Sun Pharma Laboratories Ltd vs -Siliguri Commissionerate on 4 November, 2025

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH - COURT NO. 2

[VIRTUAL MODE OF HEARING]

Excise Appeal No. 76003 of 2021
WITH

Excise Cross Objection No. 75053 of 2022

(Arising out of Order-in-Original No. 06/COMM/CE/SLG/2021-22 dated 20.07.2021 passed by the Commissioner, Central G.S.T. & Central Excise, Siliguri Commissionerate, Central Revenue Building, Haren Mukherjee Road, Hakimpara, Siliguri - 734 001)

M/s. Sun Pharma Laboratories Limited : Appellant
Plot No. 754, Setipool, P.O. Ranipool,
East Sikkim - 737 135

VERSUS

The Commissioner, C.G.S.T. and Central Excise : Respondent
Siliguri Commissionerate,
Central Revenue Building, Haren Mukherjee Road, Hakimpara,
Siliguri - 734 001

APPEARANCE:
Shri Ashok Nawal, Consultant [C.M.A.], for the Appellant

Shri P.R.V. Ramanan, Special Counsel, for the Respondent

CORAM:
HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77613 / 2025

DATE OF HEARING: 11.09.2025

DATE OF DECISION: 04.11.2025

ORDER:

[PER SHRI R. MURALIDHAR] The captioned Appeal has been filed against the Order-in-Original No. 06/COMM/CE/SLG/2021-22 dated 20.07.2021 passed by the Ld. Commissioner, Central G.S.T. and Central Excise, Siliguri Commissionerate, in the matter of Show Cause Notice dated 19.10.2016, wherein an alleged erroneous refund amounting to Rs.82,84,25,639/- has been demanded from M/s. Sun Pharma Laboratories Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Limited, Plot No. 754, Setipool, P.O. Ranipool, East Sikkim (hereinafter referred to as the "appellant"). The period of dispute is from March, 2014 to January, 2016.

2. The facts of the case are that the appellant had set up a unit in Sikkim and opted to avail of the benefit of exemption Notification No.56/2003 dated 25.06.2003. This notification granted exemption from duty equivalent to the duty paid by the manufacturer, other than the amount of duty paid by utilization of CENVAT credit. Subsequently, the said Notification was amended by Notification No.21/2008 dated 27.03.2008 and Notification No. 36/2008 dated 10.06.2008, which granted exemption from duty equivalent to the value addition undertaken in the manufacture of the final goods in the concerned unit. This change effectively meant a reduction in the exemption benefit to 56% as against 100%. The Notification was applicable to new units which commenced commercial production on or after 23.12.2002 but not later than 31.03.2007. The Notification No.21/2007 dated 25.04.2007 had also been issued to cover new units commencing commercial production on or after 01.04.2007 but not later than 31.03.2017. This Notification was later amended by Notification No.36/2008 ibid.

2.1. The appellant commenced implementation of the project in 2005-2006 employing about 100 employees and made an overall investment of Rs.20.42 Cr. Commercial production in Unit I [Present dispute relates to this Unit] commenced from 20.04.2009. Thus, from this date, the appellant had been availing of recredit of 56% as per the said Notification No. 56/2003, as amended.

Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 2.2. By their letter dated 22.10.2011, the appellant informed the jurisdictional officer that they would avail of 100% recredit, instead of 56%, in view of the judgment of the J&K High court in the case of Reckitt Benckiser Versus Union of India [2011 (269) E.L.T. 194 (J&K)]. This was objected to by the Department and a Show Cause Notice was issued demanding the excess credit taken for the period from June, 2012 to November, 2012. The appellant did not file a reply to the said SCN and did not appear for personal hearing.

2.3. The respondent Commissioner passed an order dated 26.03.2014, confirming a demand of Rs.5.17 Cr., along with interest and imposing penalty of an equivalent amount. The respondent also withdrew the facility of self-credit. This meant that they had to claim the exemption benefit by filing refund claims for each month.

2.4. Following the order dated 26.03.2014, the appellant filed refund claims for the period from March, 2014 to January, 2016, claiming 100% of the duty paid in PLA. All these claims were filed by the appellant in terms of the Notification No.56/2003 ibid.

2.5. The jurisdictional officer sanctioned the claims by reducing the amount to 56% of the duty paid. Refund claims for the period from 3/2014 to 7/2015 were sanctioned by the jurisdictional officer in terms of Notification No.56/2003. However, for the period from 9/2015 to 1/2016, the claims were sanctioned in terms of Notification No.20/2007.

3. During the course of audit, the headquarter Audit Unit of the Revenue vide their report submitted under C. No. III(11)1/Audit/Refund/SLG-COM/Pt- I/14-15/12177 dt.29.06.2016 inter alia observed that Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 the refund application was submitted in contravention of the provision of clause 2B(a) of the said Notification as the same should have been submitted in terms of clause 2C(a) of Notification No.20/2007-CE dt.25.04.2007 by 7th of next month in which the duty had been paid.

3.1. Thereafter, refund statement submitted by the appellant for claiming refund on duty payable on value addition for the month of April 2016 was taken up for process and for confirmation of the date of registration and the date of commencement of commercial production of the said appellant, a letter vide C. No. V(18)07/Refund/CE/Sun-754/Gtk-Divn/16-17/2848 dt.05.07.2016 was issued to the Superintendent, Central Excise & Service Tax Gangtok Range seeking report on these two issues.

3.2. The Range Superintendent vide his letter under C. No. V(30)46/CE/SPLL/GTK/2016/438 dt.14.07.2016 informed that the Central Excise Registration was issued to the appellant on 17.01.2007 and the intimation of commercial production by the appellant was given on 17.04.2009 informing the date of commercial production as 20.04.2009.

