The document details a case where a company, MESSRS AALIDHRA TEXCRAFT ENGINEERS, sought a refund of Rs. 40,00,000. The refund was denied by the respondent (UNION OF INDIA) on grounds of limitation (Section 54(1) of the GST Act). The petitioner argued that the payment was made in error, not as a tax payment subject to the limitation. The court ultimately allowed the refund, citing several key reasons:

Voluntary Payment: The petitioner's payment was deemed a voluntary payment, not a tax payment. This critical distinction is why the limitation period of Section 54(1) does not apply. The Court found no evidence that this payment was intended as tax and that the petitioner acted in good faith. This stands in contrast to a situation where a tax liability was in dispute and the payment was made to satisfy the dispute.

Misapplication of Law: The respondent's rejection of the refund claim was based on a misapplication of the law, particularly the interpretation of Section 54(1). The court emphasized that the crucial point is whether the payment was made as a tax or voluntarily.

Lack of Proper Communication: The court noted that the respondent authorities failed to provide proper acknowledgment for the voluntary payment. This further strengthens the petitioner's argument against the application of the limitation period.

Previous Case Law: The court relied on precedents, specifically cases such as M/s. Joshi Technologies International and others, which established that voluntary payments made in error are not subject to the same limitation periods as those applied to legitimate tax payments. This precedent clearly indicates that a mistaken payment doesn't automatically become a tax liability.

In summary, the court allowed the refund because the payment was deemed a voluntary payment made in error, not a tax payment subject to the limitations in Section 54(1). The court also considered relevant case law and the lack of proper acknowledgment from the respondent authorities. The key takeaway is the distinction between voluntary payment and tax payment for determining the applicability of limitation periods.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14554 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR.JUSTICE D.N.RAY

==========

Approved for Reporting	Yes	No

==========

MESSRS AALIDHRA TEXCRAFT ENGINEERS & ANR.
Versus
UNION OF INDIA & ORS.

==========

Appearance:
AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1,2
MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2
NIDHI T VYAS(7772) for the Respondent(s) No. 1,2,3

==========

CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 12/12/2024

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Paresh M. Dave for the petitioners and learned advocate Ms. Nidhi T. Vyas for the respondents.

2. **RULE returnable forthwith.** Learned advocate Ms. Nidhi Vyas waives the service of rule on behalf of the respondents.

3. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the order in revision passed by the respondent No.2 dated 14.6.2024 rejecting the refund claim of the petitioner on the ground of limitation.

4. Brief facts of the case are as under:-

4.1 The petitioner is engaged in the business of manufacturing various types of textile machinery and equipment. Petitioner is registered under the provisions of the Central/State Goods and Services Tax Act, 2017 (for short the 'GST Act'), after coming into force of the said Act.

5. The petitioner for manufacturing the goods, various types of textile machinery and equipment

was procuring various inputs, raw materials, capital goods including the supplies by way of import during the period from May 2019 to March 2020. The petitioner imported various inputs and material by filing 33 Bills of Entry which were cleared from the ports of imports to the factory premises of the petitioners on payment of import duties leviable including the integrated tax of Rs. 2,48,28,300/- which is admissible as Input Tax Credit (ITC). Accordingly, the petitioner availed the ITC of the said amount on the basis of the Bills of Entry and challans. However, it appears that due to some wrong impression created on the petitioner's part that an excess credit of Rs.40,00,000/- was availed regarding the tax paid on imported goods, which the petitioner paid on account of the mismatch between the figures of ITC relatable to integrated tax paid on imports, which was auto populated in Form of GSTR-2A and monthly returns filed in Form GSTR-3B returns. On account of some mismatch of some error in system resulted

in impression that excess credit of Rs.40,00,000/- was reflected in GSTR-2A return. The petitioner therefore deposited Rs.40,00,000/- on 13.11.2020 in Form DRC-03 believing bonafide that credit of Rs.40,00,000/- was erroneously availed in excess of what was legally admissible.

6. It is the case of the petitioner that no communication or letter was issued by the respondent authorities acknowledging the deposit of Rs.40,00,000/- as voluntary payment and such payment is still shown on GST portal as “pending for action by Tax Officer”.

7. It appears that in the month of January–February, 2024, the Range Superintendent of the respondent authorities conducted verification and formal auditing of the records of the petitioner. During the scrutiny, it was found that there is discrepancy about Rs. 40,00,000/- which was deposited vide Form DRC-03 but there was apparently no such tax liability which was

required to be discharged within the financial year 2019-2020. Therefore, a notice in form of GST ASMT-10 dated 23.2.2024 was uploaded on the portal calling upon the petitioner to clarify about the payment of Rs.40,00,000/- through DRC-03 along with other issues. The petitioner provided a clarification on 20.3.2024 stating that there was a excess payment of Rs.40,00,000/- by DRC-03 by mistake and filed an application for refund in Form GST RFD-01 on 30.3.2024 stating that the petitioner has paid excess GST by mistake. The respondent authority also accepted the reply of the petitioner and closed the matter by passing an order in Form GST ASMT-12 dated 24.4.2024.

