Form J(2)

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction
(Original Side)

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
And
THE HON'BLE JUSTICE UDAY KUMAR

Reserved on : 04.08.2026.
Pronounced on : 08.09.2026

CEXA 26 of 2025
With
IA No. GA 2 of 2026

Commissioner of CGST and CX Kolkata South Commissionerate

...Appellant

-Vs-

M/s. Electrosteel Casting Limited

...Respondent

Present:-

Mr. Vipul Kundalia, Sr. Adv.
Mr. Tapan Bhanja, Adv.
Mr. Anindya Kanan, Adv.

...for the appellant

Mr. Rahul Dhanuka, Adv.
Mr. Niraj Baheti, Adv.

..... for the Respondent

Rajarshi Bharadwaj, J:

1. The appeal arises from an order of the Learned Customs, Excise and Service Tax Appellate Tribunal, Kolkata, dated July 04, 2025 in Service Tax Miscellaneous Application No. 75358 of 2025. By the impugned order, the

Learned Tribunal directed the refund sanctioning authority to pay the respondent compensatory interest at the rate of 9% per annum on a principal refund amount of Rs.2,20,24,738/-. The Tribunal ordered that interest be calculated commencing from three months after the original dates of filing the refund claims, which are January 5, 2012 and March 20, 2012, respectively.

2. The facts of the case in a nutshell are that the respondent, M/S Electrosteel Castings Limited, holds a service tax registration and entered into an agreement on October 3, 2006, to execute a drinking water supply and distribution project on a turnkey basis for the Kerala Water Authority. The project included construction and maintenance of water supply and waste water schemes. Believing its activities were taxable under commercial and industrial construction services, the respondent paid service tax during the dispute period. However, on October 31, 2011, Tokyo Engineering Consultants Limited informed them that laying water pipelines did not constitute taxable construction services. Consequently, the respondent submitted two refund claims under Section 11B of the Central Excise Act, 1944. The first claim was filed on January 5, 2012, for Rs.15,23,691/-. The second claim was filed on March 20, 2012, for Rs. 2,05,01,047/-.

3. The second claim was returned on March 26, 2012, as time-barred, while the first claim was rejected on October 18, 2012, following a show cause notice. The respondent's subsequent appeals were rejected by the Commissioner (Appeals) on December 30, 2013. On appeal, the Tribunal set aside these rejections on August 9, 2024 and ordered the department to sanction the refunds within one month. The revenue challenged this before the High Court, but its appeals were dismissed on January 3, 2025.

4. Following the Tribunal's decision, the respondent submitted an implementation request on September 12, 2024. After a deficiency memo was issued on October 7, 2024, the respondent submitted additional documents on October 24, 2024. The Assistant Commissioner sanctioned the total principal refund of Rs.2,25,24,738/- on January 6, 2025, under Order-in-Original No. R/25/PSD CGST/KOL(S) 2024-25, but did not grant any interest. On January 23, 2025, the respondent filed an appeal under Section 85 of the Finance Act, 1994 before the Commissioner (Appeals). On June 10, 2025, the respondent also filed a Miscellaneous Application under Rule 41 of the CESTAT Rules seeking directions for interest payment.

5. On July 4, 2025, the Tribunal passed interim order 01(M)/2025 directing the refund sanctioning authority to pay nine percent interest on the refund, calculating the delayed period from three months after the original 2012 filing dates. The respondent subsequently withdrew the appeal before the Commissioner (Appeals) on July 21, 2025. The department has now filed the present appeal under Section 35G of the Central Excise Act, 1944, challenging the Tribunal's order directing the payment of interest.

6. Learned counsel appearing for the appellant raises the issue on the following substantial questions of law that have been admitted:

I. *Whether the interest is payable in the facts and circumstances of the case when said refund claim has been sanctioned within three months from the receipt of all requisite documents and accordance with the Explanation to Section 11BB of the Central Excise Act, 1944, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court, is to be treated an order passed under the said sub- section (2) for the purposes of this section?*

II. *Whether the Learned Tribunal is justified/ correct in awarding interest @9% in favour of the respondent when the said refund claim has been sanctioned within three months from the receipt of all requisite documents?*

III. *If the answer to the aforesaid question is in affirmative, whether the direction of the Learned Tribunal upon the refund sanctioning authority to pay interest @9% is contrary to the Notification No. 24/2014-C.E.(NT) dated 12.08.2014 or not?*

IV. *Whether by entertaining the appeal against the order dated 06.01.2025 passed by the Assistant Commissioner, Park Street Division the Learned Tribunal exceeded its jurisdiction as well as acted contrary to Rule 9 of The Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 as well as Section 35B of the Central Excise Act, 1944 and as such whether the impugned order dated 04.7.2025 and subsequent orders passed by the Learned Tribunal are without jurisdiction or not?*

V. *Whether the Tribunal order is correct when it seems that the respondent had not revealed all the facts before the Tribunal about the appeal filed by them before the Commissioner (Appeal-I) for allowing interest, rather suppressed the facts to take undue advantage?"*