3.3. From the above, it appeared to the Revenue that as per Clause 3(i) &(ii) of the said notification, the unit/units availing the benefit of the said notification has/have to first fulfill the condition that the said unit is a new industrial units which have commenced commercial production on or after 23rd day of December, 2002 but not later than 31st day of March 2007 or it should be an industrial unit(s) existing before the 23rd day of December, 2002 but which have Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 undertaken substantial expansion by way of increase in installed capacity by not less than 25 per cent on or after the 23rd day of December, 2002 but have commenced commercial production from such expanded capacity, not later than 31st day of March 2007. Accordingly, it appeared to the Revenue that the appellant was not satisfying the condition as laid down in Clause 3(i) & (ii) of the said Notification i.e., the appellant was neither a new industrial unit which had commenced commercial production on or after 23rd day of December, 2002 but not later than 31st day of March 2007 nor an industrial unit existing before the 23rd day of December, 2002 which had undertaken substantial expansion by way of increase in installed capacity by not less than 25 per cent on or after the 23rd Day of December, 2002 but have commenced commercial production from such expanded capacity not later than 31st day of March 2007. As per the findings of the Headquarter Audit Cell and as per their report letter dt.29.06.2016, therefore, it was alleged that the benefit of the said notification was not admissible to the appellant and accordingly, all such refunds sanctioned to the appellant in terms of Clause 2B (a) (b) of the said Notification were considered as erroneous and inadmissible.

4. Following the audit objection, the Show Cause Notice dated 19.10.2016(the impugned Show Cause Notice) was issued to the appellant asking them to show cause why the amount of Rs.82,84,25,639 erroneously refunded in contravention of the condition as laid down in Clause 3(i) and 3(ii) of Notification No.56/2003 read with Clause 2 B(b) of the same Notification should not be deposited, as undertaken by the appellant to do so in the undertaking submitted to Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 the Department at the time of filing the refund claims and if the amount was not so deposited as per the undertaking, why the amount should not be demanded under section 11A of the Central Excise Act, 1944 and interest in terms of section 11AA ibid. should not also be demanded.

5. In the meantime, the Appellant filed several refund claims, for the period from December, 2012 to January.2017. Some of these claims were rejected and in respect of some SCNs were issued asking why the same should not be rejected. The appellant filed a series of Writ petitions before the Hon'ble Sikkim High Court, against the aforesaid rejection orders, including the Order-in-Original dated 26.03.2014 and SCNs, the details of which are recorded in their Order dated 21.11.2017. The Writ Petitions mainly challenged the validity of the amending notifications changing the criteria to 'value addition'. The Hon'ble High Court in Paragraph 87 of their Order dated 21.11.2017 held as follows:

> "The facts and circumstances of the present writ petitions, therefore, squarely falls within the parameters of the doctrine of promissory estoppel and that it would be unconscionable on the part of the respondent No. 1 to shy away from it without fulfilling its promise. The relief that must, therefore be granted on the facts of the present case is that for the period declared vide Notification No. 20/2007 the petitioner would be entitled to the excise duty exemption as promised therein. Consequently, impugned Notification Nos. 20/2008 and 38/2008 are liable to be quashed to the extent they curtail and whittle down the 100% excise duty exemption benefit as promised vide Notification No. 20/2007 and is hereby quashed. All impugned All impugned orders/demand notices/show cause notices which are against the aforestated declarations of law are also quashed."

Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 In Paragraph 86 of the same order, the Hon'ble Court also observed as follows:

> "86. In view of the above, it is held that the petitioner which was entitled to exemption benefit under Notification No. 20/2007 but sought benefit under Industrial Policy, 2003 and Notification No. 56/2003 would be entitled for the benefit under the Industrial Policy, 2007 as put into operation vide impugned Notification No. 20/2007."

5.1. The aforesaid Order of the Hon'ble Sikkim High Court was appealed against to the Hon'ble Apex Court by the Department. The relevant paragraph in the judgment of the Hon'ble Apex Court dated 22.04.2020 [2020 (372) E.L.T. 495 (S.C.)] is as under: -

> "7. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court of Sikkim dated 21-11-2017 passed in Writ Petition Nos. 8/2017, 27/2017, 40/2015 and 41/2015 respectively, by which the High Court has quashed and set aside the subsequent Notification No. 20 of 2008 dated 27-3-2008, Notification No. 36 of 2008, dated 10-6-2008 and Notification No. 38 of 2008, dated 10-6-2008 on the ground that the same are hit by the doctrine of promissory estoppel, the Union of India has preferred the present Appeals."

The Hon'ble Apex Court has allowed the appeal filed by the Revenue and observed as under:

> 16. Under the circumstances, the respective High Courts have committed a grave error in quashing and setting aside the subsequent notifications/industrial policies impugned before the respective High Courts on the ground that they are hit by the doctrine of promissory estoppel and that they are retrospective and not retro-active.

Consequently, all these appeals are ALLOWED. The impugned Judgments and Orders passed by the respective High Courts, which are impugned in the present appeals, quashing and setting aside the Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 subsequent notifications/industrial policies impugned in the respective writ petitions before the respective High Courts, are hereby quashed and set aside. Consequently, the original writ petitions filed by the respective original writ petitioners before the respective High Courts challenging the respective subsequent notifications/industrial policies stand dismissed and for the reasons stated hereinabove, the challenge to the respective subsequent notifications/industrial policies impugned before the respective High Courts FAIL. [Emphasis supplied] However, it is CLARIFIED that the present judgment shall not affect the amount of excise duty already refunded, meaning thereby, the cases in which the excise duty is already refunded prior to the subsequent notifications/industrial policies impugned before the respective High Court, they are not to be reopened. However, it is further CLARIFIED that the pending refund applications shall be decided as per the subsequent notifications/industrial policies which were impugned before the respective High Courts and they shall be decided in accordance with the law and on merits and as per the subsequent notifications/industrial policies impugned before the respective High Courts. All these appeals stand disposed of accordingly. NO COSTS."

