

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND  
DHARMADHIKARI**

**&**

**HON'BLE SHRI JUSTICE GAJENDRA SINGH**

**ON THE 22<sup>nd</sup> OF APRIL, 2024**

**CENTRAL EXCISE APPEAL No. 5 of 2024**

**BETWEEN:-**

**CGST AND CENTRAL EXCISE, COMMISSIONER, MANIK BAG PALACE,  
P.B. NO. 10, INDORE (MADHYA PRADESH)**

**.....APPELLANT**

***(SHRI PRASANNA PRASAD, ADVOCATE)***

**AND**

**M/S INDORE TREASURE MARKET CITY PVT. LTD., DIRECTOR 6TH  
FLOOR, TREASURE ISLAND, 11 SOUTH TUKOGANJ, INDORE (MADHYA  
PRADESH)**

**.....RESPONDENT**

***(SHRI SUMIT NEEMA, SENIOR ADVOCATE APPEARED FOR THE  
RESPONDENT THROUGH V.C. WITH SHRI ARUN DWIVEDI, ADVOCATE)***

***(SHRI SOUMYA DHARWA, ADVOCATE FOR INTERVENOR)***

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*This appeal coming on for admission this day, Justice Sushrut Arvind Dharmadhikari passed the following:*

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**ORDER**

Heard finally with the consent of both the parties.

2. In this appeal Sub-Section (2) of Section 35G of the Central Excise Act, 1944 arises out of final order No.50125/2024 dated 11/01/2024 passed by Customs, Excise and Service Appellate Tribunal, Principal Bench – New Delhi (which shall be referred hereinafter as “CESTAT”) in Service Tax Appeal No.55434/2023 filed against Order-in-Appeal No.IND-EXCUS-000-APP-47-2023-24 dated 23/05/2023 passed by the Commissioner (Appeals), Customs, Central Excise & Goods and Service Tax, Indore (M.P.).

3. The brief facts of the case are that M/s Indore Treasure Market City Pvt. Ltd. i.e., the respondent, was engaged in the business of setting-up and managing shopping centers, family entertainment centers, multiplexes, etc. Popularly known as “Malls”. The respondent registered itself with the Service Tax Department for Renting of Immovable Property Service, Maintenance and Repair Services, Advertising Services, GTA Services, Management consultancy Services, etc., intended to be provided by them. The respondent availed the credit on inputs like cement, steel, angles, channels etc., and input services like construction services, consultancy, architect and allied services etc., used by them in the construction of “Malls”.

4. An Audit of the records of the respondent was conducted and the Department opined that the respondent is not eligible to avail credit on inputs and input Services used for construction of Mall. Accordingly, a Show Cause Notice F.No. ST/18/13-14/Adj-I/3702-3705 dated

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10.05.2013 was issued. The said Show Cause Notice was adjudicated and demand made there under was confirmed by Order-in-Original No. 03/COMMR/ST/IND/ 2014 dated 10.02.2014 wherein recovery of CENVAT credit availed of Rs.10,21,04,601/- and CENVAT credit utilized of Rs.6,45,131/- was confirmed under Rule 14 of CENVAT Credit Rules 2004 (herein after referred to the Credit Rules) along with applicable interest and equal penalty under Section 78 of the Finance Act, 1994,

5. The respondent had accepted said Order in Origin dated 10.02.2014 and had reversed wrongly availed CANVAT Credit of Rs.9,22,71,765/- and Rs.77,06,230/- through the Journal Voucher No.Jun/1/2015-16 dated 03.06.2015 and Jul/4/2015-16 dated 30.07.2015 respectively. However, after laps of about 6 years respondent had filed an appeal against the said OIO, before the Principal Bench of learned CESTAT at New Delhi. The learned CESTAT had condoned abnormal delay of 2102 days in filing appeal vide passing Misc. Order No. Defect/MO/42/2020- [CR] dated 07.12.2020 and admitted appeal file by the respondent. Since abnormal delay of 2109 days condoned without any genuine and justifiable reason the said order of the learned CESTAT has been challenged by the department before this Hon'ble Court and in this regard CEA No.02/2021 is filed, which is pending decision.

6. Subsequent to delay condonation, the learned CESTAT had decided appeal vide Final Order No.ST/A/51784/2021-CU [DB] dated 01.09.2021 observing that the definition of input was amended w.e.f. 01.04.2011 vide Notification 03/2011 dated 01.03.2011, wherein input services and inputs used for construction of a building or a civil structure were excluded from the definition of "input". Therefore, it was held in the final order that the Cenvat credit availed by the tax-payer before 01.04.2011 is admissible to them, and the impugned OIO was set-aside to that extent. Further, the learned CESTAT remanded the matter back to

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Adjudicating Authority for quantification of credit admissible to the taxpayer.

