AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for orders on : 12.11.2025
Order passed on : 05.12.2025

TAXC No. 153 of 2025

1 - Deepak Pandey S/o Late C.P. Pandey Aged About 60 Years R/o 30/120, Brahman Para, Sai Mandir Street, Raipur, District Raipur Chhattisgarh

... Appellant

versus

1 - Commissioner Of Service Tax Service Tax Division, Civil Lines Raipur Chhattisgarh

... Respondent(s)

(Cause-title is taken from Case Information System)

For Appellant	:	Mr. Siddharth Dubey, Advocate
For Respondent	:	Mr. Ashutosh Singh Kachhawaha, Advocate assisted by Mr. Shruti Parmar, Advocate

(Division Bench)

(Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Amitendra Kishore Prasad)

C.A.V. Order

***Per*; Amitendra Kishore Prasad, Judge**

1. The present appeal is being preferred against the order dated 10.01.2025, transmitted on 21.01.2025, passed by the Customs,

Excise and Service Tax Appellate Tribunal (CESTAT), bearing Final Order No. 50065/2025. This appeal was admitted for hearing on the following substantial question of law :

> *"Whether, the Adjudicating Authority as well as the Custom Excise and Service Tax Appellate Tribunal are justified in holding that the application for refund of Rs.14,89,086/- was barred by limitation by virtue of notice contained in Section 102 sub-section (3) of the Finance Act, 1994?*

2. Facts of the case, as averred in the appeal, are that the appellant/assessee is duly registered with the Service Tax Department and has been allotted Service Tax Registration No. AFUPP1402JSD001. The dispute in the present matter traces its origin to the issuance of a first summons dated 23.01.2016 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Along with the said summons, the Department furnished a calculation sheet alleging service tax liability of Rs. 57,80,852/- (inclusive of cess) for the period from April 2015 to December 2015. The appellant was simultaneously directed to produce year-wise contract receipts, ledgers, R.A. bills for FY 2011-12 to 2015-16 (up to December 2015), all work order agreements pertaining to the said period, and Form 26AS for FY 2011-12 to 2015-16. Prior to issuance of the aforesaid summons, the Assistant Commissioner (Preventive) had sought a

clarification from the Raipur Municipal Corporation vide letter dated 27.09.2015 regarding the purpose and usage of the Multi-Level Parking constructed by the appellant. The Commissioner, Raipur Municipal Corporation, subsequently issued a clarification on 22.10.2016 categorically stating that the Multi-Level Parking was meant for public welfare and was not intended for commercial, industrial or business use. Thereafter, on 30.11.2016, a second summons was issued under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 reiterating the earlier requisition for documents. Upon scrutiny of the documents furnished by the appellant, the Department issued a letter dated 15.12.2016 recording closure of the investigation, stating that no discrepancy relating to service tax liability had been found. Before the investigation was formally closed, the appellant had deposited an amount of Rs. 14,89,086/- on 17.02.2016. Consequently, the appellant filed a refund application in Form-R on 09.02.2017 seeking refund of the said amount. However, the Department issued a show-cause notice dated 02.03.2017 alleging deficiencies in the refund application and asserting that the refund claim was barred by limitation under Section 102 of the Finance Act, 2016. The appellant sought thirty days' time to reply to the notice vide letter dated 17.03.2017 and subsequently filed a detailed reply on 17.04.2017. The Adjudicating Authority passed Order-in-Original dated 09.05.2017

rejecting the refund claim. The refund was denied primarily on the grounds that the appellant had not furnished evidence of payment of stamp duty on the contract/agreement as required under Notification No. 09/2016-ST dated 01.03.2016; that no work-order-wise breakup of taxable value, invoices or ST-3 returns had been filed; that the nature of services could not be verified; and that the refund claim was filed beyond the six-month period prescribed under Section 102 of the Finance Act, 2016. Aggrieved, the appellant preferred an appeal before the Commissioner (Appeals) under Section 85 of the Finance Act, 1994 on 17.07.2017 in Form ST-4. The Commissioner (Appeals), by Order-in-Appeal dated 22.03.2018, upheld the Order-in-Original and dismissed the appeal, reiterating that the refund claim was time-barred and that the appellant had failed to furnish evidence of stamp duty payment, nature of services, and non-passing of tax incidence. The appellant thereafter approached the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) by filing an appeal on 15.06.2018 under Section 86 of the Finance Act, 1994, registered as Service Tax Appeal No. 52346 of 2018. The Tribunal, however, dismissed the appeal vide Final Order No. 50065/2025 dated 10.01.2025 (transmitted on 21.01.2025), relying on the judgment in MDP Infra (India) Pvt. Ltd. v. Commissioner of Customs, Central Excise & CGST, which had been affirmed by the Hon’ble Supreme Court in Civil Appeal No.

6335 of 2019. The Apex Court had dismissed the said civil appeal on 17.02.2021, holding that no infirmity existed in the view taken by the authorities below. It is against this order that the present appeal under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 has been filed.

