HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CEA No. 06/2018

Reserved on 06.06.2023.
Pronounced on 13.07.2023.

Commissioner of Central GST and Central Excise ..... appellant (s)

Through :- Mr. Jagpaul Singh Advocate

V/s

Krishi Rasayan Exports Pvt. Ltd .....Respondent(s)

Through :- Mr.Naveen Bindal, Advocate with
Mr. Mohd Ashfaq Mir Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

Sanjeev Kumar, J.

1. This appeal by the Revenue filed under Section 35 G of the Central Excise Act, 1944 ['the Act'] is directed against a final order No.A/62272/2018-EX (DB) dated 19.03.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chandigarh ['CESTAT'] whereby the appeal preferred by the respondent has been accepted and the impugned order dated 17.02.2011 passed by the Commissioner, Central Excise, J&K, Jammu has been set aside.

2. Briefly stated the facts leading to filing of this appeal are that the respondent is engaged in manufacturing of various products like Pesticides, Insecticides, Herbicides and Plant Growth Regulators and has established its unit at SIDCO Industries Complex, Samba. The respondent is registered for the manufacture of aforesaid products under Tariff Heading Nos. 38089330, 38089990, 38089090 & 38089340 respectively of the 1st Schedule to the

Central Excise Tariff Act, 1985 [‘the Act of 1985’]. The respondent being eligible had been availing exemption/refund of excise duty under Notification No. 56/2002-CE dated 14.11.2002 as amended [‘the exemption notification’]. The respondent filed monthly claims of exemption for the period from 2005-06 to 2008-09 which was duly sanctioned by the appellant in favour of the respondent by passing separate orders for each month. The orders passed by the appellant for exemption/refund under the exemption notification were not assailed by the appellant-revenue and instead, the sanctioned amount was released in favour of the respondent. It seems that, during some investigation, the appellant noticed that, during the relevant period, the respondent had cleared the products Paushak/Joy and Kri-kelp on payment of duty by classifying the same under sub-heading 3808 9340 and claimed the benefit of exemption notification. It was found by the appellant that the Chemist and the Director of the respondent in their statements had clearly admitted that Paushak/Joy, used to increase the size and yield of fruits and vegetables, was manufactured by mixing various solvents, dye, caustic soda and stabilizers with Gibberillic acid. The appellant, therefore, found that the only active ingredient in the product aforementioned manufactured by the respondent was Gibberillic acid and the rest being only solvents, dyes and stabilizers, as such, the product was required to be classified under sub-heading 3808 93330 as Gibberillic acid and exempted from payment of duty as mentioned at S.No. 285 of Notification No. 06/2002-CE prior to 01.03.2006 and S.No.53 of Notification No. 04/2006-CE thereafter. Kri-kelp was also found manufactured from the extract of sea weeds and was a biological plant growth enhancer as per the product label and was, thus, classifiable under sub-heading 3101 0099.

The appellant was of the opinion that the respondent had willfully suppressed/misstated the facts to the appellant-revenue with an intent to pay duty on goods which was otherwise exempted and consequently, take erroneous refund under the exemption notification. The appellant-revenue, thus, concluded that, in the instant case, the extended period of limitation as provided under the proviso to Section 11 A(1) of the Act was invocable for recovery of excess amount of refund claimed and granted to the respondent. Resultantly, a show cause notice was issued to the respondent for recovery of erroneous refund sanctioned in its favour on the ground that the goods in question were not dutiable and, therefore, the respondent was neither liable to pay the duty, nor was entitled to refund of the same. The said show cause notice culminated into order in original passed by the appellant and demand was confirmed along with interest and penalty.