6. Adjudicating the said Show Cause Notice, the respondent has passed the impugned order dated 20.07.2021, confirming the demand of Rs. 82,84,25,639/- against the appellant under Section 11A (10) of Act, along with interest on the said amount under Section 11AA of the said Act.

6.1. The present appeal has been filed by the appellant in respect of this order.

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7. The Ld. Counsel appearing on behalf of the appellant submits that following the Order dated 26.03.2014 passed by the Commissioner, wherein the respondent has withdrawn the facility of self-credit, the appellant had to claim the exemption benefit by filing refund claims for each month.

Accordingly, it is submitted that the appellant filed refund claims for the period from March, 2014 to January, 2016, claiming 100% of the duty paid in PLA. However, he submits that inadvertently, they have filed all these claims in terms of the Notification No.56/2003, instead of Notification No.20/2007. The appellant's submission is that inadvertent error in mentioning exemption under Notification No. 56/2003-CE instead of Notification No. 20/2007-CE would not disentitle them from claiming the substantial benefits which are otherwise eligible to them, as the conditions for availing the benefit of the exemption are identical under both the notifications.

7.1. In support of their contention that mentioning of wrong Notification would not disentitle the benefit otherwise available to them, the appellant relied on the following decisions:

> • Share Medical Care Versus Union of India [2007 (209) E.L.T. 321 (S.C.)] • R.S. Infraprojects (Pvt.) Ltd. Versus Commissioner of C. Ex., Ghaziabad [2017 (358) E.L.T. 1188 (Tri. -

All.)] • Commissioner of Cus. & C. Ex., Meerut-ii Versus Packaging India (Pvt.) Ltd. [2012 (285) E.L.T. 497 (Uttarakhand)] • Central India Institute of Medical Science Versus C.C. (ACC), Mumbai[2008 (231) E.L.T. 113 (Tri. - Mumbai)] • Packaging India Pvt. Ltd. Versus Commissioner of C. Ex., Meerut-II [2012 (283) E.L.T. 390 (Tri. - Del.)] Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 • Tata Consulting Engineers Versus Commissioner of C. Ex., Bangalore[2000 (124) E.L.T. 467 (Tribunal)] • IN RE: Mandhana Industries Ltd. [1999 (107) E.L.T. 284 (Commr. Appl)] • Monopol Chemicals Pvt. Ltd. Versus Commissioner of C. Ex., Mumbai-II[1999 (112) E.L.T. 957 (Tribunal)] 7.2. In view of these submissions, the appellant has prayed for setting aside the demand confirmed in the impugned order and allowing the appeal filed by them.

8. The submissions tendered by the Ld. Special Counsel, Shri P.R.V Ramanan, appearing on behalf of the Revenue, are summarized as under: -

> (i) Regarding the contention of the appellant that the impugned order is contrary to the judgment of the Hon'ble Sikkim High Court, the Ld. Special Counsel submits that form the Judgment of the Hon'ble Supreme Court, it is abundantly clear that judgments/orders of various High Courts, which includes the judgment of the Sikkim High Court dated 21/11/2017, stand quashed and set aside. If the Apex Court had sought to decide only the promissory estoppel issue, they would have used the expression 'in so far as it concerns the promissory estoppel issue'. Accordingly, the Ld. Special Counsel submitted that the entire judgment of the Sikkim high Court stands quashed and set aside. Hence, the impugned order is not contrary to the Judgment of the Sikkim High Court.
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> (ii) Regarding inadvertent mentioning of the Notification No. 56/2003 instead of Notification No. 20/2007, the Ld. Special counsel submits Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 that the argument of the appellant that they have inadvertently mentioned the notification No. 56/2003 is not

> all acceptable. The appellant started the project in 2005 itself, when Notification No. 56/2003 was in operation. At that time, the appellant could never have anticipated that there would be another notification. Besides, in April, 2009, the appellant opted for the benefit under Notification No.56/2003. By their letter dated 22/10/2011, the appellant have informed the jurisdictional officer that they would avail of 100% recredit, instead of 56%, in view of the judgment of the J&K High court in the case of Reckitt Benckiser. This was also w.r.t.

Notification No.56/2003. Again, after the order of the respondent dated 26/3/2014, they filed refund claims, every month, only in terms of the said notification.

(iii) In para 7.12 of the impugned order, the respondent has categorically stated that in their letter dated 1/7/2019 the appellant had defended their eligibility to exemption under the notification no. 56/2003. In Para 7.13, the respondent has also observed that the Department had taken up the issue of applicability of notification no. 56/2003.The argument that mention of notification no. 56/2003 was a clerical mistake is clearly an afterthought.

(iv) Commercial production started from April 2009 but they raised the issue before the Court in 2015/2016. Even assuming that they have raised the issue before the sanctioning authority Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 in September, 2015, the time period during which they had maintained that they were eligible for the benefit of notification no. 56/2003 was more than 6 years.

(v) The appellant had forcefully claimed their eligibility to exemption under the Notification No. 56/2003 and in the year 2003, this was the only notification available and they still had more than 2 years to meet the requirement of commencement of commercial production. That is the reason the appellant opted for the benefit under that notification. Once having exercised their option they could not change it. What is more, knowingly, they claimed refunds and took credit of the same.

(vi) In view of the above, the respondent has rightly held that they appellant had to comply with the conditions specified in the aforesaid notification. Since the appellant's unit began its commercial production much after the last date specified in the said notification, in strict legal terms, they are not eligible to claim the exemption under that notification.

(vii) Section 11A of CEA specifically provides for recovery of amounts refunded erroneously. Since in sanctioning these refund claims, the authority had erred in not considering the fact of commencing commercial production after the specified date, the provisions of section 11A are clearly attracted for recovery of the erroneously sanctioned refund claim.

(viii) The refund of 100% of duty taken under Notification No. 56/2003 is not admissible Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 because the commercial production of appellant's Unit I began on 20/4/2009 i.e. after the due date of 31/3/2007 prescribed under the said notification. In fact, all refunds sanctioned to the appellant were inadmissible on account of this reason.