8. The respondent No.2 issued a notice for rejection of the refund claim on 29.5.2024 calling upon the petitioner as to why the refund claim should not be rejected on the ground of limitation as the same was filed after two years from the date of payment as per the provisions

of Section 54(1) of the GST Act.

9. It is the case of the petitioner that petitioner did not file any reply in writing. However, the representative of the petitioner had personal meeting with the jurisdictional GST officer to whom the explanation was tendered orally with regard to the circumstances resulting in refund claim.

10. The respondent No.2 Assistant Commissioner by impugned order dated 14.6.2024 rejected the refund application of the petitioner being time barred.

11. Being aggrieved the petitioner has preferred this petition.

12. Learned advocate Mr. Paresh Dave for the petitioners submitted that there are no disputes with regard to the facts of the case as it is admitted by the respondents in the affidavit-in-reply filed that the payment made by the petitioner was not recovered as tax by the

authorities but was a voluntary payment. It was further submitted that the petitioner has not paid the amount of Rs.40,00,000/- towards any tax and interest as contemplated under Section 54(1) of the Act and therefore, the limitation of two years prescribed in Section 54(1) shall not be applicable to the refund of the amount voluntarily deposited by the petitioner in Form DRC-03. It was further submitted that the issue of refund of such voluntary payment is no more res-integra in view of decision of this Court in case of **M/s. Joshi Technologies International Versus Union of India reported in (2016) 339 ELT 21,** which was subsequently followed in decision of **M/s Gujarat State Police Housing Corporation Ltd. Versus Union of Indian and Another** rendered in **Special Civil Application No. 11221 of 2022 and other allied matters** vide judgment dated 18.1.2024. It was therefore prayed that the respondent may be directed to grant refund Rs. 40,00,000/- voluntarily deposited by the petitioner with statutory interest, if any.

13. On the other hand, learned advocate Ms. Nidhi Vyas appearing for the respondents submitted that the petitioner deposited the sum of Rs.40,00,000/- in the year 2020 and has made the application for refund in the year 2024 after calling upon the petitioner to give the clarification for deposit of such amount by the respondent authorities. It was further submitted that the amount of Rs. 40,00,000/- deposited by the petitioner cannot be refunded after the expiry of period of two years as per provisions of Section 54(1) of the GST Act. In support of her submissions, reliance was placed on the following averments made in the affidavit-in-reply filed on behalf of respondents :-

> "7. It is submitted that, the petitioner had voluntarily made payment of Rs.40,00,000/-through DRC-03 on 20.11.2020 (annexed at pg. 21) for excessive availment of ITC under the reason as "IGST CREDIT EXCESSIVELY CLAIMED BY RS.4000000 DUE TO PUNCHING ERROR IN F.Y. 2019-20, WHICH IS HEREBY PAID THROUGH DRC-03." It is pertinent to note that, the said payment was not recovered as 'tax' by the authorities, but was a voluntary payment

as it is evident from the section 'cause of payment' in the form.

8. That, thereafter, the petitioner had made refund application on 30.03.2024 by Form GST RFD-01 for refund of the amount of Rs.40,00,000/-on ground of IGST excess paid by mistake. The said refund amount was for the financial year 2019-2020. (annexed at pg 46 of the petition). It is submitted that, as per the provisions of S. 54(1) read with it Explanation 2(h) defining 'relevant date', of the said Act, any refund application has to be made within period of 2 years. Thus, in present case, the petitioner ought to have claimed refund under S.54 for FY 2019-2020 within 2 years as per the statutory limit. That, since the application was not within prescribed time period, as per the provisions of Rule 92 of the Central Goods and Service Tax Rules, 2017, the respondents issued Form GST-RFD-08 on 29.05.2024 seeking explanation on why the application may not be rejected being time barred. (copy annexed at pg 47 of the petition). The petitioner failed to submit their reply to the SCN issued to them in the form of RFD-08 and also failed to appear for personal hearing. Hence, after considering the facts, the impugned order dated 14.06.2024 came to be passed.

10. It is submitted that, a contention is raised by the petitioner that, the cause of action for claiming refund has arisen in April, 2024 based on ASMT-12 order. Such contentions are completely misplaced, in as much as the order of ASMT-12 has been issued by the jurisdiction Range Superintendent on 24.04.2024 whereas the refund claim was

filed by petitioner, prior to that, i.e. on 30.03.2024. Furthermore, even assuming, without admitting, that upon intimation of GST ASMT-10 dated 23.02.2024, it came to the knowledge of petitioner regarding such mistake, it would not be of any relevance, since as per the Act, the period of limitation of 2 years does not start with such knowledge of mistake but starts with payment of tax. Hence, the petitioner's computation of delay is against the provisions of the Act and they shift the onus upon the authorities for justifying their delay.