3. Learned counsel for the appellant submits that the appellant had filed the refund application within a short period of approximately two months from the date of closure of the investigation, i.e., from 15.12.2016, which was the date on which the appellant first gained certainty that the works contract services rendered during the financial year 2015-16 were exempt from service tax. It is only upon such official intimation, communicated through the closure of the investigation, that the appellant became aware that the tax deposited earlier was not legally due, and therefore the refund application filed shortly thereafter must be treated as having been filed within a reasonable time. It is further submitted that in cases such as the present one, involving peculiar factual circumstances, Section 102(2) of the Finance Act, 2016 cannot be construed so rigidly as to render the provision otiose. The legislative intent underlying Section 102 is to grant refund in deserving cases, and therefore its procedural stipulations must be interpreted in a manner consistent with its remedial purpose. Learned counsel for appellant contends that where an assessee, as here, had no means to know prior to the closure of investigation that the

services rendered were exempted, the statutory period must be construed as directory and not mandatory, so long as the refund application is made within a reasonable period. Without prejudice to the above submissions, it is argued that Section 102(2) read with Section 103(2) of the Finance Act, 2016 would not apply in the present case, because the amount deposited by the appellant was not paid pursuant to any assessment or self-assessment, nor was it accompanied by any statutory return in Form ST-3. Thus, the deposit made was merely an amount paid under protest or as a precautionary measure during investigation, and cannot be treated as an amount “collected” for the purposes of the Finance Act. Even if tested under the parameters of Section 11B of the Central Excise Act, 1944, the refund application was filed within a reasonable period and is therefore maintainable. Learned counsel for the appellant submits, without prejudice, that denial of refund in the present case would be hit by Article 265 of the Constitution of India, which mandates that no tax shall be levied or collected except by authority of law. Since the refund application was filed within the limitation period when correctly computed, the appellant is entitled to the refund. Reliance is placed on the principle emerging from the judgment of **M/s Aadhar Stumbh Township Pvt. Ltd.**, which recognizes that unlawfully collected tax must be returned when claimed within a reasonable time. It is further submitted that the reliance placed by the authorities on the

judgment in **MDP Infra (India) Pvt. Ltd. vs. Commissioner of Customs, Central Excise & CGST, 2019 (29) G.S.T.L. 296 (M.P.)** is wholly misplaced. The said decision involved a scenario where tax had been deposited pursuant to an assessment or self-assessment, whereas in the present case, the appellant deposited a simpliciter amount only on the basis of a calculation sheet annexed to the summons. Thus, the factual matrix is entirely distinct. It is also emphasized that the MDP Infra case did not involve a situation where an ongoing investigation was determining whether or not the services rendered were exempt from service tax. On this ground too, the ratio of MDP cannot be applied to the facts of the present case. Additionally, learned counsel for appellant submits that for the purpose of calculating the limitation period prescribed in Section 102(2), the entire duration of the investigation ought to be excluded, as the appellant was incapable of asserting any right to refund until the investigation was formally dropped on 15.12.2016. Once the investigation was concluded and the appellant became aware that the services rendered were exempt, the appellant promptly filed the refund application. It is also urged that it is well-settled law that any amount paid under a mistake of law is liable to be refunded. The amount in the present case was deposited under such a mistake of law, and therefore the beneficial provisions of Section 17(1)(c) of the Limitation Act, 1963, which postpone the

commencement of limitation until the mistake is discovered, must be applied for determining the period within which the refund claim ought to have been filed. This principle applies with full force as the amount deposited does not fall within the purview of the Finance Act, 1994 in the absence of any assessment or statutory return, and must therefore be governed by the limitation scheme applicable to claims founded upon mistake of law. In view of the aforesaid submissions, it is prayed that this Court may be pleased to allow the present appeal and consequently set aside the impugned Final Order dated 10.01.2025 passed by the Customs, Excise and Service Tax Appellate Tribunal (Annexure A/1).

4. The learned counsel for appellant places reliance on a catena of judicial precedents from various High Courts, the CESTAT, and the Hon'ble Supreme Court which elucidate the principles governing refund of indirect taxes, limitation, procedural compliances, and the scope of special statutory provisions. Reference is first made to the decision of the CESTAT, New Delhi in **M/s Jai Bhawani Concast Pvt. Ltd. v. Commissioner of Central Excise & Central Goods and Service Tax, Alwar**, reported in **2022 (9) TMI 1281 (CESTAT New Delhi)**, the judgment of the Allahabad High Court in **Commissioner, Central Excise v. Eveready Industries India Ltd., Aishbagh, Lucknow, Neutral Citation 2017:AHCLKO:1752-DB**, the Punjab and

