2026 INSC 1292

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(@ Special Leave Petition (Civil) No. 576 of 2025)

CGST and Central Excise Commissioner, Indore ….. Appellant

versus

Indore Treasure Market City Pvt. Ltd. ….. Respondent

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. Entitlement of the respondent, Indore Treasure Market City Pvt. Ltd., to claim interest on a refund is in issue.

3. Indore Treasure Market City Pvt. Ltd., assessed to service tax under Section 69 of the Finance Act, 1994, suffered Order-in-Original dated 10.02.2014 passed by the Commissioner of Customs, Central Excise and Service Tax, Indore, whereby the Commissioner disallowed the CENVAT credit of ₹10,21,04,601/- availed by it during the period October, 2010 to June, 2012. He also levied interest and penalties. Indore Treasure Market City Pvt. Ltd., the assessee, acted upon the said order and reversed the credits, under intimation to the Revenue stating that the same was being done 'under protest'. It reversed the credit of ₹9,22,71,765/- on

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03.06.2015 and the credit of ₹77,06,230/- on 30.07.2015. The reversals amounted to payment of duty in the context of the disallowed credits. However, despite stating that such reversals were made 'under protest', the assessee took no further steps till 17.02.2020, when it filed an appeal against the Order-in-Original dated 10.02.2014.

4. The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, condoned the delay of 2102 days in the filing of this appeal on 07.12.2020 and entertained it as Service Tax Appeal No. 50248 of 2021. The appeal was ultimately allowed on 01.09.2021, holding that the CENVAT credit availed by the assessee till 01.04.2011 was admissible. The CESTAT, accordingly, remanded the matter to the Revenue for quantification of the admissible credit. Thereupon, the Commissioner, CGST & Central Excise, Indore, passed order dated 03.01.2022, wherein he held that out of the total CENVAT credit of ₹10,00,82,212/-, comprising the input credit of ₹2,75,91,505/- and the input service credit of ₹7,24,90,707/- pertaining to the period prior to 01.04.2011, the input service credit of ₹7,15,09,643/- was admissible but left out the input credit taken on materials, amounting to ₹2,75,91,505/-, on the ground that the Revenue was contemplating filing of an appeal on that issue. We are informed that litigation in that regard is still pending.

5. In any event, pursuant to the aforestated order dated 03.01.2022, the assessee submitted an application on 04.01.2022 for refund of the

sum of ₹7,15,09,643/-. Refund of this amount was sanctioned on 02.02.2022 by the office of the Assistant Commissioner, Division-V, CGST Commissionerate, Indore. Perusal of the said order reflects that the Assistant Commissioner took note of Section 11BB of the Central Excise Act, 1944[1], and held that interest would not be payable on the refund, as it was being made within three months from the date of receipt of the refund application of the assessee. He, accordingly, sanctioned the refund of the principal amount of ₹7,15,09,643/- to the assessee.

6. Aggrieved by the denial of interest on the refund, the assessee approached the Commissioner (Appeals), CGST, Customs & Central Excise, Indore, by way of an appeal under Section 35 of the Act of 1944. However, the said appeal was dismissed by the Order-in-Appeal dated 23.05.2023, upholding the denial of interest on the refund. Assailing the said order, the assessee approached the CESTAT by way of Service Tax Appeal No. 55434 of 2023. This appeal was allowed on 11.01.2024, awarding interest upon the refund @ 12% per annum from the date of payment of the initial amount till the date of its refund.

7. The Revenue questioned the validity of the CESTAT's order dated 11.01.2024 before the High Court of Madhya Pradesh at Indore, by way of Central Excise Appeal No. 5 of 2024. However, a Division Bench of the High Court dismissed the said appeal, *vide* order dated 22.04.2024,

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[1] For short, 'the Act of 1944'

confirming the view taken by the CESTAT with regard to the assessee's entitlement to interest on the refund. This is the order subjected to challenge by the Revenue in the present appeal.

8. By order dated 03.01.2025, this Court stayed the operation of the impugned order.

9. Perusal of the initial Order-in-Appeal dated 23.05.2023 reflects that the Commissioner (Appeals) did not accept the argument of the assessee that the reversal of CENVAT credit by it was by way of a pre-deposit for the filing of the appeal and, therefore, interest was payable on the same as the appeal was allowed. The Commissioner also rejected the contention of the assessee that the amount refunded was not duty for the purposes of Section 11BB of the Act of 1944. Holding so, the Commissioner upheld the Assistant Commissioner's order denying interest on the amount refunded to the assessee.

