rejected on the ground that the Petitioner had not exported a portion of the final products. Accordingly, Mr. Sridharan submitted that the Petitioner's rebate claim could not have been rejected by invoking the proviso to Section 142(4) of the CGST Act.

29. Mr. Sridharan submitted that even the provisions of Section 130(1) of Finance (No.2) Act, 2019, were not attracted in the facts of the present case. He submits that this Section only bars a taxpayer from reopening a settled dispute by requesting a refund. He submitted that, in the present case, the Petitioner was seeking a refund on the ground that the Order-in-Original dated 05 December 2019 was bad, as that is a matter the Petitioner intends to pursue separately. He submitted that the Petitioner was seeking a rebate under Rule 18 of CER, 2002, on the basis that the final products were exported, and that the Rule provides that a refund would be granted if any tax was paid in respect of such exported goods. He submitted that this was an additional reason to hold that the bar under Section 130(1) would not apply in the present case.

30. Mr. Sridharan, without prejudice submitted that the three reasons have no nexus with the rejection of the

Petitioner's refund claim. Specifically, he submitted that the issue of interest payment on alleged delayed NCCD claims is an independent issue. Assuming any interest was indeed payable, it was open to the Respondents to recover the same in accordance with law. However, that issue has no nexus whatsoever with the Petitioner's rebate claim available under Rule 18 of CER 2002, read with the notification dated 6 September 2004.

31. Apart from the above submissions, Mr. Sridharan clarified that this was not a case of the Petitioner seeking any double benefits as was sought to be projected in the returns file on behalf of the Respondents. Without prejudice, he submitted that if any duty is paid twice over by a party, though not required to do so under the law, there is no bar to seeking a refund of the duty paid twice over.

32. In any event, Mr. Sridharan asserted that this Petition was restricted to the rebate for NCCD paid in cash in June 2018 in terms of Rule 18 of CER, 2002 read with Notification dated 09 September 2004, because the final products were ultimately exported outside India. He, therefore, submitted that both claims were different and distinct and there was no question of any double benefit being sought by the Petitioner.

33. Mr. Sridharan, again without prejudice, submitted that exports made under "claim of rebate" and "under bond" should be at parity, since the intention of both procedures is to make the duty incidents "NIL". He submitted that the

interpretation now adopted by the Respondents defies this parity principle. He also submitted that this entire exercise was revenue-neutral, as the Petitioner seeks a rebate under Rule 18 of CR 2002 only in respect of a final product exported outside India. He reiterated that this is the only subject matter of this Petition, and that the Petitioner was not seeking any refund of the balance, approximately Rs 18/19 Crores, in this Petition, but would pursue that matter in separate proceedings.

34. Based on the above contentions, Mr. Sridharan contended that the impugned common order dated 17 January 2022 made by the 2nd Respondent be set aside and the relief of rebate in an amount of Rs. 3,26,17,188/- be granted to the Petitioner.

RESPONDENT'S CONTENTIONS.

35. Mr Karan Adik, the learned counsel for the Respondents, submitted that there was no error, much less any jurisdictional error, in the impugned common order dated 17 January 2022. He submitted that all the reasons set out therein, including the reason that NCDD payments made by the Petitioner in cash were under protest, were valid reasons for rejecting the Petitioner's rebate claim.

36. Mr Adik submitted that if the Petitioner had not made payments "Under Protest" or "Disputed", then *"the picture may have been different at the time of granting rebate*" (this

is quoted from paragraph 1 (v) of the brief written submissions filed on record by Mr Karan Adik).

37. Mr. Adik submitted that Section 136 of the Finance (No.2) Act, 2001 applies the provisions of Central Excise Act, 1944 and the Rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, as far as may be, in relation to levy and collection of NCCD leviable under the said Section in respect of goods specified in the VII Schedule as they apply in relation to levy and collection of the duties of excise on such goods under that Act or those Rules as the case may be.