Haryana High Court judgment in **LSE Securities Ltd. v. Assistant Commissioner, Service Tax Division, Chandigarh**, reported in **2015 (8) TMI 687 / 2015 (320) E.L.T. 350 (P&H)**, the Gujarat High Court's ruling in **Principal Commissioner of Customs v. H.V. Ceramics, 2018 (10) TMI 1579 / (2019) 365 E.L.T. 390**, the Karnataka High Court in **Commissioner of Central Excise (Appeals), Bangalore v. KVR Construction**, reported in **2012 (7) TMI 22 / 2012 (26) STR 195 (Kar)**. The Delhi High Court decision in **Vallabh Textiles v. Senior Intelligence Officer, 2022 (145) taxmann.com 596**, the Delhi High Court in **Makemytrip (India) Pvt. Ltd. & Ibibo Group Pvt. Ltd. v. Union of India**, reported in **2016 (9) TMI 52 / 2016 (44) S.T.R. 481 (Del.)**, the Karnataka High Court in **Union of India & Ors. v. Bundl Technologies Pvt. Ltd., (2022) 99 GSTR 71 / W.A. No. 1274 of 2021.** Attention is also drawn to the judgment of the Bombay High Court in **The Hongkong and Shanghai Banking Corporation Ltd. v. Union of India and Another**, **(2023) taxcode.in 185 (HC)**, **Commissioner of Customs v. Mahalaxmi Exports, 2009 SCC OnLine Guj 11194 / (2010) 258 E.L.T. 217**, a Gujarat High Court decision holding that refund eligibility cannot arise in derogation of explicit statutory mandates. Lastly, support is taken from the judgment of the Madras High Court in **M/s Shri Nandhi Dhall Mills India Pvt. Ltd. v. Senior Intelligence Officer**

& Ors., reported in **2021 (4) TMI 366 / [2022] 102 GSTR 449 (Mad.)**.

5. On the other hand, learned counsel for the respondent vehemently opposes the submissions advanced on behalf of the learned counsel for appellant and submits that due process of law was meticulously complied with prior to rejecting the refund application of appellant. The assertion of appellant that the refund was rejected solely as being time-barred under Section 102(2) of the Finance Act, 1994, is factually and legally erroneous. The rejection was in fact under Section 102(3), the special statutory provision prescribing a mandatory timeline for filing refund applications arising from the retrospective exemption granted under Section 102. The respondents submit that Section 102 of the Finance Act, 1994 introduced a special retrospective exemption for specified construction services provided to Government Departments during the period 01.04.2015 to 29.02.2016. Crucially, Section 102(3) stipulates, in mandatory terms, that a refund application “shall be made within six months” from the date on which the Finance Bill, 2016 received Presidential assent, namely 14.05.2016. Accordingly, the statutory deadline for filing refund claims was 14.11.2016. The appellant, however, admittedly filed the refund claim on 09.02.2017, well beyond the statutory limit. The attempt to rely on the alleged “closing of investigation” on 15.12.2016 as a trigger point for

limitation is wholly misconceived, for the statute prescribes a clear and exhaustive mechanism for refund and does not carve out any exception for cases where a party claims to have obtained “knowledge” after investigative proceedings. The plea that the application was filed within a “reasonable time” is equally untenable. The Tribunal has already held, and correctly so, that the appellant cannot on the one hand invoke the benefit of Section 102(1), and on the other hand disregard the express statutory precondition in Section 102(3). When the legislature has used overriding terms such as “notwithstanding anything” and has prescribed a specific time frame, it is not open to the appellant to import into the statute the doctrine of “reasonable time,” which has no application where a special statute provides a specific limitation period. The refund claim was therefore rightly rejected as time-barred. In addition to limitation, the adjudicating authority also rejected the refund on multiple substantive grounds; the appellant failed to furnish proof of payment of stamp duty on a pre-01.03.2015 contract, which is a necessary condition under Section 102(1); the appellant did not produce documents establishing the nature of services rendered; the appellant failed to prove that the incidence of tax had not been passed on to the recipient; and the appellant misconstrued Notification No. 9/2016-ST dated 01.03.2016, which is prospective and does not grant retrospective exemption for the 2015–16 period. The Tribunal has

correctly explained that the retrospective exemption flows only from Section 102, and not from Notification No. 9/2016-ST. Furthermore, the proposition that the refund arose due to a “mistake of law” is devoid of merit. Section 102 is a self-contained legislative mechanism with its own limitation period. Once the legislature has provided a complete code for refund, the appellant cannot bypass the statutory prescription by invoking equitable doctrines or the general provisions of the Limitation Act, 1963. The attempt to rely on Section 17(1)(c) of the Limitation Act is entirely misplaced, as the Finance Act contains a specific limitation clause that overrides any general law. The learned counsel for respondents further rely on the judgment of the **Madhya Pradesh High Court in MDP Infra (India)**, wherein the Court categorically held that refund applications filed beyond six months from 14.05.2016 are not maintainable. The Hon’ble Supreme Court subsequently dismissed the civil appeal filed against this judgment, thereby affirming the legal position that the time limit under Section 102(3) is mandatory and cannot be relaxed on equitable or other grounds. The reasoning in **MDP Infra** squarely applies to the present case, where the appellant has also filed the refund claim beyond the statutory time limit. In view of the above statutory framework and judicial pronouncements, it is submitted that the appellant is not entitled to any relief. The refund claim is hopelessly barred by limitation

and, independently of limitation, suffers from non-compliance with mandatory documentation requirements. The writ appeal is therefore devoid of merit and liable to be dismissed.