11. It is submitted that a contention is raised by the petitioner regarding scrutiny of return undertaken by the authorities and the pendency of Form ASMT-12. Such contention is completely misplaced and completely irrelevant for the impugned order. That, in the month of February, 2024, the petitioner company did not conduct any audit. That, Scrutiny of Returns for the period 2019-20 of the Petitioner under Section 61 of Central GST Act, 2017 was conducted. On the basis of assessed bills of entry and Customs challans evidencing payment of duties, the Petitioner has availed ITC of integrated tax of Rs.2,48,28,300/-. During the period 2019-20, on verification and reconciliation of the records they have found mismatch between amount of credit shown in GSTR 2A and GSTR 3B as a result they noticed that they have availed excess ITC of Rs.40,00,000/- and therefore, the same has been paid in cash through DRC-03 dated 20-11-2020. The discrepancies so noticed were communicated to the Petitioner in form of ASMT-10 and a copy of this intimation uploaded on portal 23.02.2024 (annexed at pg 25 & 26 of

petition). At that time, the Petitioner was requested to clarify such voluntarily payment of Rs.40,00,000/- through DRC- 03. A reply was filed on 20.3.2024 (annexed at pg. 29 pf petition), wherein for the first time it was intimated by them that, they have made the payment by mistake and a separate application for refund is preferred.

Hence, proceedings under S.61 are initiated with respect to many discrepancies and not just regarding the amount in issue. The said proceedings are completely different than proceedings under S.54 of the Act, and hence, no reliance can be placed on those proceedings. Petitioner is merely trying to misguide this hon'ble Court by raising such issue. Therefore, mere pendency of ASMT-10 would not entitle petitioner for any refund, beyond statutory period.

14. It is submitted that, the contention raised by the petitioner regarding non issuance of acknowledgement in Form DRC-04, however, the said contention is completely misleading as in the instant case, the petitioner has made voluntarily payment through Form DRC-03 and not under any direction from the authority. Since, such payment is voluntary in nature, the liability has not been verified with the documents and therefore, no acknowledgement under Form DRC-04 can be issued without any due verification and scrutiny. Therefore, the pendency of Form DRC-04 would not have any relevance for the petitioner.

14. It was therefore submitted that the petitioner is not entitled to any refund in view

of the belated claim of refund made by the petitioner after the period of two years from the date of deposit.

15. Having considered the rival submissions made by both the learned advocates, it is not in dispute that the petitioner deposited amount of Rs.40,00,000/- by mistake on 20.11.2020 voluntarily which was neither towards any tax, interest or penalty. The similar issue came up for consideration before this Court in case of **M/s. Joshi Technologies International (Supra)** as well as in case of **Gujarat State Police Housing Corporation Ltd. (Supra),** wherein it is held by this Court as under :-

> "22.Having heard learned advocates for the respective parties and having considered the facts of the case, it is not in dispute that the petitioner is entitled to the exemption under Notification No.32/2017 read with Notification No.12 of 2017 dated 13.10.2017, which reads as under:-
>
> "GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
>
> New Delhi: 05.07.2022

Notification No. 13/2022-Central Tax

G.S.R. 516(E). In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, the Government, on the recommendations of the Council, hereby,-

(i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;

(ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of

order under sub-section (9) of section 73 of the said Act, for recovery of erroneous refund;

(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

[F. No. CBIC-20001/2/2022-GST]

RAJEEV RANJAN, Under Secy."

23. The entry no.9(c) of Chapter 99 of GST Tariff-Services, reads as under:-

> "Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants."

24. Section 5A(1A) of Central Excise Act, 1944 stipulates as under:-

> "Section 5A[(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such

excisable goods shall not pay the duty of excise on such goods"

25. Section 54(1) of the CGST Act reads as under:-

"Section 54(1) Refund of tax paid on zero rated supplies of goods or services or both or on "input or input service" (not the capital goods) used in making such zero rated supplies."

27. Explanation 2(h) of Section 54 of the CGST Act defining the relevant date reads as under:-

"(2) "relevant date" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(ii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India:

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on

which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

2[(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises:]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

> (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
>
> (h) in any other case, the date of payment of tax."

28. Therefore, the contention of the petitioner that the Section 54(1) of the CGST Act is not applicable in the facts of the case is not tenable in view of the fact that the petitioner is liable to pay the GST under the Act. However, in view of the Notification No.32/2017, the petitioner was not granted exemption providing "Nil rate of Tax". Therefore, as per clause(h) explanation 2, refund date would be the date of payment of tax, which petitioner has failed ignoring the Notification No.32/2017. Therefore, the petitioner is ought to have filed refund claim as per the Section 54(1) of the CGST Act.

29. This Court in the case of **Joshi Technologies International (supra)** has held that the amount paid by mistake or through ignorance as self assessment of tax cannot be retained by the revenue and revenue is duty bound to refund as its retention is hit by Article 265 of the Constitution of India, which mandates that no tax shall be levied or collected except by authority of law. It was held as under:-

> "13. The next question that needs to be addressed is the aspect of limitation. The refund application has been made in July 2014 seeking refund of the amount paid for the period

July, 2004 to April 2014. On behalf of the revenue it has been contended that in view of the provisions of section 11B of the CE Act, the limitation for filing the refund claim would be before the expiry of one year from the relevant date. The expression "relevant date" is defined under clause (B) of the Explanation to section 11B of CE Act and insofar as the present case is concerned would be the date of payment of duty. However, as discussed hereinabove, the provisions of section 11B of the Act would not apply to the claim of refund made by the petitioner. Consequently, the limitation prescribed under the said provision would also not be applicable.