3. Feeling aggrieved against the aforesaid order in original passed by the Commissioner, Central Excise, Jammu, an appeal was filed by the respondent before CESTAT. The appeal of the respondent was allowed vide order impugned primarily on the following two grounds:

(i) That all the facts were in the knowledge of the Revenue and there was no suppression on the part of the respondent before CESTAT and, therefore, the extended period of limitation was not invocable. The demand along with interest and penalty raised by the appellant herein was, thus, time barred; and,

(ii) That the Revenue had not challenge the appealable orders sanctioning refund to the respondent herein before CESTAT and, therefore, those orders had attained finality. The demand could not have been raised under Section 11A of the Act without challenging the appealable orders.

4. The revenue did not accept the final order passed by the CESTAT accepting the appeal of the respondent and is, therefore, in appeal before us in terms of Section 35 G of the Act.

5. This Court vide its order dated 16.04.2019, after hearing both the sides, framed the following substantial question of law for determination in this appeal:

> "Whether the erroneous refund which was sanctioned under Notification No. 56 of 2002-CE can be recovered under Section 11A of the Central Excise Act, 1944 by invocation of extended period of limitation, where the refund was granted on the basis of any approval, acceptance and assessment relating to the rate of duty ?

6. Heard learned counsel for the parties and perused the material on record.

7. Mr. Jagpaul Singh, learned counsel appearing for the appellant-revenue vehemently submits that the respondent through its counsel Sh. P.S.Pruthi has not disputed so far as the classification of the goods in question falling under heading 3808 9340 of the Act of 1985 is concerned. The respondent has also not disputed before the CESTAT that the goods classified under the aforesaid heading were exempted from payment of duty. He submits that, in view of the aforesaid admission made by learned counsel appearing for the respondent, it was no longer *res integra* that the goods manufactured by the respondent were predominantly Gibbereillic acid classifiable under heading 3808 9340 and, therefore, not exigible to excise duty. He argues that the respondent being aware that Gibberiellic accid manufactured by it was exempted from payment of duty, yet passed on the same as plant growth

regulator classifiable under Chapter heading 3808 9340. He submits that the respondent by misrepresentation and misstatement first paid the excise duty on the product which was otherwise exempted from payment of excise duty and thereafter submitted its claim for refund under the exemption notification. He, therefore, argues that the case of 'erroneous refund' made in favour of the respondent was covered by the extended period of limitation as provided under proviso to Section 11A(1) of the Act. Learned counsel submits that the revenue rightly invoked the extended period of limitation and put the respondent on show cause notice for recovery of erroneous refund of excise duty paid to it on the basis of misstatement/misrepresentation made by the respondent.

8 *Per contra*, Mr. Naveen Jindal, learned counsel appearing for the respondent argues that Section 11A of the Act, inter alia, deals with recovery of duty of excise "erroneously refunded" and, therefore, it has to be a case of refund of duty of excise under Section 11B of the Act which is the only section dealing with refund of the excise duty. He, therefore, argues that Section 11A and Section 11B of the Act go hand in hand and, therefore, are required to be read together. He submits that, as per the Board Circular dated 19.12.2002, the provisions of Section 11B are not applicable to the exemption notification, for, the said notification only provides a mechanism to operationalise the exemption and is not a provision for refund. He submits that the case of the respondent was a case of grant of exemption and not a case of refund in the eye of law and, therefore, the provisions of Section 11A were not invocable. His further argument is that the orders sanctioning refund passed by the Revenue were indisputably appealable under Section 35 of the Act. The revenue did not file appeals and accepted the orders passed by the Assessing Authority and sanctioned the refund by passing separate orders for each month. He submits

that, unless the orders sanctioning refund are reviewed or recalled, the same should be deemed to have attained finality. The refund sanctioned under such final orders cannot be termed as 'erroneous' and made subject matter of recovery by having resort to Section 11A of the Act.