6. We have heard learned counsel for the parties and also perused the documents enclosed along with the appeal.

7. This appeal arises against the Final Order No. 50065/2025 dated 10.01.2025, transmitted on 21.01.2025, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), rejecting the appellant’s refund claim of Rs. 14,89,086/-.

8. The key issue before this Court is whether the Adjudicating Authority and CESTAT were justified in denying the refund on the ground of limitation under Section 102(3) of the Finance Act, 1994. The appellant contends that the refund application was filed within a reasonable period after the Department formally concluded its investigation, and that the amount paid was not legally due. The matter, therefore, involves not only interpretation of statutory limitation but also principles of natural justice and equitable treatment of taxpayers.

9. The appellant, a registered service tax assessee, was subjected to an inquiry under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. The Department issued summons directing production of financial records,

agreements, invoices, and other relevant documentation. Concurrently, a provisional service tax liability of Rs. 57,80,852/- was alleged for the period April 2015 to December 2015. During the course of investigation, the appellant submitted documents demonstrating that the multi-level parking project operated by them was intended for public use and not for commercial or industrial gain. Confirmation was received from the Raipur Municipal Corporation substantiating the non-commercial purpose of the project. Consequently, the Department issued a closure letter dated 15.12.2016, stating that no tax liability was attributable to the appellant. The appellant had made a deposit of Rs. 14,89,086/- on 17.02.2016 and filed a refund application on 09.02.2017. This application was rejected by the Adjudicating Authority on limitation grounds and procedural deficiencies, upheld by the Commissioner (Appeals), and subsequently dismissed by CESTAT.

10. **Analysis on Limitation :** The Adjudicating Authority relied primarily on Section 102(3) of the Finance Act, 1994, contending that any refund claim filed beyond six months from the relevant date is barred. The appellant submits that the refund was filed within a reasonable period from the date of the closure of the departmental investigation (15.12.2016) and that the limitation clock should be read in a manner that does not unjustly deprive an assessee of a legitimate claim.

11. In **Union of India v. Bundl Technologies Pvt. Ltd**., reported in **2022 SCC OnLine Kar 565,** the Karnataka High Court emphasized that any amount collected during a tax investigation without proper adjudication of liability is liable to be refunded. The Court drew support from earlier rulings, including Vodafone Essar South Ltd. v. Union of India (2009), where the Bombay High Court held that an assessee should not be compelled to pay during an investigation absent adjudication, and MakeMyTrip (India) Pvt. Ltd. v. Union of India (2016), which reinforced that amounts collected in the course of an investigation without determination of liability must be refunded. Similarly, Century Knitters (India) Ltd. and Concepts Global Impex v. Union of India established that illegally collected amounts cannot be retained without issuing a show-cause notice or completing the adjudication process. The Court further held that under Articles 265 and 300A of the Constitution, tax collection must have legal authority; collection without statutory backing constitutes deprivation of property without due authority. In the facts of the case, the Court found that the collection of the amount from the company violated constitutional provisions, as section 74(5) of the CGST Act was not applicable. Accordingly, the Department could not condition the refund on the outcome of the pending investigation, and the amount collected was held to be refundable to the company. It was held thus :

*"**23**. In Vodafone Essar South Ltd. v. Union of India (2009) 237 ELT 35 (Bom) it was held by Division Bench of the Bombay High Court that without adjudication of liability, during the course of an investigation the assessee should not be forced to pay any amount. Similar view was taken by the Delhi High Court in MakeMyTrip (India) Pvt. Ltd. v. Union of India [2016] 96 VST 37 (Delhi) ; (2016) 44 STR 481 (Delhi) and it was held that amount collected during investigation proceeding without any adjudication is liable to be refunded. In Century Knitters (India) Ltd. v. Union of India [2014] 24 GSTR 12 (P&H) ; (2013) 293 ELT 504 (P&H) it was held that any amount illegally collected cannot be retained without issuance of show-cause notice and adjudication of liability and such amount is liable to be refunded. Similar view was taken in Concepts Global Impex v. Union of India (2019) 365 ELT 32 (P&H).*

***31**. The submission by the company that Green Finch is neither a non existent entity nor that the company has rightly availed input-tax credit is concerned need not be adverted to in this proceeding, as the same is pending investigation. Article 265 of the Constitution mandates that collection of tax has to be by the authority of law. If tax is collected without any authority of law, the same would amount to depriving a person of his property without any authority of law and would infringe his right under article 300A of the Constitution of India as well. In the instant case, the only provision which*

> *permits deposit of an amount during pendency of an investigation is section 74(5) of the CGST Act, which is not attracted in the fact situation of the case. Therefore, it is evident that amount has been collected from company in violation of articles 265 and 300A of the Constitution. Therefore, the contention of the Department that amount under deposit be made subject to the outcome of the pending investigation can not be accepted. The Department, therefore, is liable to refund the amount to the company."*

12. In the present matter, the payment made by appellant was made during an ongoing investigation and not pursuant to an assessment. The filing of the refund claim immediately after the closure letter issued by the Department demonstrates prompt action on the part of the appellant.