14. It has been further contended on behalf of the revenue, that in case the limitation prescribed under section 11B of the CE Act is not applicable, the general principles of limitation would apply and the limitation of three years for filing a suit would apply, whereas on behalf of the petitioner reliance has been placed upon section 17 of the Limitation Act, 1963 to contend that this case would be governed by the said provision and hence the limitation would not begin to run till the petitioner discovered the mistake. In support of the above submission, on behalf of the petitioner, reliance has been placed on the following decisions:-

14.1 The decision of the Supreme Court in Dehri Rohtas Light Rly. Co. Ltd. v. District Board, Bhojpur (supra), was cited, wherein it has been held thus:

"12. The question thus for consideration is whether the appellant should be deprived of the relief on account of the laches and delay. It is true that the appellant could have even when instituting the suit agitated the question of legality of the demands and claimed relief in respect of the earlier years while challenging the demand for the subsequent years in the writ petition. But the failure to do so by itself in the circumstances of the case, in our opinion, does not disentitle the appellant from the remedies open under the law. The demand is per se not based on the net profits of the immovable property, but on the income of the business and is, therefore, without authority. The appellant has offered explanation for not raising the question of legality in the earlier proceedings. It appears that the authorities proceeded under a mistake of law as to the nature of the claim. The appellant did not include the earlier demand in the writ petition because the suit to enforce the agreement limiting the liability was pending in appeal, but the appellant did attempt to raise the question in the appeal itself. However, the Court declined to entertain the additional ground as it was beyond the scope of the suit. Thereafter, the present writ petition was filed explaining all the circumstances. The High Court considered the delay as inordinate. In our view, the High Court failed to appreciate all material facts particularly the fact that the demand

is illegal as already declared by it in the earlier case.

13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case1 relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of

the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed." (Emphasis supplied)

14.2 Reliance was also placed upon the decision of this court in Swastik Sanitarywares Ltd. v. Union of India (supra), wherein it has been held as follows:

"15. In the present case, however, we find that the second deposit of the same amount on clearance of the same goods did not amount to deposit of excise duty and was a pure mistaken deposit of an amount with the Government which the revenue cannot retain or withhold. Such claim, therefore, would not fall within Section 11B of the Act. It is true that insofar as the Act is concerned, for refund of duty, the provision is contained in Section 11B. However, merely because there is no specific statutory provision pertaining to return of amount deposited under a mistake, per se, in our opinion, should not deter us from directing the respondents to return such amount. Admittedly, there is no prohibition under the Act from returning such an amount. Allowing the respondents to retain such amount would be, in our opinion, highly inequitable. We may not be seen to suggest that such a claim can be raised at any point of time without any explanation. In a given case, if the petitioner is found to be sleeping over his right, or raises such a claim after unduly long

period of time, it may be open for the Government to refuse to return the same and this court in exercise of discretionary writ jurisdiction, may also not compel the Government to do so.

16. In the present case, however, no such inordinate delay is pointed out. The petitioners have contended that the error was noticed by them some time in October, 2003 whereupon immediately on 1-11-2003, such refund claim was filed.

17. In a recent judgment in case of C.C. Patel & Associates Pvt. Ltd. (supra), this court had occasion to deal with somewhat similar situation where the petitioner had deposited service tax twice which was not being refunded by the Department. In that context, it was observed as under:-

> (12) We fail to see how the department can withhold such refund. We say so for several reasons. Firstly, we notice that under sub-section(3) of section 68, the time available to a service provider such as the petitioner for depositing with the Government service tax though not collected from the service recipient was 75 days from the end of the month when such service was provided. This is in contrast to the duty to be deposited by a service provider upon actual collection by the 15th of the month following the end of the month when such duty is collected. Sub-section (3) of section 68 thus provided for an outer limit of 75 days, but never provided that the same cannot be

paid by the 15th of the month following the end of the month when such service was provided. Thus, if the petitioner deposited such duty with the Government during a particular quarter on the basis of billing without actual collection, he had discharged his liability under sub-section (3) of section 68. Thereafter, on an artificial basis, the Assessing Officer could not have held that he ought to have deposited same amount once all over again in the following quarter. This is fundamentally flawed logic on the part of the Assessing Officer.

(13) Further, to accept such formula adopted by the Assessing Officer would amount to collecting the tax from the petitioner twice. The petitioner having already paid up the service tax even before collection in a particular quarter, cannot be asked to pay such tax all over again in the following quarter on the same service on the ground that such tax had to be deposited in the later quarter but was deposited earlier. Any such action would be without authority of law. Further, before raising demand of Rs.1,19,465/- under the head of duty short paid, the Assessing Officer should have granted adjustment of the duty already paid by the petitioner towards the same liability.

(14) Under the circumstances, we are of the opinion that the department cannot withhold such amount which the petitioner rightfully claimed. Under the circumstances, question of

applying limitation under section 11B of the Act would not arise since we hold that retention of such service tax would be without any authority of law."