9 To buttress his submissions, learned counsel relies upon a judgment of Gauhati High Court in the case of **Commissioner of Central Excise Shillong vs. Jellalpore Tea Estate, 2011 (268) ELT 14 (Gau).** Learned counsel goes a step further and submits that Section 11A of the Act can be invoked in the case of 'erroneous refund' and, therefore, for invoking Section 11A, the revenue is required to demonstratively show that the refund sanctioned in favour of the respondent was actually an erroneous refund. He contends that the refund duly sanctioned by the Competent Authority by passing a formal assessment order which otherwise is appealable under Section 35 of the Act can only be declared erroneous by the Appellate Authority. The Adjudicating Authority does not have any power to sit in appeal in collateral proceedings and refuse to accept the final order passed by the Assessing Authority. His further contention is that Section 11A and Section 35 E of the Act operate in two different fields and none of them can be said to have overriding effect on the other. So far as the recovery of erroneous refund is concerned, Section 35 E of the Act is the only provision to declare the refund as erroneous which would, in turn, pave the way for recovery of erroneous refund under Section 11A of the Act.

10 Regarding invoking of extended period of limitation, learned counsel for the respondent submits that the extended period of limitation as provided under proviso to Section 11A(1) of the Act was not attracted, for, it was not the case of the revenue demonstrated by reference to any evidence that

there had been willful suppression or willful misstatement of facts bringing the case of the revenue within proviso to Section 11A(1) of the Act. He, therefore, submits that the CESTAT vide final order impugned in this appeal has correctly held the demand raised by the revenue on account of erroneous refund of the excise duty as time barred.

11 Before we proceed to appreciate the rival contentions and adjudicate the substantial question of law framed by this Court in the instant appeal, it is necessary to first set out the provisions of Section 11A of the Act.

> *"11A.* ***Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded—***
>
> *(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded,whether or not such non levy or non payment, short levy or short payment or acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice—*
>
> *Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty by such person or his agent, the provisions of this sub section shall have effect*
>
> *Explanation: where the service of the notice is stayed by an order of a Court the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be.*

(1A) when any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, by such person or his agent, to whom a notice is served under the proviso to sub section (1) by the CENTRAL Excise Officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 11AB and penalty equal to twenty five per cent of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.

2. The Central Excise Officer shall, after considering the representation if any made by the person on whom notice is served under sub section (1), determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice and thereupon such person shall pay the amount so determined;

Provided that if such person has paid the duty in full together with, interest and penalty under sub section (1A), the proceedings in respect of such person and other persons to whom notice is served under sub section (1), shall, without prejudice to the provisons of sections 9, 9A and 9AA be deemed to be conclusive as to the matters stated therein:

Provided further that if such person has paid duty in part, interest and penalty under sub section (1A), the Central Excise Officer, shall determine the amount of duty or interest not being in excess of the amount partly due from such person.

(2A)……

(2B)……

(2C)……..

(3) For the purposes of this section-

*(i) "**refund**" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;*

*(ii) "**relevant date**" means,—*

(a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid-

(A) where under the rules made under this Act a periodical return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a werehouse as the case may be, the date on which such return is so filed

(B) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(C) In any other case, the date on which the duty is to be paid under this Act or the rules made thereunder

(b) In a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(c) *In the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund"*

12 From a reading of Section 11A of the Act, it clearly transpires that when any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer, may within six months from the relevant date, serve a notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made to show why he should not be asked to pay the amount specified in the notice. Indisputably, in the instant case, the period of six months from the relevant date has since expired. To put it more clearly, the expression 'relevant date" is defined under sub-section 3 (ii) of Section 11A of the Act. Neither side has disputed that the

limitation, provided for issuance of show cause notice in terms of sub-section 1 of section 11 A of the Act had expired much prior to the issuance of show cause notice to the respondent. The revenue, however, has relied upon the proviso appended to sub-section (1) of Section 11A of the Act which provides for extended period of limitation of five years, provided it is a case where duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act and the rules made thereunder with an intent to evade payment of duty by such person or his agent etc. The *sine quo non* for invoking the proviso is to demonstrate by reference to material on record that the assessee had claimed and has been paid erroneous refund of the excise duty by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Act and the rules framed thereunder and that this fraud, collusion, willful misstatement or suppression of facts etc., is made with an intention to evade payment of duty by the assessee or his agent.