38. Based on the above, Mr. Adik submitted that the provisions concerning the payment of interest on delayed payment of NCCD were squarely applicable and that the contentions to the contrary lacked merit. He relied on **B.V. Jewels Vs. Union of India**[4]**; Union of India Vs. Valecha Engineering Ltd.**[5] and **Navayuga Engineering Co. Ltd. Vs. Union of India and ors.**[6] to support his contentions.

39. Mr. Adik also relied upon the decisions of the Hon'ble Supreme Court in the case of **Unicorn Industries Vs. Union of India**[7] and **Commissioner of Central Excise, TN Vs. Vinayaga Body Building Indus. Ltd**[8] to submit how the Hon'ble Supreme

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4 Writ Petition No. 2423 of 2024 decided on 14 November 2024.

5 2010 (249) ELT 167 (Bom)

6 2024 (390) ELT 3 (SC)

7 2019 (370) E.L.T. 3 (SC)

8 2008 (224) E.LT. 3 (SC)

Court had interpreted the provisions relating to NCCD, Education Cess and Secondary and Higher Education Cess. He pointed out in all these cases, the levy of Cess payments along with interest thereof were upheld. Based on these decisions, he submitted that the requirement to pay interest on delayed NCCD payments could never be doubted.

40. Mr. Adik submitted that the Petitioner has paid the amount under the SVLDRS. Therefore, the question of payment of interest now becomes academic. He submitted that after having availed of the benefits under the SVLDRS, the Petitioner cannot turn around and seek additional benefits by way of a rebate. He submitted that in any event, such a rebate was rightly denied to the Petitioner based upon the reasons set out in the impugned common order dated 17 January 2022. Mr Adik relied upon the provisions of Section 142(4) of the CGST Act 2017 and submitted that the 2nd Respondent correctly invoked the same to deny a rebate to the Petitioner.

41. Mr. Adik submitted that the factum filing of Appeal before the CESTAT was nowhere in the original Writ Petition but was disclosed only in the additional affidavit filed after the institution of the Petition. Similarly, the order dated 23 April 2025 dismissing the Petitioner's Excise Appeal No. 41585 of 2019 was also not disclosed at the final stage of the hearing of this Petition. He submitted that this amounts to a

clear suppression dis-entitling the Petitioner to any equitable relief under Article 226 of the Constitution.

42. Mr. Adik submitted that Excise Appeal No. 41585 of 2019 pertains to the refund of the entire amount of Rs. 22,31,16,229/- for the period from March 2016 to June 2017. This is the same amount and period that form the subject matter of this Petition. In any case, he argued that this amount includes the rebate claim of Rs. 3,26,17,188/- sought in this Petition. Mr. Adik contended that this is merely a case of the Petitioner attempting to receive double benefits, which is unlawful.

43. Mr. Adik submitted that the CESTAT, in its order of 23 April 2025, rejecting the Petitioner's Excise No. 41585 of 2019, had recorded a categorical finding of fact that the Petitioner had already passed on the burden of the duty paid by it in cash towards NCCD to its customers. He pointed out how the CESTAT had referred to the various invoices raised by the Petitioners on their customers in this regard. He therefore submitted that on the principle of unjust enrichment, as was explained by the Hon'ble Supreme Court in the case of **Mafatlal Industries Ltd Vs Union of India & Ors**[9], no relief should be granted to the Petitioner in the exercise of this Court's extraordinary and equitable jurisdiction under Article 226 of the Constitution.

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[9] 1997 (89) E.L.T. 247 (SC)

44. For all the above reasons, Mr. Adik urged the dismissal of this Petition.

REJOINDER.

45. Mr Sridharan, by way of rejoinder, submitted that the Petitioner was not seeking any double benefits. He submitted that the transitional provisions under GST are robust and comprehensive. He submitted that double payment of duty mandates a double refund. He submitted that this double payment theory was not even a reason in the impugned common order dated 17 January 2022, and therefore, the Respondents were not entitled to urge this misconceived reason while defending the impugned common order.