14.3 Strong reliance was placed upon the decision of the Supreme Court in Salonah Tea Co. Ltd. v. Supdt. of Taxes (supra), wherein it has been held thus:

"13. Under Article 113 of the Limitation Act, 1963 the limitation was the period of three years from the date the right to sue accrues. It may be noted that in the instant case under Section 23 of the Act, it was provided that the Commissioner shall, in the prescribed manner refund to a producer or a dealer any sum paid or realised in excess of the sum due from him under this Act either by cash or, at the option of the producer or dealer, be set off against the sum due from him in respect of any other period. Section 23 applies only in a case where money is paid under the Act. If there is no provision for realisation of the money under the Act, the act of payment was ultra vires, the money had not been paid under the Act. In that view of the matter Section 23 would not apply.

14. The High Court in the instant case after analysing the various decisions came to the conclusion that where a petitioner approached the High Court with the sole prayer of claiming refund of money by writ of mandamus, the same was normally not granted but where the refund was prayed as a consequential relief the same was normally entertained if there was no

obstruction or if there was no triable issue like that of limitation. We agree that normally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution the court has power to direct the refund unless there have been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to respondent or any third party. It is true that in some cases the period of three years is normally taken as a period beyond which the court should not grant relief but that is not an inflexible rule. It depends upon the facts of each case. In this case, however, the High Court refused to grant the relief on the ground that when the section was declared ultra vires originally that was the time when refund should have been claimed. But it appears to us, it is only when the Loong Soong case was decided by the High Court in 1973 that the appellant became aware of his crystal right of having the assessment declared ultra vires and in that view of the matter in October 1973 when the judgment was delivered in July 1973 the appellant came to know that there is mistake in paying the tax and the appellant was entitled to refund of the amount paid. That was the time when the appellant came to know of it. Within a month in November 1973 the present petition was filed. There was no unexplained delay. There was no fact indicated to the High

Court from which it could be inferred that the appellant had either abandoned his claims or the respondent had changed his position in such a way that granting relief of refund would cause either injury to the respondent or anybody else. On the other hand, refunding the amount as a consequence of declaring the assessment to be bad and recovery to be illegal will be in consonance with justice, equity and good conscience. We are, therefore of the view that the view of the High Court in this matter cannot be sustained."

"20. In State of M.P. v. Bhailal Bhai, AIR 1964 SC 1006, this Court had occasion to consider what wasunreasonable delay in moving the court when tax was paid under a mistake. There the respondents were dealers in tobacco in the State of Madhya Bharat. The State had imposed sales tax on the sale of imported tobacco by the respondents. But no such tax was imposed on the sale of indigenous tobacco. The respondents filed writ petitions under Article 226 of the Constitution for the issue of writ of mandamus directing the refund of sales tax collected from them. They contended that the impugned tax was violative of Article 301(a) of the Constitution and they paid the tax under a mistake of law and the tax so paid was refundable under Section 72 of the Indian Contract Act, 1872. The appellant contended that there was no violation of Article 301 of the Constitution, and even if there was such violation the tax came within the special provision under Article 304(a) of the Constitution and the High Court

had no power to direct refund of tax already paid and in any event the High Court should not exercise its discretionary power of issuing a writ of mandamus directing this to be done since there was unreasonable delay in filing the petition. The High Court rejected all the contentions of the appellant and a writ of mandamus was issued as prayed for. It was held that tax was violative under Article 301 of the Constitution. But it was held that even though the tax contravened Article 301 of the Constitution, it was valid if it came within the saving provisions of Article 304 of the Constitution. Tobacco manufactured or produced in the appellant State, similar to the tobacco imported from outside had not been subjected to the tax and therefore the tax was not within the saving provisions of Article 304(a) of the Constitution. It was reiterated that the tax which had already been paid was so paid under a mistake of law under Section 72 of the Indian Contract Act. The High Courts had power for the purpose of enforcement of fundamental rights and statutory rights to grant consequential reliefs by ordering repayment of money realised by the government without the authority of law. It was reiterated that as a general rule if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by the extraordinary remedy of mandamus. Even if there is no such delay, in cases where the opposite party raises a prima facie issue as regards the availability of such relief on the merits on grounds like

limitation the court should ordinarily refuse to issue the writ of mandamus. Though the provisions of the Limitation Act did not as such, it was further held, apply to the granting of relief under Article 226, the maximum period fixed by the legislature as the time within which relief by a suit in a civil court must be claimed may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 could be measured. The court might consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. Where the delay is more than that period it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act was three years from the date when the mistake was known. In this case knowledge is attributable from the date of the judgment in Loong Soong case on 10-7-1973 and there being a statement that the appellant came to know of that fact in October 1973 and there being no denial by the averment made on this ground, the High Court, in our opinion, in the instant case was in error in presuming that there was a triable issue on this ground and refusing to grant refund." (Emphasis supplied)