13 We have gone through the entire record, but could not find an iota of material on record which would suggest that the assessee-the respondent herein had, at any time, suppressed any material facts or made any willful misstatement as is attributed to it by the Adjudicating Authority in the Order In Original passed for recovery of purported erroneous refund. Rather, it has come on record that the respondent had fairly and in a transparent manner explained the entire process leading to the manufacture of the product in question in the industrial unit of the respondent. The process of manufacture followed in the industrial unit and the product produced in the manufacturing process was all along clearly indicated by the respondent by filing periodical

returns. The periodical audits also took place and refunds were sanctioned by the Competent Authority in favour of the respondent by passing a speaking order for each month. It is pursuant to the refund sanctioning orders passed by the competent authority, the respondent was released the refund.

14 Viewed form any angle, we do not find sufficient material on record to come to the conclusion that the respondent, with an intention to evade payment of duty, suppressed or misstated any facts relating to the manufacturing process and the product which it produced and passed on by payment of excise duty. Whether the product produced by the respondent is a Gibbereillic acid simplicitor or is a plant growth regulator containing Gibbereillic acid as dominant ingredient, is a question of fact which cannot be gone into by this Court hearing an appeal on a substantial question of law. Be that as it may, even if we were to assume that the revenue had erroneously made the refund of the excise duty in favour of the respondent, yet the period of limitation for issuing show cause notice in terms of sub-section (1) of section 11A of the Act, had since expired and, therefore, the entire process had become time barred. As already explained, the extended period of limitation as provided under provision to sub -section (1) of Section 11A was not invocable for the simple reason that the twin factors which are *sine quo non* for invoking the proviso were missing in the instant case. We are not convinced with the argument of Mr. Jagpaul Singh that not only the respondent had misstated/suppressed the facts with regard to the classification of the product in question, but had done so with an intent to evade payment of excise duty.

15 That apart, we are also in agreement with CESTAT that, once the excise duty in favour of assessee is sanctioned by the competent authority after passing a speaking order and which order is appealable under section 35 of the

Act, parallel proceedings seeking recovery of the sanctioned refund cannot be launched by the Adjudicating Authority. Unless the orders of sanctioning refund passed by the Adjudicating Authority are reversed in appeal or revision under the Act, Section 11 cannot be invoked by terming such sanctioned refund of excise duty as 'erroneous refund' by holding collateral proceedings under section 11A of the Act. Any duty, which is paid /refunded to the assessee after holding formal proceedings and passing speaking orders in favour of the assessee, cannot be termed as 'erroneous refund'. The revenue, if it is of the opinion that the Adjudicating Authority has made an erroneous refund in favour of assessee to which it was not otherwise eligible, can avail the remedy of filing appeal or revision under the Act. So long as the orders stand as having attained finality, the same cannot be tampered with by the Adjudicating Authority by launching collateral proceedings purportedly under Section 11A of the Act.

16 The judgment of the Hon'ble Supreme Court in the cases of **Priya Blue Industries Pvt. Ltd., 2004 (172) ELT 145 (SC) and Flock India Pvt. Ltd., 2000 (12) ELT 285 (SC),** relied upon by the CESTAT are exactly on the point and leaves no manner of doubt that Section 11A of the Act is not invocable when refund has been sanctioned by the Adjudicating Authority by passing a speaking order and which order is appealable under Section 35 of the Act, more particularly, when such order has not been challenged by the revenue and has attained finality.