46. Mr Sridharan submitted that the Petitioner had the option to enter into a bond, and if exercised, there would be no question of insisting on payment of any BED or NCCD. He submitted that Mr Adik's reliance on the decision in **Union of India Vs. Valecha Engineering Ltd**[10] was misplaced, and this decision was expressly examined, distinguished, and even overruled in *Mahindra and Mahindra Ltd* (supra). He submitted that *the Hon'ble Supreme Court* affirmed *Mahindra and Mahindra Ltd* (supra) because the Special Leave Petition against the same was dismissed.

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[10] 2010 (249) E.L.T. 167 (Bom)

CONSIDERATION OR EVALUATION.

47. The rival contentions now fall for our determination.

48. Based upon the contentions of the learned Counsel for the parties and the pleadings, the primary issue involved in this Petition was whether the Petitioner was entitled to a rebate under Rule 18 CER 2002 read with Notification No. 19/2004-CE(NT) dated 6 September 2024 in respect of the finished products upon which BED and NCCD was paid by the Petitioner (initially by utilising CENVAT credit, and later in cash), in so far as such payments concern the export of the finished products outside the India.

49. To determine the above issues, the Respondents, including the second Respondent, had to address themselves to the provisions of Rule 18 of the CER 2002 and Notification dated 6 September 2004. Unfortunately, from a perusal of the impugned common order dated 17 January 2022, we find that these precise issues have not been considered in light of Rule 18 and the Notification dated 6 September 2024.

50. The liability in law, to pay such tax on the final products exported in the given factual complexion, coupled with the above provisions, is required to be addressed, which is amiss in the impugned common order. This becomes crucial because the liability to pay the underlying tax/duty in the given factual compass and the payment of interest thereon, if at all,

as mandated by law, warrants application of mind followed by findings by the 2nd Respondent, in the first instance.

51. The Petitioner first contended that no duty, i.e., BED and/or NCCD, was payable on the final products exported outside India. The Petitioner, however, had the option to pay such duty before exporting and afterwards claim a rebate, or to export by submitting a bond without paying any duty. The Petitioner contended that, since both modes were allowed, a parity of consequences was required, and the Petitioner could not be disadvantaged for adopting one of the permissible modes.

52. This issue of parity, though squarely raised by the Petitioner, does not appear to have been considered or dealt with in the impugned common order. Any decision on such an issue would involve examination of the factual aspect of whether parity would indeed be a casualty if the revenue's version were allowed to prevail.

53. The second issue concerns the non-payment of interest on the allegedly delayed NCCD payments. There was much debate over whether interest is payable on such delayed NCCD payments. At least prima facie, we were inclined to agree with Mr Adik's submission that interest was payable, in light of the decision of the co-ordinate Bench in *Valecha Engineering Limited (supra).* This is more so because recently, the Hon'ble Supreme Court, in *Navayuga Engineering* (supra),

has specifically upheld this Court's decision in *Valecha Engineering Limited (supra).* Therefore, at least *prima facie*, Mr. Sridharan's arguments about *Valecha Engineering Limited (supra)*, being '*inconsistent, factually distinguishable and stands effectively overruled by the subsequent decision in Mahindra & Mahindra (supra)"* cannot be accepted at its face value.

54. Nevertheless, Mr. Adik was unable to satisfactorily explain whether the non-payment of interest on delayed NCCD could be a ground to deny the Petitioner a rebate under Rule 18 of the Central Excise Rules, 2002, read with Notification No.19/2004-CE (NT) dated 06 September 2004, particularly when it was the case of the Petitioner that such rebate was only in respect of the finished products that were exported outside India.

55. Even the impugned common order dated 17 January 2022 does not explain, let alone specify, why no rebate could be allowed on the ground of non-payment of interest on the alleged delayed payment of NCCD. The nexus between the non-payment of interest and the claim for rebate of the amounts paid was a crucial issue. Such an issue is not even considered in the impugned common judgment and order dated 17 January 2022.