13. The Department relied on Section 102(3) and Notification No. 09/2016-ST to reject the claim. However, these provisions were not intended to operate rigidly in circumstances where a taxpayer could not file a refund due to ongoing verification by the Department.

14. In the matter of **Commissioner of Central Excise (Appeals) Bangalore vs. KVR Construction, 2012(7) TMI 22** – Karnataka High Court held that when tax is paid under a mistaken notion, though not legally payable, the Department lacks authority to

retain it. Mere payment or labeling the amount as “service tax” does not convert an otherwise non-taxable amount into a valid levy. Where the Department itself had no authority to demand the tax due to an existing exemption, any such payment remains outside the scope of ‘service tax’. Consequently, the assessee retains a substantive right to refund, and procedural technicalities cannot defeat restitution of an amount collected without authority of law. It was held thus :

> *“**19**. According to the appellant, the very fact that said amounts are paid as service tax under Finance Act, 1994 and also filing of an application in Form-R of the Central Excise Act would indicate that the applicant was intending to claim refund of the duty with reference to Section 11B, therefore, now it is not open to him to go back and say that it was not refund of duty. No doubt in the present case, Form-R was used by the applicant to claim refund .It is the very case of the petitioner that they were exempted from payment of such service tax by virtue of circulardates the 9-2004 and this is not denied by the Department and it is not even denying the nature of construction/services rendered by the petitioner was exempted from to payment of Service Tax. What one has to see is whether the amount paid by petitioner under mistaken notion was payable by the petitioner. Though under Finance Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was*

exemption to pay such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority lacked authority to levy and collect such service tax. In case, the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. If we look at the converse, we find mere payment of amount, would not authorize the department to regularise such payment. When once the department had no authority to demand service tax from the respondent because of its circular dated 17-9-2004, the payment made by the respondent company would not partake the character of "service tax" liable to be paid by them. Therefore, mere payment made by the respondent will neither validate the nature of payment nor the nature of transaction. In other words, mere payment of amount would not make it a "service tax" payable by them. When once there is lack of authority to demand "service tax" from the respondent company, the department lacks authority to levy and collect such amount. Therefore, it would go beyond their purview to collect such amount. When once there is lack of authority to collect such service tax by the appellant, it would not give them the authority to retain the amount paid by the petitioner, which was initially not payable by them. Therefore, mere nomenclature will not be an embargo

> *on the right of the petitioner to demand refund of payment made by them under mistaken notion."*

15. The Department also cited alleged deficiencies in documentation, including lack of work-order-wise breakup, incomplete invoices, and absence of ST-3 returns. However, the closure letter of 15.12.2016 itself confirmed that no service tax liability arose. Judicial precedent, such as **Vallabh Textiles v. Senior Intelligence Officer (Delhi High Court, 2022),** passed in **W.P.C. No. 9834 of 2022** vide order dated **20.12.2022** has held as under**:**

> *"31.1 Where, however, before service of notice or statement, the person chargeable with tax, based on self-ascertainment, seeks to make payment of tax and interest, in consonance with the leeway given under sub- section (5) of Section 73 [which relates to cases not involving fraud, wilful misstatement or suppression of facts to evade tax] or as the case may be, the payment of tax, interest and penalty under sub-section (5) of Section 74 [which relates to cases involving fraud, wilful misstatement or suppression of facts to evade tax], he is required to inform the proper officer of such payment made in the prescribed form i.e., GST DRC-03.*
>
> *31.2 The proper officer thereafter, is required to issue an acknowledgement, accepting the payment made by the person, also in the prescribed form i.e., GST DRC-04.*

31.3 This is also required to be done [i.e., the acknowledgement of acceptance of payment] where tax, interest and penalty are ascertained by the proper officer, under Rule 142(1A).

32. Clearly, the facts which have emerged, disclose that although payments were made in the prescribed form i.e., GST DRC-03, no document has been placed on record by the official respondents / revenue, demonstrating acknowledgement of having accepted the payment.

32.1 Therefore, the stand taken before by the official respondents/revenue, that this was a voluntary payment, based on self- ascertainment of tax, interest and penalty, is not established, as the regime incorporated under the provisions of Section 73/74 of the 2017 Act and the 2017 Rules, adverted to hereinabove, has not been adhered to.

33. Besides this, the following circumstances reveal, that the amounts deposited [the cumulative sum being Rs. 1,80,10,000/-] did not have an element of voluntariness attached to it.

33.1 There is no dispute, that Rs. 1,80,10,000/- was deposited in four (4) tranches in the prescribed format i.e., GST DRC-03, on the dates and at the time set forth hereinbelow:

Rs. 35,00,000/- vide Form GST DRC-03 dated 17-2-2022 at 01:28 AM

Rs. 1,00,00,000 vide Form GST DRC-03 dated 17-2-2022 at 02:15 AM

Rs. 20,25,000/- vide Form GST DRC-03 dated 17-2-2022 at 05:04 AM

Rs. 24,85,000/- vide Form GST DRC-03 dated 17-2-2022 at 07:03 AM

34. It is also not in dispute, that the search proceedings commenced on 16-2-2022 at about 03:30 PM and were concluded on the following day i.e., 17-2-2022 at 09:30 A.M.