17 The case in hand is also covered by the Division Bench judgment of the Gauhati High Court rendered in the case of **Jellalpore Tea Estate** (supra) wherein the issue has been considered and dealt with by the Division

Bench in paragraphs (12) to (15) which, for facility of reference are reproduced hereunder:

> *"12. The material portion of Section 11A of the Act reads as follows:*
>
> *"11-A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded-*
>
> *(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, whether or not such non- levy or non-payment, short-levy or short-payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder a Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*
>
> *Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if, for the words one year, the words "five years" were substituted.*
>
> *A bare reading of Section 11A of the Act indicates that power can be exercised only if duty has not been levied or paid or has been short-levied etc. "on the basis of any approval, acceptance or assessment relating to the rate of duty on or*

valuation of excisable goods under any other provisions of this Act". Insofar as the present case is concerned, the only issue that arose for consideration was whether the assessee was entitled to the benefit of Notification No.33/99-CE dated 8.7.99. There was no issue of any approval, acceptance or assessment relating to the rate of duty nor was there any issue relating to the valuation of any excisable goods. Ex-facie, therefore, Section 11A of the Act was inapplicable to the facts of the case".

13. That apart, the Assistant Commissioner of Central Excise, Silchar had passed a final order in favour of the assessee on 29.4.2002 and admittedly, this order was revisable under Section 35-E of the Act. For reasons best known to the Commissioner of Central Excise, Shillong no action was taken to have the order of the Assistant Commissioner revised or set aside. Having failed to avail of the statutory remedy available under the Act, the Revenue sought to circumvent the law (as it were) by taking recourse to Section 11A of the Act. In our opinion, this was clearly impermissible inasmuch as what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all.

14. Insofar as the present case is concerned, the prescription of law required that the order of the Assistant Commissioner passed on 29.4.2002 could be challenged only by resorting to Section 35-E of the Act. The Revenue could not initiate collateral proceedings to set aside the order dated 30.4.2002 by resorting to the enabling power under Section 11A of the Act.

15. Consequently, we are of the opinion that: (i) Section 11A of the Act is not applicable to the facts of the case since the issue raised did not concern any approval, acceptance or assessment relating to the rate of duty on or valuation of any excisable goods. The issue raised by the assessee related to its entitlement to the benefit of Notification No.33/99-CE dated 8.7.99. (ii) Even

otherwise, the Revenue could not take recourse to Section 11A of the Act when it had a statutory remedy available to it to challenge the order dated 29.4.2002 passed by the Assistant Commissioner of Central Excise, Silchar by resorting to the revisional power available under Section 35-E of the Act"

18 The expression 'willful suppression' also fell for determination of the Supreme Court in the case of **Anand Nishikawa Company Ltd vs. Commissioner of Central Excise, Meerut, 2005 (188) ELT 149 (SC)** wherein the Apex Court, after considering the provisions of Section 11A of the Act in para 27 held thus:

"27.Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. Vs. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to section 11A of the Act. We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was not open to the CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts". In Densons Pultretaknik vs. Collector of Central Excise [2003 (11) SCC 390], this Court held that mere classification under a different sub-heading by the manufacturer cannot be said to be willful misstatement or

"suppression of facts". This view was also reiterated by this Court in Collector of Central Excise, Baroda, vs. LMP Precision Engg.Co.Ltd. [2004 (9) SCC 703]"

19 The judgment passed by the Hon'ble Supreme Court in **Grasim Industries Ltd vs Commissioner of Central Excise, (2011) 14 Supreme Court Cases 685**, relied upon by by Mr. Jagpaul Singh learned counsel appearing for the revenue, is beside the point and the question of law formulated for adjudication in this appeal. Para 10 of the judgment which has been strongly relied upon by Mr. Jagpaul is set out hereinbelow.

"10.Section 11A provides for a right of issuance of show cause notice, if, according to the Department, duty of excise has been erroneously refunded to a party. In the event of such erroneous refund of excise duty, the competent authority may then issue such a show cause notice as provided for under Seciton 11A in which case the assessee has to show cause as to why the aforesaid amount of refund, which it erroneously refunded, should not be recovered from him. In such a case, there is no question of filing any appeal, as appropriate remedy as provided under Section 11A is available. Therefore, in our considered opinion, the first contention of the counsel appearing for the appellant has no merit."