56. None of the provisions referred to by Mr Adik provide for any correlation between the payment of interest and issue

of rebate on the ground that the finished products exported did not attract any BED or NCCD. Significantly, in respect of the 63 rebate claims filed by the Petitioner, the rebate of BED on the goods exported by utilising the BED credit was not even disputed by the Respondents in their show cause notices issued between 20 March 2018 and 24 August 2018. The dispute was only with respect to the rebate claim for NCCD, totalling Rs. 3,26,17,188/-.

57. Therefore, the issue of nexus between non-payment of interest on the alleged delayed payment of NCCD and rebate under Rule 18 of CER, 2002, read with Notification dated 06 September 2022, was the crucial issue before the 2nd Respondent, and this issue has not been addressed or decided by the 2nd Respondent in the impugned common order dated 17 January 2022.

58. The third issue concerns the payment of the demanded amount of Rs. 22,31,16,229/- in cash, "under protest" or by signing the same as "disputed" as being one of the reasons for rejection of rebate claim does not appeal to us is nowhere reflected in the impugned common order dated 17 January 2022. On this issue, we note that the impugned common order states, as a matter of fact, that the amount was paid in cash "under protest". However, there is nothing in the impugned common order which suggests the payment of this amount "under protest" was one of the grounds for rejecting

the Petitioner's rebate claim. Such a contention was advanced by Mr Adik across the Bar.

59. As it is well settled, statutory orders made by statutory authorities must stand or fall based upon the reasons set out therein. Such reasons cannot ordinarily be supplemented in the form of Affidavits or contentions advanced across the Bar. If this was indeed one of the reasons for the denial of the rebate, then the same should have been put to the Petitioner so that the Petitioner could have dealt with the same.

60. In any event, even if we assume that the Petitioner's payment of this amount under protest was one of the reasons, the 2nd Respondent has not explained why a payment under protest disqualifies the party from claiming a rebate, if such a rebate is legally otherwise admissible. If amounts are not paid under protest, the Revenue objects to their refund on the grounds that such amounts were voluntarily paid without any objection. Now that the amount was paid under protest, the rebate is contested on the said ground without explaining why such a payment disqualifies an assessee from receiving the rebate, if it is otherwise due by law. Again, none of these aspects are reflected in the impugned common order dated 17 January 2022.

61. The fourth issue concerns the impact of the provisions in Section 142(4) of the CGST Act 2017, Section 136 of the Finance (No.2) Act, 2001 or Section 130(1) of the Finance

(No.2) Act, 2019 a lapse under Section 142(4) of the CGST Act on the Petitioner's rebate claim. Even this is cursorily referred to in the impugned common order. Most of the shades of the rival contentions on these issues are not even considered in the impugned common order.

62. The fifth issue concerns the impact of the settlement of the dispute under the SVLDRS on the Petitioner's rebate claim. This required an examination of the scope of the settlement proceedings and the final settlement reached. Secondly, this required examining the nexus between the settlement reached and the claim for rebate, which the Petitioner claimed was made independently under Rule 18 of CER 2002 r/w the Notification dated 06 September 2024. The Petitioner had contended that the settlement under the SVLDRS had no nexus with the rebate claim, which was made only in respect of finished products exported outside India. All these aspects have not been considered in the impugned common order dated 17 January 2022.

63. The arguments or reasons concerning overlap and unjust enrichment cannot, at least prima facie, be accepted in these proceedings, mainly because they are not reflected in the impugned common order dated 17 January 2022. No opportunity was also provided to the Petitioner to address these aspects, if they were intended to form the basis for denying the rebate claim. Of course, Mr. Adik, with some justification, argued that such material in the form of

CESTAT's order dated 23 April 2025 was not available to the respondents when the impugned common order was issued. But it is equally possible to argue that such a plea was not raised because it does not relate to refunds or rebates for exports out of India, or that the petitioner's rebate claim was limited solely to the amount of Rs. 3,26,17,188/- in respect of payment of NCCD on finished products exported outside India.