14.4 Thus, in view of the principles enunciated by the Supreme Court in Salonah Tea Co. Ltd. v. Superintendent of Taxes, Nowgong (supra), in case where money is paid by mistake, the period of limitation prescribed is three years from the date

when the mistake was known. Besides, section 17 of the Limitation Act inter alia provides that when a suit or application is for relief from the consequences of a mistake, the period of limitation would not begin to run until the plaintiff or applicant has discovered the mistake, or could, with reasonable diligence, have discovered it. Therefore, in case where money is paid under a mistake, the limitation would begin to run only when the applicant comes to know of such mistake or with reasonable diligence could have discovered such mistake. Adverting to the case at hand, the mistake is in the nature of a mistake of law. It appears that the legal position was not clear and hence, pursuant to representations made by the trade and field formations, the CBEC was required to issue the circular dated 07.01.2014 clarifying the issue. As noticed earlier, the petitioner had all along, right from July 2004 been paying Education Cess and subsequently, from the year 2007 was paying Secondary and Higher Secondary Education Cess, till April 2014. It was only when the Circular dated 07.01.2014 came to be issued by the CBEC, clarifying the issue, that the petitioner came to know about its mistake. Considering the nature of the mistake and the fact that the issue was not free from doubt till the above circular came to be issued by the CBEC, it also cannot be said that the petitioner could with reasonable diligence have discovered the mistake. It appears that it is only sometime after the Education Cess and Secondary and Higher Secondary Education Cess came to be paid for the month of April 2014 that the petitioner came to know about its mistake and in July 2014, it filed the application

for refund before the second respondent. Since the period of limitation begins to run only from the time when the applicant comes to know of the mistake, the application made by the petitioner was well within the prescribed period of limitation. Moreover, as discussed hereinabove, the retention of the Education Cess and Secondary and Higher Secondary Education Cess by the respondents is without authority of law and hence, in the light of the decision of this court in Swastik Sanitarywares Ltd. v. Union of India (supra), the question of applying the limitation prescribed under section 11B of the CE Act would not arise."

30.The Hon'ble High Court of Karnataka in the case of Commr. Of C.EX (Appeals), Bangalore vs. KVR, reported in 2012 (26) S.T.R. 195 (Kar.) Construction has held as under:-

> "18. From the reading of the above Section, it refers to claim for refund of duty of excise only, it does not refer to any other amounts collected without authority of law. In the case on hand, admittedly, the amount sought for as refund was the amount paid under mistaken notion which even according to the department was not liable to be paid.
>
> 19. According to the appellant, the very fact that said amounts are paid as service tax under Finance Act, 1994 and also filing of an application in Form-R of the Central Excise Act would indicate that the applicant was intending to claim refund of the duty

with reference to Section 11B, therefore, now it is not open to him to go back and say that it was not refund of duty. No doubt in the present case, Form-R was used by the applicant to claim refund. It is the very case of the petitioner that they were exempted from payment of such service tax by virtue of circular dated 17-9-2004 and this is not denied by the Department and it is not even denying the nature of construction/services rendered by the petitioner was exempted from to payment of Service Tax. What one has to see is whether the amount paid by petitioner under mistaken notion was payable by the petitioner. Though under Finance Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was exemption to pay such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority lacked authority to levy and collect such service tax. Incase, the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. If we look at the converse, we find mere payment of amount, would not authorize the department to regularise such payment. When once the department had no authority to demand service tax from the respondent because of its circular dated 17-9-2004, the payment made by the respondent company would not

partake the character of "service tax" liable to be paid by them. Therefore, mere payment made by the respondent will neither validate the nature of payment nor the nature of transaction. In other words, mere payment of amount would not make it a "service tax" payable by them. When once there is lack of authority to demand "service tax" from the respondent company, the department lacks authority to levy and collect such amount. Therefore, it would go beyond their purview to collect such amount. When once there is lack of authority to collect such service tax by the appellant, it would not give them the authority to retain the amount paid by the petitioner, which was initially not payable by them. Therefore, mere nomenclature will not be an embargo on the right of the petitioner to demand refund of payment made by them under mistaken notion.

23. Now we are faced with a similar situation where the claim of the respondent/assessee is on the ground that they have paid the amount by mistake and therefore they are entitled for the refund of the said amount. If we consider this payment as service tax and duty payable, automatically, Section 11B would be applicable. When once there was no compulsion or duty cast to pay this service tax, the amount of Rs. 1,23,96,948/- paid by petitioner under mistaken notion, would not be a duty or "service tax" payable in law. Therefore, once it is not payable in law there was no authority for the department to retain such amount. By

any stretch of imagination, it will not amount to duty of excise to attract Section 11B. Therefore, it is outside the purview of Section 11B of the Act."

31.The Hon'ble Supreme Court in the case of Commissioner vs. KVR Construction, reported in 2018 (14) G.S.T.L. J70 (S.C.) has held thus:-

"Delay Condoned
The Special Lave petitions are dismissed."