35. The fact, that deposits were made [during the early hours of 17-2- 2022] when the search had not concluded, would show that the F payments were not voluntary. The deposits made were not aligned with provisions of sub-section (5) of Section 73 or sub-section (5) of Section 74.

36. As noted above, if the payments/deposits were voluntary, then an acknowledgement of having received the payment should emanate from the proper officer, as mandated in the prescribed form i.e., GST DRC- 04, as prescribed under sub-section (2) of Rule 142 of the 2017 Rules.

36.1 The official respondents/revenue, in our opinion, have not been able to discharge this burden."

16. **Similarly, in the matter of the Hongkong and Shanghai Banking Corporation Ltd. v. Union of India (Bombay High Court, 2023)**, emphasizes that procedural technicalities cannot override the substantive right to a refund once the Department has confirmed non-liability. Therefore, rejection of the refund on these grounds is unsustainable.

“32. In our opinion, the petitioner time and again had made its position clear pointing out to the department, that the said amounts were deposited/paid under protest. The petitioner had pursued its claim and that too by making a proper refund application. It is not the case that the petitioner had abandoned its claim. The department had clearly failed in setting into motion the provisions of law to raise any levy to collect service tax on the transaction in question. Thus ex-facie the department has no authority to retain such amount. In fact, retaining such amount would amount to an unjust enrichment. Also, the case of the petitioner being hit by the case of unjust enrichment, is not the case of the department.

33. It is well settled that once such amounts were deposited by the petitioner and were retained by the department without the authority in law, the claim of the petitioner for refund could not have been denied. In such circumstances, it was appropriate for the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution praying for writ for directing refund of money illegally retained / withheld. The law in this regard is well settled. In such context, we may usefully refer to a recent decision of the Division Bench of this Court in Grasim Industries Ltd. Vs. Assistant Commissioner of Income Tax' wherein the Division Bench has held that refusal of the department to return the amount and retaining the same, was unauthorised and in the facts of the case amounted to unjust enrichment at

the hands of the department. The Court summerising the principles of law in that regard when the revenue had retained said amounts deducted as tax at source, observed that the fees received were not taxable in India and consequently, no tax would be deducted out of source by the petitioner to a foreign entity concerned in the said proceedings. The observations of the Court in such context are required to be noted, which read thus:-

> *"23. In our view, the refusal of the Department to return the amount and retaining the same is unauthorized by law and would only amount to unjust enrichment by the Department on technical grounds.*
>
> *24. The Apex Court in CIT v. Shelly Products [2003] 129 Taxman 271/261 ITR 367, as relied upon by Mr. Mistri, has held that where an assessee chooses to deposit by way of abundant caution advance tax or selfassessment tax which is in excess of his liability on the basis of return furnished or by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income tax or is not an income within the contemplation of law, he can certainly make such claim before the concerned authority for refund and he must be given that refund on being satisfied that refund is due and payable. Non giving the*

refund, in our view, would be in breach of Article 265 of the Constitution of India which states, "no tax shall be levied or collected except by authority of law".

In New India Industries Ltd. v. Union of India AIR 1990 (Bom.) the Court held that taxes illegally levied must be refunded. The doctrine of unjust enrichment has to be applied after having regard to the facts of each case.

26. In Balmukund Acharya v. Dy. CIT (2009)_176 Taxman 316/310 ITR 310 (Bom.) the Court held that the authorities under the Act are under an obligation to act in accordance with the law. Tax can be collected only as provided under the Act. If any assessee, under a mistake, misconceptions or on not being properly instructed is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. Paragraphs No. 31,32 and 33 of Balmukund Acharya (supra) read as under:

> *"31. Having said so, we must observe that the Apex Court and the various High Courts have ruled that the authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If any assessee, under a mistake, misconceptions or*

on not being properly instructed is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected (see S.R. Kosti v. CIT [2005]_276 ITR 165 (Guj.), CPA Yoosuf v. ITO [1970]_77 ITR 237 (Ker), CIT v. Bharat General Reinsurance Co. Ltd. [1971]_81 ITR 303 (Delhi), CIT v. Archana R. Dhanwatey [1982]_136 ITR 355 (Bom.).

32. If particular levy is not permitted under the Act, tax cannot be levied applying the doctrine of estoppel. (See Dy. CST v. Sreeni Printers [1987] 67 SCC 279.

