

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9294/2012

M/S SRD NUTRIENTS(P) LTD.

Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE

Respondent(s)

O R D E R

1. We have heard learned counsel for the parties.
2. This appeal is directed against the order of the Guwahati High Court (for short the High Court) dated 07.12.2011 by which the appellant's appeal preferred under Section 35G of the Central Excise Act, 1944, against the order of Customs, Excise And Service Tax Appellate Tribunal (CESTAT), Kolkata in Appeal No. Ex. Ap. 306/06, was dismissed.
3. The appellant was availing exemption in terms of Notification No.33/99-CE dated 8.7.99 as a new unit and in terms thereof was refunded Rs.1,73,10,473 from October 2002 to December 2002. This notification was modified on 23.12.2002, which restricted the quantum of refund available to the assessee. Later, the notification dated 23.12.2002 was validated retrospectively by Finance Act, 2003. Based on that, the matter was reviewed and on re-assessment, *vide* original order dated 13.5.2003, a sum of Rs.35,31,810/- was found due and payable by the appellant, pursuant to which, a demand notice was issued to the appellant.

4. The case of the appellant is that in respect of the period regarding which the demand was raised, the appellant had CENVAT credit of Rs.98,38,935/- available in its account therefore, instead of raising the demand, Revenue ought to have recovered the demanded amount by adjusting it against the CENVAT credit available with the appellant.

5. The aforesaid plea of the appellant was not accepted by CESTAT on the ground that from the communications available on record, it did not appear that the appellant made a request for adjustment of the CENVAT credit available with it against the amount payable towards excess refund.

6. Aggrieved by the order of CESTAT, appeal was filed before the High Court which came to be dismissed by the impugned order.

7. On 04.05.2012, when notices were issued on the special leave petition filed by the appellant, seeking leave to appeal against the order of the High Court, following order was passed:

"Issue notice in the special leave petition as also in the prayer for interim relief, confined to the question of payment of interest."

8. The learned counsel representing the appellant submitted that under the provisions of Section 11 of the Central Excise Act, 1944, the Revenue is entitled to deduct the amount payable from any money owing to the person from whom such sums are recoverable or due. It is the case of the appellant that since there is no dispute as regards CENVAT credit of Rs.98,38,935/- available with the appellant, the Revenue ought to have adjusted the demand against

the aforesaid credit even in absence of any specific claim for such adjustment.

9. Per contra, the learned counsel for the Revenue submitted that this question is no longer available for adjudication in the context of the limited notice that was issued by this Court *vide* order dated 04.05.2012. According to him, as far as liability towards interest is concerned, Section 153(4) of the Finance Act, 2003, which has received Presidential assent on 14.05.2003, validity of which has been upheld, now governs the field. He submits that sub-section (4) of Section 153 of the Finance Act, 2003, clearly provides that if an amount is to be recovered, the interest would be chargeable on expiry of 30 days from the date on which the Finance Bill, 2003 received the assent of the President and in the event of non-payment of duty or interest or other charges so recoverable, interest @15% per annum shall be payable from the date immediately after the expiry of the said 30 days till the date of payment. It is the case of the Revenue that interest would therefore be chargeable from 14.06.2003 up to the date of actual payment.

10. In response to the above submission, the learned counsel for the appellant submits that in the instant case the appellant has made a debit entry in the CENVAT credit available in its account and that would amount to payment.

11. In our view, the argument in respect of debiting account *qua* CENVAT credit available cannot be permitted to be raised now, as it was neither raised before CESTAT nor the High Court. Insofar as

recovery by way of adjustment is concerned, that may be an option available to the Revenue under Section 11 but there is no statutory obligation on the Revenue to adopt that mode even in absence of a request. Thus, we do not find any merit in the submission that Revenue ought to have recovered the amount by adopting that mode of recovery. Besides that, the notice issued by this Court is confined to the payment of interest. In such circumstances, insofar as the demand notice *qua* excess refund is concerned, no fault can be found with the same.

12. Insofar as payment of interest is concerned, in our view, that would have to be calculated in terms of the provisions of the statute (i.e., Section 153(4) of Finance Act, 2003), the validity of which has been upheld by this Court. We, therefore, do not find any merit in this appeal, the same is, accordingly, dismissed.

13. Pending application(s), if any, shall stand disposed of.

.....J.
[MANOJ MISRA]

.....J.
[AUGUSTINE GEORGE MASIH]

New Delhi;
23rd July, 2025

ITEM NO.102

COURT NO.16

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9294/2012

M/S SRD NUTRIENTS(P) LTD.

Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE

Respondent(s)

Date : 23-07-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MANOJ MISRA

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s) : Ms. Charanya Lakshmikumaran, Adv.

Ms. Neha Choudhary, Adv.

Ms. Umang Motiyani, Adv.

Mr. Ayush Agarwal, Adv.

Ms. Nitum Jain, Adv.

Mr. Swastik Mishra, Adv.

Mr. R. Parthasarathy, AOR

For Respondent(s) :

Mr. Raghavendra P Shankar, A.S.G.

Mr. Gurmeet Singh Makker, AOR

Mr. Karan Lahiri, Adv.

Mr. Navanjay Mahapatra, Adv.

Mr. B K Satija, Adv.

Mr. Aditya Dixit, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is dismissed in terms of the Signed Order.
2. Pending application(s), if any, shall stand disposed of.

(RASHI GUPTA)
COURT MASTER (SH)

(RAVINDER KUMAR)
COURT MASTER (NSH)

(Signed order is placed on the file)