10. In appeal by the assessee in Service Tax Appeal No. 55434 of 2023, the CESTAT, strangely, acted upon the cited caselaw relating to grant of interest on amounts deposited during investigation, refunded thereafter. The case before the CESTAT was not such a case, but having relied upon the caselaw cited in that regard, the CESTAT erroneously recorded that the refund claim was for the amount which was deposited by the assessee under protest during investigation. On this fallacious understanding of the facts, the CESTAT opined that it was not open to the Revenue to retain

the amount which was otherwise not payable by the assessee. Further, the CESTAT compounded that error by holding that the amount deposited by the assessee was to be treated as a pre-deposit since the matter had not attained finality during the relevant period and, therefore, the subject refund was to be treated as a refund of the pre-deposit made in the appeal. This observation was also completely opposed to the factual position, as the appeal was filed belatedly, over six years after the assessee's reversal of the CENVAT credit. There was, therefore, no appeal pending at all for the amount to be treated as a pre-deposit. Basing on this comedy of errors on facts, the CESTAT directed payment of interest @ 12% per annum on the refund from the date of payment till the date of disbursement.

11. This order was challenged by the Revenue before the High Court, by way of Central Excise Appeal No. 5 of 2024. Unfortunately, the High Court chose to tread in the footsteps of the CESTAT and perpetuated the blunder of misreading the facts. Having noted the chronology of events correctly, the Division Bench of the High Court blindly followed the decisions of the Meghalaya High Court in ***The Principal Commissioner of Central Goods and Service Tax vs. M/s. Green Valley Industries Pvt. Ltd.***[2] and the Punjab & Haryana High Court in ***Commissioner of Central Excise, Panchkula vs. M/s. Riba Textiles Limited***[3]. Both those

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2 MC (Central Excise Ap.) No. 1/2023, decided on 26.07.2023

3 CEA No. 8 of 2022 (O&M), decided on 14.03.2022

cases related to interest payable on refund of amounts deposited during investigation and not duty payable, as in the case on hand. Without even examining those decisions on facts, the Division Bench baldly summed up that the issues raised in the appeal before it were covered by those decisions and, therefore, no question of law arose for consideration. The appeal was dismissed on this short ground.

12. In this regard, we may note that Section 11B(1) of the Act of 1944 entitles a person claiming refund of any duty of excise and interest, if any, paid on such duty, to make an application for refund thereof before the expiry of one year from the relevant date. Section 11B(2) states to the effect that, upon receipt of such an application, if the Assistant Commissioner or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid thereon is refundable, he may make make an order and the amount so determined shall be paid to the applicant, if such amount is relatable to any of the matters covered by Clauses (a) to (f) thereunder. Section 11BB of the Act of 1944 deals with interest on delayed refunds and provides that, if any duty ordered to be refunded under Section 11B(2) to an applicant is not refunded within three months from the date of receipt of the application under Section 11B(1), the applicant shall be paid interest on such duty from the date immediately after expiry of three months from the date of receipt of such application till the date of refund of such duty.

13. This being the legal position, we find that there is no getting over the fact that the assessee suffered the Order-in-Original dated 10.02.2014 and reversed the credit availed by it on 03.06.2015 and 30.07.2015, no doubt under protest, but failed to take any steps thereafter till 17.02.2020. It was only on that date that the assessee chose to file an appeal against the order dated 10.02.2014. This delay was squarely attributable to the assessee. Having slept over the matter for years together, it was not open to the assessee to seek to enrich itself by claiming interest on the amount that was refunded to it, pursuant to its belated appeal being allowed on 01.09.2021. Pursuant thereto, the matter was remanded to the Revenue and the refund payable was quantified by order dated 03.01.2022. The application for refund filed a day later by the assessee, i.e., on 04.01.2022, was dealt with promptly and well before expiry of the three month period stipulated in Section 11BB of the Act of 1944. The refund was sanctioned and released in February, 2022. Therefore, the question of interest being payable on the refund under Section 11BB did not even arise.

14. The approach adopted by the CESTAT and, thereafter, by the High Court and their consequential findings, completely ignoring the factual foundation and applying caselaw that was wholly irrelevant to the case on hand, thereby treating the duty refunded to the assessee either as a deposit made during investigation or as a pre-deposit pending appeal, were neither correct on facts nor were they tenable in law.

15. The plain fact of the matter was that the assessee, having accepted and acted upon the order passed on 10.02.2014 chose not to take any steps in relation thereto for over six years and, thereafter, on the strength of its belated appeal being allowed, it attempted to wrongfully claim interest on such refund from the date of its reversal of credits in June/July, 2015, till refund of the amount in February, 2022. The assessee was not entitled to interest on this refund, be it viewed from any angle. The orders dated 11.01.2024 and 22.04.2024 holding to the contrary passed by the the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi, and the High Court of Madhya Pradesh, Indore, respectively, are utterly unsustainable on facts and in law and are, therefore, set aside.

The appeal is, accordingly, allowed.

Pending applications, if any, shall stand disposed of.

Parties shall bear their own costs.

....., J
SANJAY KUMAR

....., J.
SANJEEV SACHDEVA

November 28, 2026
New Delhi.