33. This Court in the case of Nirmala L. Mehta v. A. Balasubramaniam, CIT (2004)_269 ITR 1 has held that there cannot be any estoppel against the statute. Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law. In the case on hand, it was

> *obligatory on the part of the Assessing Officer to apply his mind to the facts disclosed in the return and assess the assessee keeping in mind the law holding the field."*
>
> *34. As a result of the above discussion, it is limpid that the respondents have retained the amounts in question without authority in law. Such amounts are required to be refunded to be petitioner along with interest."*

17. Denial of the refund also violates Article 265 of the Constitution of India, which mandates that no tax shall be collected except under law. Since the Department itself recognized the non-taxable nature of the service, retaining the amount would result in unjust enrichment. In **M/s Jai Bhawani Concast Pvt. Ltd. v. Commissioner of Central Excise & Central Goods and Service Tax – Alwar,** reported in **2022 (9) TMI 1281 CESTAT New Delhi**, it was held that any excess payment, even if voluntary or under protest, must be refunded. It was held thus :

> *"7. I further find that Hon'ble Madras High Court in the case of CCE vs Pricol Ltd 2015 (320) ELT 703 have held that any amount deposited during investigation has to be treated as pre-deposit and the same is neither hit by limitation nor by the clause of unjust enrichment for the purpose of refund. Similar view has been taken by Hon'ble Allahabad High Court in CCE vs*

Eveready Industries Ltd 2017 (357) ELT 11 and also by Hon'ble Gujarat High Court in the case of Principal Commissioner of Customs vs. H.V. Ceramics 2019 (365) ELT 390."

18. After careful consideration of the facts, submissions, and relevant legal provisions, it is evident that the appellant acted in good faith and made the refund claim promptly following the closure of the departmental investigation. The evidence submitted, including confirmation from the Raipur Municipal Corporation and supporting documentation, clearly establishes that the service provided was non-taxable and that the amount deposited by the appellant was not legally due. The reliance of the Adjudicating Authority and CESTAT on Section 102(3) of the Finance Act, 1994, to deny the refund is not justified in light of established judicial precedents emphasizing that limitation provisions should not be construed to defeat substantive rights or principles of natural justice. Procedural lapses, if any, cannot override the right of appellant to recover amounts paid under a bona fide belief of liability, particularly when the Department itself acknowledged non-liability.

Analysis on Refund :

19. Furthermore, allowing the refund is consonant with constitutional principles under Article 265, ensuring that no tax is collected without legal justification, and prevents unjust enrichment of the Government at the cost of the appellant. In view of the foregoing,

the appellant's claim for refund is legitimate, and it is both legally and equitably appropriate to allow the refund along with applicable interest, thereby upholding the principles of fairness, natural justice, and statutory entitlement.

20. High Court of Bombay in the matter of **BASF (India) Ltd. and Another vs. W. Hasan, Commissioner of Income-Tax and Others, reported in** 2005 SCC OnLine Bom 1305 has held as under :

> *"17. Mr. Jasani further submits that it is well-settled that no tax can be levied except with the authority of law as enjoined by article 265 of the Constitution of India. The Central Board of Direct Taxes has opined in Circular No. 790 (see [2000] 243 ITR (St.) 58) that the amount paid by the assessees like petitioners is not a tax and, therefore, the same cannot be retained by the respondents. He pressed into service the judgment of this court in Nirmala L. Mehta v. A. Balasubramaniam, CIT [2004] 269 ITR 1 wherein it was held that there could not be any estoppel, against the statute. Article 265 of the Constitution in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief to which he is entitled on account of levy or collection of tax is without any authority of law.*
>
> *18. There is no dispute that the amount deposited by the petitioners is in excess*

of tax which could not be collected from the petitioners. The Central Board of Direct Taxes in the context of section 192 of the Act in Circular No. 285 dated October 21, 1980 (see [1981] 130 ITR (St.) 1), had suggested grant of refund independent of the provisions of the Act. In this view of the matter, Mr. Jasani states that the petitioners could not have been denied refund sought by them.

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33. In the result, the impugned orders dated February 28, 2001, passed by the Commissioner of Income-tax, Mumbai and the order dated July 14, 2000, passed by the Assessing Officer rejecting the application for refund of TDS are set aside and it is declared that the petitioners are entitled to refund of the TDS amount. The petition is allowed. Rule is made absolute in terms of this order with no order as to costs."

21. In the matter of **South India Corporation vs. Asst. Commr. Of Sales Tax**, reported in **1994 SCC OnLine Ker 361**, it was held as under :

"7. The Supreme Court had, as early as in 1958 held in the decision in Sales Tax Officer v. Kanhaiya Lal Makund Lal Saraf, (1958) 9 STC 747 that refund of sales tax paid under a mistake of law could be claimed based on S. 72 of the Indian Contract Act, 1872. The court dealt with the scope of S. 72 and held that a person who pays money either under a mistake of law or of fact, is

entitled to recover the amount so paid, and the party receiving the same is bound to repay or return it irrespective of any consideration whether the money had been paid voluntarily, subject however to questions of estoppel, waiver, limitation or the like. That was a case where the levy in question was made under a law which was subsequently held to be unconstitutional and the Supreme Court held that as far S. 72 was concerned, there was no distinction between a tax liability and any other liability and, therefore tax paid under a mistake of law under the enactment n question could be got refunded.