The Hon'ble Supreme Court by order dated 11.07.2011 dismissed the Special Leave Petition in Appeal (civil) No.CC 10732 and 10733 of 2011 filed by the Commissioner of wages against the judgment and order of Karnataka High Court in the case of KKR (supra)

32. The Hon'ble Delhi High Court in the case of Teleecare Network (India) Pvt. Ltd. vs. Union of India, reported in 2018 (8) TMI 1901 has held as under:-

"12.There is no dispute about the applicability of SRF Ltd (supra); indeed the Revenue's refrain during the hearing was that the amounts could not be refunded because the claims were time-barred and that the petitioner has an alternative remedy. This Court is of opinion that the plea of alternative remedy- an unoriginal and frequently used stereotypical defence by public bodies - in such cases at least dodges the crux of any dispute, i.e the liability of the concerned public body or agency on merits. Sans any dispute with respect

to facts, this Court finds it entirely unpersuasive, since Article 144 of the Constitution, compels all authorities to give effect to the law declared by the Supreme Court (as in this case, the SRF Limited judgment). The other plea which the Customs had relied on, to defeat the petitioner's refund application was Section 27 (3) which confines refunds to the situations contemplated in Section 27 (2), notwithstanding any judgment, order or decree of the court. This Court is at a loss to observe the relevance of that reasoning, given that SRF Limited (supra) had ruled in principle that import implied a deemed manufacture, without any corresponding obligation on the part of the importer to have availed CENVAT credit. As such, the amount claimed was not duty and could not have been recovered by the Customs authorities in the first instance, given the declaration of law in SRF Limited (supra). Therefore, they cannot now seek shelter under Section 27 (3) to resist a legitimate refund claim."

33. The Hon'ble Madras High Court in the case of **M/s. 3E Infotech (supra)** Court has held thus:-

"8. The present appeal lies from the order of the Appellate Tribunal. We have heard the learned counsel for the Assessee and the State. The issue, which arises for consideration in this case, whether the provisions of Section 11B of the Central Excise Act would be applicable to claim of refund made by an Assessee when the tax has been paid under mistake of law. In

this case, indisputably, there was no liability on the petitioner to pay service tax. The Supreme Court of India, in the case of Union of India Vs. ITC Ltd. reported in (1993) Supp. IV SCC 326, while dealing with the question of refund of excess excise paid held:-

> 8.In Shri Vallabh Glass Works Ltd. V. Union of India, this Court, while examining the question as to what is the point of time from which the limitation should be deemed to commence observed that relief in respect of payments made beyond the period of three years may not be granted from the date of filing of the petition, taking into consideration the date when the mistake came to be known to the party concerned. Just as an assessee cannot be permitted to evade payment of rightful tax, the authority which recovers tax without any authority of law cannot be permitted to retain the amount, merely because the tax payer was not aware at that time that the recovery being made was without any authority of law. In such cases, there is an obligation on the part of the authority to refund the excess tax recovered to the party, subject of course to the statutory provisions dealing with the refund.
>
> 9. We are, therefore, of the opinion that the High Court, while disposing of the writ petition under Article 226 of the Constitution of India, was

perfectly justified in holding that the bar of limitation which had been put against the respondent by the Collect of Central Excise (Appeals) to deny them the refund for the period September 1, 1970 to May 28,1971, and June 1, 1971 to February 19, 1972 was not proper as admittedly the respondent had approached the Assistant Collector Excise soon after coming to know of the judgment in Voltas case and the assessee was not guilty of any laches to claim refund.

9. In the above cited case, the Supreme Court stated that the Assessee's claim to refund would not be disallowed solely because it seemed barred by limitation. Since the Assessee in that case made the claim for refund shortly after learning about their entitlement for the same, it would not be just to hold that such claim is hit by laches.

11. A similar view has been taken by the Bombay High Court in the case of Parijat Construction Vs. Commissioner Excise, Nashik, reported in 2018(359) ELT 113 (Bom), where the Bombay High Court has held as under:-

"4. We are of the view that the issue as to whether limitation prescribed under Section 11B of the said Act applies to a refund claimed in respect of service tax paid under a mistake of law is no longer res integra. The two decisions of the Division Bench of this Court in Hindustan Cocoa

(supra) and Commissioner of Central Excise, Nagpur v. M/s. SGR Infratech Ltd. (supra) are squarely applicable to the facts of the present case.

5. Both decisions have held the limitation prescribed under Section 11B of the said Act to be not applicable to refund claims for service tax paid under a mistake of law. The decision of the Supreme Court in the case of Collector of C.E., Chandigarh v. Doaba Co-Operative Sugar Mills (supra) relied upon by the Appellate Tribunal has in applying Section 11B, limitation made an exception in case of refund claims where the payment of duty was under a mistake of law. We are of the view that the impugned order is erroneous in that it applies the limitation prescribed under Section 11B of the Act to the present case were admittedly appellant had paid a Service Tax on Commercial or Industrial Construction Service even though such service is not leviable to service tax. We are of the view that the decisions relied upon by the Appellate Tribunal do not support the case of the respondent in rejecting the refund claim on the ground that it was barred by limitation. We are, therefore, of the view that the impugned order is unsustainable. We accordingly allow the present appeals and quash and set aside the impugned order, insofar as it is against the appellant in both appeals. We

fully allow refund of Rs. 8,99,962/- preferred by the appellant. We direct that the respondent shall refund the amount of Rs.8,99,962/- to the appellant within a period of three months. There shall be no order as to costs."