64. However, the fact remains that none of these aspects was considered when making the impugned common order dated 17 January 2022. These aspects cannot be considered for the first time in the present proceedings inter alia because they involve issues of factual determination as well. Mr Adik's contention about this ground of unjust enrichment becoming available to the revenue only after the CESTAT recorded findings of fact in its judgment and order dated 23 April 2025, or Mr Shridharan's contention about this concept having been statutorily excluded for exports under Section 11B, require consideration in the interests of justice and equal opportunity to both parties.

65. We have deliberately noted the various shades of rival contentions on these issues only to demonstrate how they have not been considered in the impugned common order.

66. Thus, in this matter, we are satisfied that the most crucial issues like parity, nexus between non-payment of

interest on delayed NCCD payments, nexus between and the impact of the SVLDRS settlement, the impact of the provisions in Section 142(4) of the CGST Act 2017, Section 136 of the Finance (No.2) Act, 2001 or Section 130(1) of the Finance (No.2) Act, 2019a lapse under Section 142(4) of the CGST Act on the Petitioner's rebate claim, the issues of protest, overlapping and unjust enrichment have not been adverted to nor adequately considered by the 2nd Respondent when passing the impugned common order dated 17 January 2022.

67. There are factual issues that must be examined in this matter. The effects of the orders made under SVLDRS and the Petitioner's argument that such orders are unrelated to the rebate claim need to be investigated. Regarding overlap and unjust enrichment, we observe that the CESTAT's subsequent order dated 23 April 2025 was not available to the second respondent when the impugned common order was issued on 17 January 2022. Arguments based on that order or its influence on the Petitioner's rebate claim should also be considered. Additionally, the effects of provisions in Section 142(4) of the CGST Act 2017, Section 136 of the Finance (No.2) Act, 2001, or Section 130(1) of the Finance (No.2) Act, 2019, have not been addressed in the impugned common order. This entire process would be best handled initially by the 2nd respondent.

68. Considering all the circumstances, justice would be best served if the impugned common order dated 17 January 2022

is set aside and the matter is remanded to the 2nd Respondent for a fresh reconsideration of the Petitioner's Revision Application, which was disposed of by the impugned common order dated 17 January 2022 (SIC 19/01/2022) [at Exhibit A pages 73 to 80 of the paper book in this Petition], by thoroughly addressing all the above crucial issues.

69. The argument about any alleged suppression cannot be accepted in the present case. Firstly, the Petitioner had contended that its claim for rebate was independent of the proceedings in Excise Appeal No. 41585 of 2019. Secondly, the factum of the institution of this Appeal was disclosed to the Court by filing an additional affidavit. The effect of the order made in this Appeal on the Petitioner's rebate claim needs to be examined upon remand.

CONCLUSION AND RELIEF

70. Accordingly, we set aside the impugned common order dated 17 January 2022 made by the 2nd Respondent and remand the matter to the 2nd Respondent for deciding the Petitioner's Revision Application afresh in accordance with law and on its own merits. The 2nd Respondent, upon remand, must address all the issues, including issues referred to by us in this judgment and order and pass a fresh reasoned order after hearing both parties.

71. The 2nd Respondent must endeavour to dispose of the

Revision Application as expeditiously as possible and in any event within six months of the parties placing an authenticated copy of this order before it.

72. We, however, clarify that the observations in this order are not meant to reflect on the merits of the rival contentions. Any such observations are only prima facie and made in the context of justifying remand. These observations should not influence the 2nd Respondent when disposing of the Petitioner's Revision Application afresh following this remand.

73. The Rule in this Petition is made absolute in the above terms without any orders for costs.

74. All concerned must act on the authenticated copy of this order.

(Advait M. Sethna, J.) (M.S. Sonak, J.)