8. The principle of this decision was applied by the Supreme Court in State of Kerala v. Aluminium Industries Ltd., (1965) 16 STC 689. That was a case of a levy made in violation of Art. 286(1)(a) of the Constitution, as it then stood, and the assessee claimed refund of the amount, when they discovered the mistake. The assessee had not raised the question of non-liability at the time the assessment was completed and the mistake was common both to the assessee and the assessing authority. It was only subsequently that the assessee discovered the mistake, and made the claim for refund which was allowed by this Court in a petition filed under Art. 226 of the Constitution. The Supreme Court observed that such payment was within the scope of S. 72 of the Contract Act and the claim for refund was liable to be entertained if it was made within three years from the date on which the mistake became

known to the assessee who made payment by mistake. The court went on to observe that it was the duty of the State to investigate the facts when the mistake was brought to its notice and to make refund if the mistake was proved, and the claim was made within the period of limitation, under Art. 96 of the Limitation Act, 1908, namely, three years from the date when the mistake became known to the person making the payment by mistake. In Commissioner of Sales Tax v. Auraiya Chamber of Commerce, (1986) 62 STC 327 the Supreme Court reaffirmed the position as stated above, and held that when tax is collected without the authority of law, the State has no right to the money and that it was refundable to the assessee. The same position has been reiterated in the subsequent decisions, both of the Supreme Court, in Shri Vallabh Glass Works Ltd. v. Union of India, (1985) 155 ITR 560 and in Salonah Tea Company Ltd. v. Superintendent of Taxes, (1988) 69 STC 290. In the latter of these cases, the court ordered refund in an appeal arising out of an application under Art. 226 of the Constitution of India, filed within a period of three years from the date of discovery of the mistake, the period prescribed under the Limitation Act for a suit in a civil court for the same relief, being ordinarily taken as the period beyond which the court should not grant relief under Art. 226, though that was not an inflexible rule. Sri Ravi Oil Mills v. Commercial Tax Officer, (1990) 77 STC 7, was another case dealt with by the Supreme Court in an analogous situation where an

assessee paid tax under a mistake of law and the mistake came to his knowledge years later. The assessee's approach to the High Court proved unsuccessful, the High Court dismissing the writ petition on the ground that a suit for the same relief was time-barred. The Supreme Court set aside the order of the High Court and directed refund, holding that in the absence of any denial, or controversy, as to the date on which the assessee came to know of the mistake on his part, and the excess payment, he was entitled to refund of the amount collected illegally. In Mahabir Kishore v. State of Madhya Pradesh, (1990) 78 STC 404 (SC); (1989) 4 SCC 1 : AIR 1990 SC 313 the question under consideration was regarding the starting point of the period of limitation of three years for a proceeding of this nature. The Supreme Court observed that when money is paid under a mistake of law, the period of limitation for recovery of the amount does not begin to run until the date on which the plaintiff discovers the mistake or could with reasonable diligence have discovered the mistake. Art. 113 of the Schedule the Limitation Act, 1963 and and the provisions of S. 17(1)(c) of that Act apply in such cases. It was also observed significantly that though a party could, with reasonable diligence, discover a mistake of fact, even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.

9. The following principles emanate from the above decisions. Tax paid under a mistake of law falls within the purview of S. 72 of the Indian Contract Act, 1872 and is liable to be refunded to the person making the payment. Art. 265 of the Constitution bars the State from recovering any amount by way of tax without the authority of law, and in its turn, it imposes a corresponding duty on the State to refund the tax illegally collected. The assesses could claim refund of the amount so paid by resort to proceedings under Art. 226 of the Constitution. Ordinarily the courts will entertain such petitions only if they are made within the period prescribed in the Limitation Act, 1963, for a suit for the same relief, that is within a period of three years from the date on which the assessee discovers the mistake or could with reasonable diligence have discovered the mistake (vide S. 17(1)(c) read with Art. 113), but that is not an inflexible rule.

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12. I accordingly allow the original petition and direct the first respondent to deal with the petitioner's application evidenced by Ext. P11, and to grant refund to the petitioner of the amount of tax, if any, paid by them under S. 5A of the Act on the purchase of materials effected by them for use in the execution of works contracts. The orders of assessment Exts. P1 to P10 will be modified accordingly. The first respondent shall pass orders in the matter with opportunity to the petitioner to be heard, making necessary

modifications in Exts. P1 to P10 and granting refund, if any due, within a period of four months from the date of receipt of a copy of this judgment. There will be no order as to costs."

22. In the result, the impugned order dated 22.03.2018 in appeal bearing No. BHO-EXCUS-002-AAP-525-2017-18 by the Commissioner (Appeals), Central Excise & Central Goods & Services Tax, Raipur (C.G.) and order dated 10.01.2025 transmitted on 21.01.2025 in Final Order No. FO/ST/A/50065/2025-ST[DB] by the Customs Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi are set-aside and it is declared that appellant is entitle for refund of the amount towards service tax.

23. Accordingly, the appeal is therefore **allowed**, and the respondents are directed to sanction the refund within the stipulated timeframe.

Sd/-
(**Rajani Dubey**)
Judge

Sd/-
(**Amitendra Kishore Prasad**)
Judge

Shayna