(ix) According to the appellant, duty demand relating to refunds pertaining to the period from March, 2014 to September, 2014 are beyond the normal period of 2 years and hence, it is not sustainable. In this regard, the Ld. Special counsel submits that the first refund in this case was sanctioned on 11/2/2015 and the last refund was sanctioned on 20/5/2016. The SCN was issued on 19/10/2016. W.e.f. 14/5/2016, the time limit for raising a demand of duty, which has been refunded erroneously, is 2 years from the relevant date, which in this case is the date of such refund. Since the SCN was issued on 19/10/2016, the period of demand could go back to 20/10/2014. Hence, the respondent has rightly held that the demand is within normal time of 2 years.

(x) Regarding interest payable on the amount of demand relating to erroneous refund, the Ld. Special counsel submits that the appellant has adverted to the purported mistake in mentioning the applicable notification and has argued that duty is not payable in this case and hence, no interest can be demanded. However, it is a settled law that if duty is payable pursuant to a notice issued under Section 11A, consequently interest becomes due and payable under Section 11AA by operation of law.

Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Accordingly, he justified the demand of interest along with the recovery of erroneously sanctioned refund. In support of this view, he relied upon the decision in the case of M/s. Kamat Printers Pvt. Ltd. & Anr. v. Union of India & Ors., Writ Petition No. 2131 of 2003 decided on 12th August, 2009, by the Hon'ble Bombay High Court, wherein it has held in the context of provisions in pari materia with section 11 AA of CEA, that if duty is payable pursuant to a notice issued under Section 28, consequently interest becomes due and payable under Section 28AB by operation of law.

8.1. Accordingly, the Ld. Special Counsel representing the Revenue prayed for rejecting the appeal filed by the appellant.

9. Heard both sides and perused the records.

10. We observe that consequent to passing of the order dated 26.03.2014, wherein the Respondent has withdrawn the facility of self-credit, the appellant has started claiming the exemption benefit by filing refund claims for each month. Accordingly, the appellant filed refund claims for the period from March, 2014 to January, 2016, claiming 100% of the duty paid in PLA. However, inadvertently the appellant has filed all these claims in terms of the Notification No.56/2003, instead of Notification No.20/2007. The submission advanced by the appellant to this effect is that the conditions imposed and benefits available under both the above said Notifications are same and identical and hence inadvertent mentioning of Notification No. 56/2003-CE instead of Notification No. 20/2007-CE, would not disentitle them the benefit of exemption Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 which is otherwise available to them under the Notification 20/2007-CE. A comparative chart showing the conditions imposed and benefits available under both the above said Notifications are extracted below:-

Notification: 56/2003-C.E. dated 25- Notification. No. 20/2007-CE dated 25-

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Jun-2003                                                    April-2007
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Para 1 In exercise of the powers conferred                Para 1In exercise of the pow
by sub-section (1) of section 5A of the Central           sub-section (1) of section 5
Excise Act, 1944 (1 of 1944), read with sub-              Excise Act, 1944 (1 of 1944)
section (3) of section 3 of the Additional                Government, being satisfied
Duties   of    Excise     (Goods      of      Special     in the public interest so to
Importance) Act, 1957 (58 of 1957) and sub-               the goods specified in the F
section (3) of section 3 of the Additional                Central Excise Tariff Act, 1
Duties of Excise (Textiles and Textile Articles)          than those mentioned in the
Act,   1978   (40   of   1978),    the    Central         cleared from a unit located
Government,    being    satisfied    that     it    is   or Tripura or Meghalaya or M
necessary in the public interest so to do,                or Nagaland or Arunachal Pra
hereby exempts the goods specified in the                 the case may be; from so muc
Schedule appended hereto, other than goods                excise leviable thereon unde
specified in Annexure appended hereto, and                equivalent to the duty payab
cleared from a unit located in the State of               undertaken in the manufactur
Sikkim, from so much of the duty of excise                by the said unit
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leviable thereon under any of the said Acts as is equivalent to the duty payable on value addition undertaken in the manufacture of the said goods by the said unit Para 3 -The exemption contained in this Para 5- The exemption contained in this notification shall apply only to the notification shall apply only to the following following kinds of units, namely: kind of units, namely:

(i) new industrial units which have (a) New Industrial units which commence commenced commercial production on commercial production on or after the I day or after the 23rd day of December, 2002, of April, 2007 but not later than 31st day of but not later than the 31st day of March, 2017; March,2007;

(ii) industrial units existing before the 23rd (b) Industrial units existing before the 1st day day of December, 2002, but which have of April, 2007 but which have undertaken undertaken substantial expansion by way of substantial expansion by way of increase by not increase in installed capacity by not less than less than twenty-five per cent. On or after the 23rd day 25% in the value of fixed capital investment in of December, 2002, but have commenced plant and machinery for the purposes of Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Notification: 56/2003-C.E. dated 25- Notification. No. 20/2007-CE dated 25-

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Jun-2003                                                April-2007
commercial production from such expanded                expansion         of
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capacity, not later than the 31 day of March, st diversification and have commenced commercial 2007. production from such expanded capacity on or after the 1st day of April, 2007 but not later than 31st day of March, 2017.

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Para -2 -Table                                          Para -2 -Table
                                      Description        S.       Chapte       Descr
        Chapt
                                       of inputs         No       r of the      on
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SS	er of the First Sched ule	Descripti on of goods	Rat e	for manufactu re of goo ds in column (3)	.	First Sched ule	goods
					2	30	All g
2	30	All goods	56	Any goods			

10.1. From the aforesaid table, it is seen that the conditions imposed and benefits available under both the Notifications are same and identical, which shows that the intention of the Government behind issuance of both Notifications for granting the benefits to the Industrial Units is also same. The only difference is that the industries which have commenced their commercial production between 23.12.2002 to 31.03.2007 are entitled for the benefit under Notification No. 56/2003-CE whereas the industries which have commenced their commercial production between 01.04.2007 to 31.03.2017 are entitled for the benefit under Notification No. 20/2007-CE. It is seen that the said benefit has continued for the industries which have initiated their commercial production from the period 01.04.2007 to 31.03.2017. We find that, as a matter of fact, the Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Notification No.20/2007 CE date 25.04.2007 has been issued, in order the continue the facility already given under the earlier Notification No.56/2003 CE dated 25.06.2003, so that the units starting their manufacturing activity after 31.03.2007, but before 31st March 2017, also get the same benefit which was given under Notification No.56/2003. The legislative intent is clear to continue the benefit for the next 10 years for the assesses operating in the Sikkim region.