12. Further, the claim of the respondent in refusing to return the amount would go against the mandate of Article 265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law."

34.The Hon'ble Supreme Court in the case of ITC Ltd. (supra), has held as under:-

"7. In Salonah Tea Company Ltd. Etc. v. Superintendent of Taxes Now-gong and Ors. etc. this Court said :

Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally as a corollary of the said statement of law it follows that taxes collected without the authority of law, as in this case, from a citizen should be refunded because no State has the right to receive or to retain taxes or levies realised from citizens without the authority of law. Dealing with the question of bar of limitation for making a claim for refund of tax or duty paid or collected without the authority of law in such cases, the Court opined: (SCC p. 411, para 14)

"[N]ormally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution the court has power to direct the refund unless there has been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to the respondent or any third party. It is true that in some cases the period of three years is normally taken as a period beyond which the court should not grant relief but that is not an inflexible rule."

8. In Shri Vallabh Glass Works Ltd., and Anr. v. Union of India and Ors.1984 (16) ELT 171 SC, this Court, while examining the question as to what is the point of time from which the limitation should be deemed to commence observed that relief in respect of payments made beyond the period of three years may not be granted from the date of filing of the petition, taking into consideration the date when the mistake came to be known to the party concerned. Just as an assessee cannot be permitted to evade payment of rightful tax, the authority which recovers tax without any authority of law cannot be permitted to retain the amount, merely because the tax payer was not aware at that time that the recovery being made was without any authority of law. In such cases, there is an obligation on

the part of the authority to refund the excess tax recovered to the party, subject of course to the statutory provisions dealing with the refund.

9. We are, therefore, of the opinion that the High Court, while disposing of the writ petition under Article 226 of the Constitution of India, was perfectly justified in holding that the bar of limitation which had been put against the respondent by the Collector Central Excise (Appeals) to deny them the refund for the period 1.9.1970 to 28.5.71 and 1.6.1971 to 19.2.1972 was not proper as admittedly the respondent had approached the Assistant Collector Excise soon after coming to know of the judgment in Voltas case (supra) and the assessee was not guilty of any laches to claim refund.

10. This now takes us to the basic question, viz. the right of the respondent to receive refund otherwise than in accordance with the provisions of Section 11B of the Act as amended by Act 40 of 1991, which amendments are aimed at preventing "unjust enrichment". Learned Counsel for the appellants urged that the excise duty, being an indirect tax, is passed on to the consumers and therefore the respondent was not in law justified to claim refund since, it was not even stated by the respondent in its affidavit that they were going to return the amount to various consumers or that any consumer had in fact sought such a refund. Reference in this connection was made by the learned Counsel specially to the

provisions of Section 11B(3) of the Act as introduced by Act 40 of 1991 with effect from 20.9.1991 and it was submitted that with effect from 20th of September 1991, no person is entitled to claim and obtain refund of the excess duty paid except in accordance with the provision of Section 11B(2) of the Act, as amended, and that since the respondent had failed to produce any documentary evidence to show that it had not passed on the burden of excess excise duty to the consumers, it was not open to it to claim and obtain the refund. Learned Counsel therefore urged that in accordance with the directions of this Court in its order dated 8.10.1982, the respondent be directed to pay back the amount which was received by them under orders of this Court with interest @ 12% p.a."

35. Considering the above dictum of law, the amount of GST paid by the petitioner is admittedly paid as a self assessment, which the petitioner was not required to pay as per the Notification No.32/2017. Accordingly, in the facts of the case, the amount paid by the petitioner from electronic cash ledger is required to be refunded by the respondent authority and could not have been rejected on the ground of limitation under Section 54(1) of the CGST Act.

36. In view of the foregoing reasons, the impugned order dated 20.07.2021 passed by the Appellate Authority and Orders in Original dated 18.12.2020 passed by the adjudicating authority rejecting the claims of the petitioner are hereby quashed and set aside. All these matters

are remanded back to the adjudicating authority to process the refund claims in accordance with law without considering the limitation period for filing the refund claim as prescribed under Section 54(1) read with explanation 2(h) of the CGST Act. Notice is discharged."

16. In view of above analysis made in the aforesaid judgment which is squarely applicable to the facts of the case, more particularly when the petitioner has deposited voluntarily the amount of Rs. 40,00,000/-, the same would not be covered by the provisions of Section 54 of the GST Act and the same is required to be refunded by the respondent authorities as the same could not have been rejected on the ground of limitation under Section 54(1) of the GST Act. However, the petitioner will not be entitled to any interest on such amount as the same was deposited voluntarily by mistake and therefore, the respondents to refund the amount of Rs. 40,00,000/- deposited by the petitioner.

17. In view of the foregoing reasons impugned order dated 14.6.2024 passed by the respondent No.2 rejecting the refund application of the

petitioner is hereby quashed and set aside and the respondent shall refund the amount of Rs. 40,00,000/- which was deposited by the petitioner by mistake on 20.11.2022 **within a period of twelve weeks from the date of receipt of copy of this order.** Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

Pallavi