7. In pursuance of the decision of learned CESTAT for re-adjudication and quantify the credit admissible to the tax-payer, the Adjudicating Authority vide OIO dated 03.01.2022 had allowed credit of Rs.7,15,09,643/- availed on the Input services prior to 01.04.2011 and kept the credit of Rs.2,75,91,505/- availed on the inputs out of the purview of remand, resting on the fact that the department had decided to file an appeal before High Court on the grounds that the definition of “inputs” in the Notification No.16/2009-CE (NT) dated 07.07.2009 has clearly restricted the goods viz. Cement, angles, channels, centrally twisted deformed bar (CTD) or TMT and other items used for construction of building, factory or laying foundation or making of structures for support of capital goods exclusively outside the definition of inputs and accordingly the question of CENVAT Credit on those goods does not arise. In consequent to this, the department also filed an appeal CEA No.1/2022 before this Court, which is pending decision.

8. In pursuance of the OIO No.01/COMMR/IND/ST/2022 dated 03.01.2022 the Respondent filed a refund claim for Rs.7,15,09,643/- plus interest amount thereon. The Refund Sanctioning Authority vide OIO No. 339/AC/ST/Div-V/Indore/2021-22 dated 02.02.2022 sanctioned refund of Rs.7,15,09,643/- to the respondent under Section 11 B of the Central Excise Act, 1944 as made applicable to the Service Tax vide Section 83 of the Finance Act, 1994 read with Section 142 (8) (b) of the CGST Act, 2017. However, the Refund Sanctioning Authority held that no interest is liable to be paid, as the refund order has been issued within three months from the date of the refund application filed by the applicant. As per the provisions of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, interest liability

arise only when the refund is not sanctioned within three months of its filing date. Aggrieved with non-sanctioning of refund of interest amount under said Refund Order, the respondent preferred an appeal before the Commissioner Appeals, Indore, who in turn vide the Order in Appeal No.IND-EXCUS-000-APP-47-2023-24 dated 23.05.2023 observed that the impugned Refund Order does not contain any infirmity and thereby rejected the appeal of the respondent. On being aggrieved with the Order in Appeal, the respondent preferred and Appeal No.55434 of 2023 before the learned CESTAT, New Delhi to assail the subject Order in Appeal.

9. The learned CESTAT has decided appeal so filed, vide impugned Final Order No.50125/2024 dated 11.01.2024 wherein learned CESTAT has allowed the appeal and held that respondent is entitled for the interest on the amount of refund sanctioned at the rate of 12% to be calculated from the date of payment till the date of disbursement.

10. Being aggrieved by the order passed by CESTAT the Revenue is before us in the present appeal raising the relevant substantial questions of law :-

“(i) Whether in the facts and circumstances of the case, the learned Tribunal has rightly examined the scope and ambit of Section 11 B and 11 BB of the Central Excise Act, 1944 ?

(ii) Whether in the facts and circumstances of the case, the learned Tribunal has rightly examined the scope and ambit of Section 35 F and 35 FF of the Central Excise Act, 1944 ?”

11. Learned counsel for the appellant contended that the learned CESTAT has erred in coming to the conclusion that the refund claimed by the respondent is governed under Section 11 B and 11 BB of Central

Excise Act, 1944 (which shall be referred hereinafter as “Act, 1944”), whereas the aforesaid provisions governs such refund of duty amount. In fact the Tribunal failed to consider that such refund is governed under Section 11 B of the Act, 1944, since it pertained to refund of duty amount paid by the respondent in compliance of an order of Adjudicating Authority. So also the interest on delay payment of refund is governed by Section 11 B of the Act, 1944. He submits that learned Tribunal has misinterpreted the Apex Court ruling in case of **Mafatlal Industries Ltd. Vs. Union of India 1997 (89) ELT 247 (SC)** as well as in the case of **Sandvik Asia Ltd vs Commissioner of Income Tax-I, Pune & Ors. AIR 2006 SUPREME COURT 1223**. Learned CESTAT also erred in granting interest @ 12% P.A., since the finding is based without any legal provisions.

12. Learned senior counsel for the respondent and counsel for the intervenor have opposed the prayer and submitted that no substantial question of law arises for adjudication in this appeal. They relied upon the judgment of *High Court of Meghalaya at Shillong* in the case of **The Principal Commissioner of Central Goods and Service Tax vs. M/s Green Valley Industries Pvt. Ltd. MC (Central Excise Ap.) No.1/2023 dated 26/07/2023** wherein similar issue has cropped-up and the Court has dismissed the appeal of Revenue. He further relied on the judgment of *High Court of Punjab and Haryana at Chandigarh* in case of **Commissioner of Central Excise, Panchkula vs. M/s Riba Textiles Limited CEA No.8 of 2022 (O&M) dated 14/03/2022** wherein also similar issue was raised by the Revenue, has been dismissed. They also submitted that the learned Tribunal has rightly come to the conclusion, therefore, the appeal deserves to be dismissed.

13. Heard learned counsel for the parties and perused the record.

14. In view of the aforesaid discussions and the rival submissions made by learned counsel for the parties, the issues raised in the present appeal is covered by the judgments in the case of M/s Green Valley Industries Pvt. Ltd. (Supra) and M/s Riba Textiles Ltd. (Supra), therefore, this Court is of the considered opinion that no substantial question of law arises for consideration in the present appeal. The appeal *sans merit* and is hereby **dismissed**.

No order as to cost.

(S.A. Dharmadhikari)  
Judge

(Gajendra Singh)  
Judge

Aiyer\*