10.2. We also note that both the aforesaid notifications were amended in the year 2008 to curtail the benefit granted and even the said amendment was also identical. Basically, Industrial Policy was announced in the year 2003 and to give effect to the same, the Notification No. 56/2003-CE was issued and, similarly, when Industrial Policy was announced in the year 2007, the Notification No. 20/2007-CE came to be issued and the benefits granted vide Industrial Policy, 2003 were continued. It is amply clear that there is no revenue loss or any adverse effect in availment of benefits under either Notifications.

10.3. It is on record that the appellant had duly complied with all the relevant provisions of the Notification No. 20/2007-CE during the entire tenure of 10 years. We observe that the Revenue has also not disputed this claim of the appellant. We also take due note of the fact that from September

2015 onwards, the appellant has correctly filed the refund claims under the Notification No. 20/2007-CE and the said claims have been sanctioned by the proper officer under the Notification No. 20/2007-CE. Thus, we find that the eligibility of the appellant to claim the benefit of exemption as provided under Notification No. Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 20/2007-CE was not in dispute for the entire period from December 2012 to January 2017. Resultantly, we find that it is a case of mere inadvertent mentioning of Notification No. 56/2003-CE instead of Notification No. 20/2007-CE. As the appellant had duly complied with all the relevant provisions of the Notification No. 20/2007-CE, we hold that the inadvertent error in wrong mentioning of the Notification No. 56/2003 would not disentitle them from availing the benefit of Notification No. 20/2007 which is otherwise entitled to them.

10.4. We also find that the said issue has already been laid to rest in a catena of decisions rendered by various judicial fora. The same view has been expressed by the Hon'ble Supreme Court in the case of Share Medical Care Versus Union of India [2007 (209) E.L.T. 321 (S.C.)], wherein it has been held that even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage. The relevant part of the said decision is reproduced below for ready reference:

> "15. From the above decisions, it is clear that even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage.
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> 20. In our opinion, the decision in Mediwell Hospital would not take away the right of the appellant Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 to claim benefit under para 3 of the Table of exemption notification. If the appellant is not entitled to exemption under para 2, it cannot make grievance against denial of exemption. But if it is otherwise entitled to such benefit under para 3, it cannot be denied either. The contention of the authorities, therefore, has no force and must be rejected."

(Emphasis supplied) 10.5. A similar rationale has been adopted by the Tribunal at Allahabad in the case of R.S. Infraprojects (Pvt.) Ltd. v. Commissioner of C.Ex., Ghaziabad [2017 (358) E.L.T. 1188 (Tri. - All.)], wherein the petitioner appellant had rectified their claim which was earlier made under Notification No. 108/95 to the correct Notification being Notification No. 6/2006-C.E. The Tribunal, while citing the reference of the judgement in Share Medical Care (supra), has held as under: -

> "5. Having considered the rival contentions we find that in the show cause notice no objection have been raised by Revenue regarding allowability of the benefit of exemption Notification No. 6/2006-C.E. Neither any objection is raised as to the eligibility of the appellant under the said Notification No. 6/2006. The only objection of the Revenue is regard to the retrospective effect of the claim of the appellant for their eligibility under Notification No. 6/2006-C.E. From the perusal of the facts on record we find that the show cause notice is misconceived. No case of any retrospective claim is made out from the show cause notice. It is evident on the face of record that the appellant had only rectified his claim which was earlier made under Notification No. 108/95 to the correct Notification being Notification No. 6/2006-C.E. Thus, we hold that there is no case of any Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 retrospective claim. Secondly, we find that Notification No. 6/2006 is of dated 1-3-2006 and the clearances were made thereafter and on this count also there is no question of any retrospective applicability of the said Notification. We further find that the appellant have rightly relied on the ruling of Hon'ble Supreme Court on the ruling in Share Medical Care v. Union of India - 2007 (209) E.L.T. 321 wherein the Hon'ble Apex Court have held that even if an applicant does not claim benefit under a particular Notification at initial stage, he is not debarred, provided or stopped from claiming such benefit at a later stage. Accordingly, we find that the show cause notice is unsustainable. Accordingly, we allow the appeal and set aside the impugned Order- in-Original and the appellant shall be entitled for consequential benefit in accordance with law."

10.6. A similar issue has also been decided by the Hon'ble Uttarakhand High Court in the case of Commissioner of Cus. & C.Ex., Meerut-II v. Packaging India (Pvt.) Ltd. [2012 (285) E.L.T. 497 (Uttarakhand)]. The relevant observation made by the Hon'ble High Court reads thus: -

> "2. The genuineness of the contention that the declaration under Notification No. 49 was filed by mistake was not questioned at any point of time. A look at Notification No. 49 will show that the goods dealt with by the assessee were not covered by said Notification, but the goods dealt with by the assessee were covered by Notification No. 50. By submitting a declaration, as was submitted, the assessee was entitled to the benefits of Notification No. 50. The assessee submitted such a declaration, but while submitting the same, indicated that the declaration is being submitted under Notification No. 49, instead of Notification No. 50. In the Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 circumstances, the matter having been decided in favour of the assessee, there is no question of law involved, nor any question of fact to be gone in."