20 From a reading of para 10, it clearly transpires that the Supreme Court has only held that, once a show cause notice, in terms of section 11A of the Act has been issued by the revenue department to the assessee for recovery of erroneous refund made to it, the remedy of the aggrieved assessee is provided under section 11A itself. The judgment therefore cannot be held to lay down a proposition of law that section 11A is invocable even in a case where there is no erroneous refund, rather the refund of the excise duty is pursuant to a speaking order passed by the Adjudicating Authority after

following due process of law. Such order passed by the Assessing Authority is appealable under Section 35 of the Act or the competent Authority of the revenue may invoke Section 35E of the Act and direct the concerned Authority to take an appropriate remedy against such order sanctioning erroneous refund, if any, in favour of the assessee.

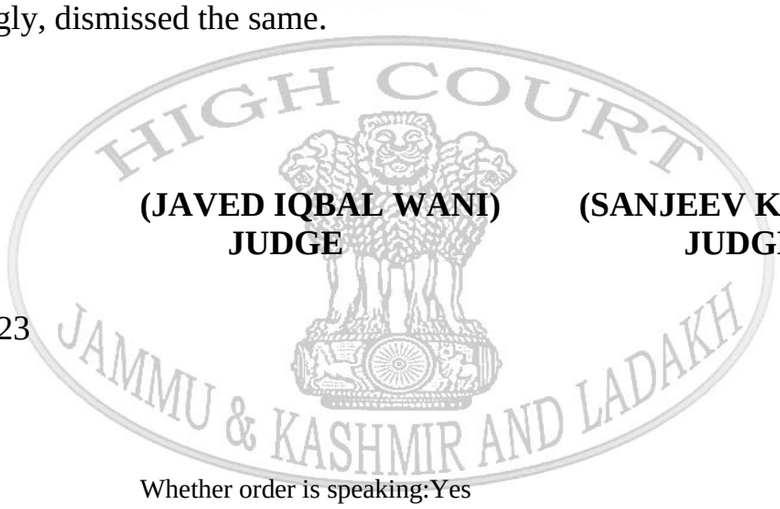
21 For the foregoing reasons, we find no illegality or infirmity in the final order passed by the CESTAT Chandigarh impugned in this appeal and, therefore, uphold the same. The substantial question of law framed by this Court vide order dated 16.04.20119 reproduced above is replied in the following manner:

> **The refund of excise duty claimed by an assessee and sanctioned by the competent Authority vide its order under Notification No. 56 of 2002-CE which order has attained finality as not having been challenged before any appellate or revisional authority under the Excise Act cannot be termed as 'erroneous refund' and recovered by resort to section 11A of the Act. The extended period of limitation as provided under proviso to sub section (1) of Section 11A would be attracted only in a case where the refund made in favour of the assessee is erroneous by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any provisions of the act and the rules framed thereunder with an intent to evade payment of duty by the assessee or his agent.**

22 As conclusively held hereinabove in the instant case, the refund sanctioned by the adjudicating authority in favour of the respondent was after proper application of mind and by passing of speaking orders and therefore, cannot be termed as 'erroneous refund' for the purposes of section 11A of the Act. The extended period of limitation provided under proviso to sub section 1 of section 11A is not attracted as we find no material on record to demonstrate

that the purported erroneous refund was sanctioned in favour of the respondent-assessee on the basis of some fraud, collusion or misstatement /misrepresentation of facts and, that too, with an intention to evade payment of excise duty. The revenue has also failed to make out a case of unjust enrichment having failed to show as to how the respondent has been benefited by such purported erroneous refund sanctioned in its favour by the Competent Authority.

13. For the foregoing reasons, we find no merit in this appeal, accordingly, dismissed the same.



(JAVED IQBAL WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
13.07.2023
Sanjeev

Whether order is speaking:Yes

Whether order is reportable:Yes