10.7. It may also be pertinent to note the observations of the Tribunal in the case of Tata Consulting Engineers v. Commissioner of C.Ex., Bangalore [2000 (124) E.L.T. 467 (Tri.)], which reads as follows: -

"4. We have considered the submissions of both sides. It is now seen from the impugned order itself that the use of the goods in question were not disputed in the impugned order. On the contrary, the learned Collector himself has stated in the impugned order that M/s. Voltas had advised the appellants that the correct Notification is 93/76. He also gave a finding in the impugned order which reads as follows:

"It is therefore clear that the appellants were entitled to the benefit of Notification 93/76".

5. He, therefore, came to the conclusion that the appellant is entitled to the benefit of Notification 93/76, which clearly goes to show that the use of the above said goods in terms of the above said Notification was also not disputed by him. The only ground which he held against the appellant is that the supplier while sending the goods has mentioned in the gate pass that they are being sent under Notification 56/78. Since the duty is now demanded from the appellant, the mere fact that the suppliers have mentioned Notification 56/78 will not come in the way of the appellant in claiming the above said notification and more particularly, in view of the finding of the learned Collector (Appeals) himself that the appellants are entitled to the benefit of Notification 93/76."

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11. One more important issue to be dealt is about the Show Cause Notice being issued under the present proceedings, for recovering the refund granted alleged 'erroneously'.

12. Following the order dated 26.03.2014, the appellant filed refund claims for the period from March, 2014 to January, 2016, claiming 100% of the duty paid in PLA. All these claims were filed by the appellant in terms of the Notification No.56/2003 ibid. The jurisdictional officer sanctioned the claims by reducing the amount to 56% of the duty paid. Refund claims for the period from 3/2014 to 7/2015 were sanctioned by the jurisdictional officer in terms of Notification No.56/2003. However, for the period from 9/2015 to 1/2016, the claims were sanctioned in terms of Notification No.20/2007. The refunds have been granted under 21 different Orders in Original between the period February 2015 to May 2016, as per the detailed table annexed by the appellant at Page No.10 of the Appeal book. All the refunds were granted by way of Orders in Original sanctioning the Refund claim after necessary verification and modification of the claimed amount. The Orders-in-Original so passed are appealable orders. A sample copy of one such Order-in-Original is reproduced below:

☐Order-in-Original No. 11/R/CE/GTK/SUN/2015-16 dated 17.12.2015:

Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022

13. We find that against the Refund sanctioning Orders in Original, the Revenue has not filed any Appeal before the Commissioner (Appeals), as would be required if they are aggrieved by the refund sanctioning order. The Refund order was passed by the Asst / Dy. Commissioner, granting the refund. This was an appealable Order, for which the Commissioner / Pr. Commissioner had the authority to Review the Refund OIO passed, and could have directed the AC / DC to file an appeal in terms of Section 35E of CEA 1944, which was not done in these cases. Therefore, the OIOs passed by the Asst / Dy. Commissioner had reached finality. This being so, the Revenue could not have taken recourse for recovering the refund so granted by issuing the Show Cause Notice under Section 11A. The Hon'ble Madras High Court in the case of Eveready Industries India Ltd. Vs CESTAT [Civil Misc Appeal No.973 of 2008 vide order dated 3.3.2016 - 2016 (337) E.L.T. 189 (Mad.) [03-03-2016], has gone into this issue in a detailed way and has held as under :

> "21. In support of his contention that Sections 11A and 35E are independent of each other, Mr. Rajnish Pathiyil, learned standingcounsel for the Department cited the following decisions :
>
> (i) Union of India v. Jain Shudh Vanaspathi Ltd.

[(1996) 86 E.L.T. 460 (S.C.)]

(ii) Asian Paints (India) Limited v. Collector of Central Excise [(1994) 54 ECR 173 (FB of the Tribunal) = 1994 (73) E.L.T. 433(Tribunal)]

(iii) Asian Paints (India) Limited v. Collector of Central Excise [2002 (142) E.L.T. 522 (S.C.)] Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022

(iv) Sivananda Pipe Fittings Ltd. v. Superintendent of Central Excise [1998 (97) E.L.T. 52 (Mad.)]

(v) Commissioner of Central Excise v. Gillooram Gaurishankar [MANU/JH/0088/2002]

(vi) Commissioner of Central Excise v. PRICOL Ltd. [2015 (320) E.L.T. 703 (Mad.) = 2015 (39) S.T.R. 190 (Mad.)], and

(vii) Commissioner of Customs & Central Excise v. Panyam Cements & Minerals Industries Ltd. [2016 (331) E.L.T. 206 (A.P.)].

22. In contrast, Mr. Raghavan Ramabadran, learned counsel for the appellant/assessee placed strong reliance upon the judgment ofthis Court in Madurai Power Corporation v. DCCE [2008 (229) E.L.T. 521].

23. Before we look into the decisions relied upon by the learned counsel ....

27. In other words, by their failure to bring it to the notice of the Commissioner (Appeals) at the time when Appeal No. 206/98 cameup for hearing and decided on 30-11-1998, the Department

lulled the assessee into a sense of false security about the refund already made on29-9-1998. This is an aspect, which we should keep in mind before we deal with the rival contentions on the interplay between Sections 11Aand 35E. It is only after the closure of the appeal filed by the appellant against the finalisation of assessment that a show cause notice wasissued on 24-3-1999 invoking the provisions of Section 11A. The original authority, the Appellate Authority as well as the Tribunal applied the strict letter of the law and found that since both these provisions can exist independent of each other, the Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 show cause notice was in accordancewith the provisions of law and unassailable.

28. But, a careful look at the scheme of Sections 11A, 11B and 35E would show that an application for refund is not to be dealt with merely as a ministerial act or an administrative act. Under Section 11B of the Act, a person, claiming refund of any duty of excise and interest already paid, should make an application in the prescribed form. Such application is to be made within the period of limitation prescribed undersub-section (1) of Section 11B. The application should be accompanied by such documentary or other evidence, in relation to which, such refund is claimed. Sub-section (2) of Section 11B mandates that upon receipt of any application for refund, the Assistant Commissioner orDeputy Commissioner, if he is satisfied that the duty is refundable, should make an order. The refund order is capable of being given effect to in several methods including adjustment or rebate of duty of excise, all of which are prescribed in Clauses (a) to (f) under the Proviso to sub-section (2) of Section 11B.

29. Sub-section (3) of Section 11B, which contains a non obstante clause, makes it clear that de hors any judgment, decree, order ordirection of the Appellate Tribunal or any Court or any other provisions of the Act, no refund shall be made except as provided by sub-section(2).

30. Therefore, the detailed procedure prescribed under Section 11B not only regulates the manner and form, in which, an applicationfor refund is to be made, but also prescribes a period of limitation, method of adjudication as well as the manner, in which, such refund is to bemade. In simple terms, Section 11B is a complete code in itself.

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31. Therefore, it is clear that what is required of an Assistant Commissioner or Deputy Commissioner under sub-section (2) of Section 11B is to adjudicate upon the claim for refund. The expression 'Adjudicating Authority' is also defined in Section 2(a) to mean any authority competent to pass any order or decision under this Act, but does not include the Central Board, Commissioner of Excise (Appeals) orthe Appellate Tribunal. Hence, the power exercised under Section 11B is that of an adjudicating authority and the order passed is certainly oneof adjudication.

32. It is only when an order of adjudication is passed under Section 11B that a person, who makes a claim for refund, will get his money back. This assumes significance in the light of the fact that by the proceedings dated 29-9-1998, the appellant/assessee was informed of the sanction granted by the Assistant Commissioner to make a refund of a sum of Rs. 3,31,365/- arising as a consequence of the finalisation of assessment.

33. In simple terms, the refund that the appellant got was and should have been only after an adjudication under Section 11B and not without an adjudication. It must be pointed out that if an authority has done something, it must be presumed that he has done it in accordance with law. Therefore, we would give the benefit of doubt to the Assistant Commissioner and presume that before according sanction in September, 1998 for refund, he had actually followed the procedure under Section 11B and passed an order of adjudication.

34. Once it is seen that an order of adjudication has been validly passed under Section 11B and a refund has also been made on 29-9-1998, then the next question that would fall for consideration is as to Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 whether Section 11A can be invoked thereafter. We have already extracted the provisions of Section 11A. Interestingly, the authority, given under Section 11A(1) for recovery of any refund erroneously paid, is upon the Central Excise Officer. The expression used in Clause (a) in sub-section (1) of Section 11A is 'Central Excise Officer'.

35. The expression 'Central Excise Officer' is defined in Section 2(b) to mean the Chief Commissioner of Central Excise, Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, Joint Commissioner of Central Excise, Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act.

36. Therefore, an order of recovery can be passed under Section 11A even by an Assistant Commissioner, as he happens to be a Central Excise Officer in terms of Clause (a) in sub-section (1) of Section 11A. In contrast, the processing of an application and the passing of an order on an application for a refund, can be made either by the Assistant Commissioner or by the Deputy Commissioner under sub-section(2) of Section 11B. Hypothetically, it would mean that a Deputy Commissioner can pass an order for refund under Section 11B(2) and an Assistant Commissioner can invoke the proceedings for recovery under Section 11A(1).

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37. In other words, by reading the provisions of Section 11A in such a manner as the learned standing counsel would request us to do, we would be recognizing a power in a Subordinate Authority to invoke the power of recovery under Section 11A, despite the fact that a refund application has been adjudicated upon by a Superior Authority under Section 11B. We should keep this fact in mind before dealing with the interplay between Sections 11A and 35E.

38. As we have seen from the language employed in Section 35E, which we have extracted above, a limited revisional jurisdiction is conferred upon the Principal Commissioner and Commissioner of Excise in sub-section (2) of Section 35E. This power is not actually to correct any error directly, on the part of an adjudicating authority. This power is available only for directing the Competent

Authority to take the matter to the Commissioner (Appeals).

39. Therefore, it was always open to the Principal Commissioner or the Commissioner of Central Excise to examine the order of the adjudicating authority namely the Assistant Commissioner in the proceedings under Section 11B and to give a direction to the Competent Authority to file an appeal against the order of refund under Section 11B, to the Commissioner of Appeals under Section

35. This was not done in this case. On the contrary, the authorities allowed the order to be passed in Appeal No. 206/98, dated 30-11-1998 on the basis of the refund already made.

40. Now, coming to the decisions, on which, heavy reliance is placed by the learned standing counsel for the Department, it is seen from the decision of the Supreme Court in Jain Shudh Vanaspathi Ltd., that the whole proceedings were held by the Supreme Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Court to be vitiated by fraud. The decision of the Supreme Court in Jain Shudh Vanaspathi Ltd., will not go to the rescue of the Department in view of the fact that there was a clear finding that the assessee got the goods cleared for home consumption under Section 47 of the Customs Act by playing a fraud upon the Department. Therefore, when an objection was taken that after clearance under Section 47, the provisions of Section124 cannot be invoked, the Supreme Court pointed out that fraud vitiates all solemn acts. That is not the type of case that we are dealing here.

41. Insofar as the decision of the Full Bench of the Tribunal in Asian Paints (India) Limited is concerned, the difficulty faced by the Tribunal was the different periods of limitation prescribed under Sections 11A and 35E. The case before the Full Bench of the Tribunal in Asian Paints (India) Limited was on the reverse. As seen from Paragraph 1 of the decision of the Full Bench, the only issue referred for the consideration of the Larger Bench revolved around the limitation prescribed in Section 35E(3) and Section 11A. We are not dealing with a casewhere there is a logjam between two different provisions. Therefore, the said decision, which was also confirmed by the Supreme Court in Asian Paints (India) Limited [2002 (142) E.L.T. 522], cannot be of any application.

42. No one can have a quarrel with the proposition that Sections 35E and 11A operate in different fields and are invoked for different purposes. We are merely concerned in this case with the interplay between Sections 11A and 35E. We are also concerned with what happened in the form of an adjudication under Section 11B. What happens in a case where an adjudication takes place under Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 Section 11B did not at all fall for consideration in Asian Paints (India) Limited.

43. The decision of this Court in Sivanandha Pipe Fittings Ltd., was also on the point as to whether it is open to the authorities to take recourse to one remedy where several remedies are available. It is not the contention in this case that there are plural remedies available to the Department. The contention in this case is as to whether, after having allowed an adjudication under Section 11B to attain finality, therewas any remedy open to the Department at all under Section 11A. Therefore, the decision in Sivanandha Pipe Fittings Ltd., is also of no assistance to the Department.

44. Insofar as the decision of the Jharkhand High Court in Gillooram Gaurishankar is concerned, the question that was referred to the High Court was whether the statutory remedies under Section 11A(1) will have to be exercised, to the exclusion of the remedies availableunder Section 35E(2) or not. In Paragraph 4 of the decision, the Jharkhand High Court rightly held that there was no necessity to issue a showcause notice under Section 11A, when recourse has already been taken to Section 35E.

45. Insofar as the decision of this Court in PRICOL Ltd., is concerned, one of the two questions of law referred was as to whether the amount erroneously refunded could not be recovered by filing an appeal under Section 35E without issuing a demand notice under Section11A. That is not the situation in this case.

46. In this case, an order of refund was passed on an application under Section 11B. The appeal against the finalisation of the assessment was closed on the basis of the refund order. There can be no doubt about the fact that the statutory right of Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 appeal is a valuable right conferred upon the assessee. That right was actually altered on the basis of an order of refund. Suppose there had been no order of refund, the appeal could have been pursued against the finalisation of the assessment.

47. In other words, two valuable rights, one in the form of right of appeal and another in the form of order of refund, are now sought to be taken away indirectly by taking recourse to Section 11A. What cannot be done directly cannot be done indirectly also.

48. Insofar as the decision of the Andhra Pradesh High Court is concerned, one observation made in Paragraph 16 of the said decision is of prime importance. In Paragraph 16, the Andhra Pradesh High Court has made it clear, after analysing Sections 11A and 11B that there is an adjudication process involved in the processing of applications made under Sections 11A and 11B. The Andhra Pradesh High Court held that orders passed under Sections 11A and 11B are appealable. Therefore, the decision of the Andhra Pradesh High Court, especially the observations in Paragraph 16, should be made use of by the assessee to contend that since there was no appeal against the order under Section11B, the Department cannot take recourse to Section 11A.

49. In Madurai Power Corporation, this Court had an occasion to consider the interplay of Sections 11A and 35E of the Act. In the said case, show cause notices issued to the Corporation as to why excise duty payable on low sulphur heavy stock and furnace oil should not be demanded, came to be challenged. The show cause notices were issued under Section 11A of the Act. Reliance was placed by the assessee upon the orders passed by the adjudicating authority Appeal No.: E/76003/2021-DB & Cross Obj. No. E/CO/75053/2022 under the Rules of the year 2001 and it was contended that such an order could be rectified only through an appeal mechanism prescribed under Section 35E(2). As seen from Paragraph 11 of the decision, the contention of the assessee was that Section 11A does not contain a non obstante clause and that therefore, it cannot be invoked to nullify the appeal remedy available to the Department under Section 35E(2).

50. The very same argument now advanced by the Department to the effect that Sections 11A and 35E operate in two different independent fields was raised by them. After considering the issue elaborately and also after taking note of the decision in Asian Paints (India)Limited approved by the Supreme Court, this Court came to the conclusion in Paragraph 23 as follows :

> "In our opinion, there is no nexus between Section 11A and Section 35E. Section 11A does not indicate that the legislature intended to override Section 35E. Both sections have to be read harmoniously. In the present case, Annexure-I certificate has been issued in favour of the petitioners from time-to-time on executing B-8 security bond and on furnishing a bank guarantee. The Department has to follow the procedure under Section 35E for setting aside the Annexure-I certificate. Unless, the Annexure-I certificate is cancelled or rejected by the Competent Authority, by following the procedure under Section 35E, it is not permissible for the respondents to invoke Section 11A of the Act. Therefore, we are of the considered opinion that the issuance of show cause notices is without jurisdiction and is liable to be struck down."

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51. We are of the considered view that the paragraph extracted above is a complete answer to the question of law now raised. Unfortunately, in none of the decisions relied upon by the learned standing counsel, the Courts were confronted with an order of adjudication passed under Section 11B on an application. Once an application for refund is allowed under Section 11B, the expression 'erroneous refund' appearing in sub-section (1) of Section 11A cannot be applied. If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under Section 11A(1). One authority cannot be allowed to say in a collateral proceeding that what was done by another authority was an erroneous thing. Therefore, the question of law has to be answered in favour of the appellant/assessee and the appeal deserves to be allowed."

14. We find that to the factual matrix of the present case, the decision of the Hon'ble Madras High Court cited supra, is squarely applicable. Applying the ratio, we hold that the present proceedings are legally not sustainable in the absence of challenge to the refund granting Orders in Original.

15. In view of the above findings and by relying on the decisions cited supra, we find that the impugned order confirming the demand of alleged erroneously sanctioned refund claim is legally not sustainable. Accordingly, we do not find any infirmity in the proper officer sanctioning the refund to the appellant. We thus hold that the appellant is eligible for the refund and consequently, the demand on account of alleged erroneous refund in the impugned order is set aside.

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16. In the result, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law. The cross objection filed by the respondent also stands disposed of accordingly.

(Order pronounced in the open court on 04.11.2025) Sd/-

(R. MURALIDHAR) MEMBER (JUDICIAL) Sd/-

(K. ANPAZHAKAN) MEMBER (TECHNICAL) Sdd