VI. *Whether an appeal under Section 35G of the Central Excise Act, 1944 is maintainable against order passed by the Hon'ble CESTAT in miscellaneous application filed by the Respondent under Rule 41 of the CESTAT (Procedure) Rules, 1982 for issuance of direction for payment of interest consequent to the Final Order dated 9th August 2024?*

7. Learned Counsel for the appellant submits that the Customs, Excise and Service Tax Appellate Tribunal lacked jurisdiction to pass the impugned interim order directing the payment of interest under Rule 41 of the CESTAT Rules. The order of the Assistant Commissioner dated January 6, 2025, which sanctioned the principal refund without interest, is an appealable order under Section 85 of the Finance Act. Bypassing this statutory appellate mechanism by directly entertaining a miscellaneous application under Rule 41 violates Rule 9 of the CESTAT Rules and Section 129A of the Customs Act. Since the Tribunal did not grant any interest in its final order dated August 9, 2024, it became functus officio in respect of that order. The Tribunal cannot invoke Rule 41, which is procedural in nature, to award a substantial relief like interest, as doing so amounts to an impermissible modification of its parent final order. The order dated January 6, 2025, remains a valid order in the eye of law and has not been set aside by any judicial forum. Therefore, the appeal before this Court under Section 35G of the Central Excise Act is fully maintainable as the Tribunal exceeded its jurisdiction and decided substantial questions of law.

8. The appellant further submits that under the explanation to the proviso of Section 11BB of the Central Excise Act, when a refund is ordered by an appellate authority, that appellate order is deemed to be the refund order for interest computation. In this case, the Tribunal's order was passed on August 9, 2024 and the respondent submitted their application on September 12, 2024. The letter dated September 12, 2024, was accompanied by a request for refund and interest, prompting the department to issue a deficiency memo on October 7, 2024, seeking necessary documents. The completed documents were submitted by the respondent only on October 24, 2024. Since the refund was sanctioned on January 6, 2025, which is within the statutory three-month period from the date of receiving the completed documents, there was no delay on the part of the department and no interest is payable under Section 11BB.

9. The Counsel argues that the decision of the Hon'ble Supreme Court in ***Ranbaxy Laboratories v. Union of India*** reported in ***2011 (273) E>L.T.3 (SC)*** in the present case were disposed of within three months of receiving the complete application and supporting documents. Instead, the present case is squarely covered by the decision of the Hon'ble Supreme Court and the Karnataka High Court in ***JSW Steel Limited v. Commissioner of Customs*** reported in ***2022 (381) E.L.T. 443 (S.C.)***, which established that an assessee cannot take undue advantage of its own lapses in failing to submit requisite documents. Interest is not payable when the refund is sanctioned within three months of receiving the completed documentation.

10. The appellant also contends that the second refund claim of over two crore rupees was filed on March 20, 2012, which was way beyond the prescribed one-year limitation period and was thus rightly returned as time-barred on March 26, 2012. The Tribunal's observation that the claims were entertained without the issuance of a show cause notice is perverse and contrary to the records, as a show cause notice was issued for the first application and the second was rejected on limitation.

11. Furthermore, the statutory rate of interest on delayed refunds is fixed at 6% under Notification No. 24/2014-CE (NT) dated August 12, 2014. Even if interest were held to be payable, the Tribunal erred in law by granting interest at the rate of 9% contrary to the statutory notification. Finally, the respondent suppressed the fact that they had simultaneously filed an appeal before the Commissioner (Appeals) on January 23, 2025, against the same refund order, withdrawing it only on July 21, 2025, just before the Tribunal's compliance date, to seek an unfair advantage.

12. The learned Counsel appearing for the respondent submits that the present appeal filed by the appellant under Section 35G of the Central Excise Act, 1944 is ex facie not maintainable. The order challenged is an interim direction passed by the Hon'ble CESTAT under Rule 41 of the CESTAT (Procedure) Rules, 1982, specifically to ensure the implementation of its earlier final order dated August 9, 2024. Under Section 35G, an appeal to the High Court is only permissible against an order passed in appeal by the Tribunal, which refers to orders rendered under Section 35C arising from appeals instituted under Section 35B. The application filed by the respondent before the Tribunal was not an appeal, but a request for the Tribunal to exercise its inherent powers to secure the ends of justice and prevent abuse of its process.

13. The Counsel further emphasises that this legal position is no longer res integra. High Courts across jurisdictions, including the Hon'ble Bombay High Court in ***Commissioner of Customs (Import), Mumbai v. Pride Foramer*** reported in ***2006 (204) E.L.T. 381 (Bom.)*** and the Hon'ble Karnataka High Court in ***Commissioner of Customs, Bangalore v. Toyota Kirloskar Auto Parts Pvt. Ltd.*** reported in ***2013 (297) E.L.T A149 (SC)*** have held that orders passed under Rule 41 are not orders in appeal and thus are not amenable to the appellate jurisdiction of the High Court. This view was further affirmed by the Hon'ble Supreme Court. The impugned order does not decide a substantial question of law in an appeal but merely acts as a ministerial direction to give effect to a finality already reached.

14. Regarding the jurisdiction of the Hon'ble Tribunal, the Counsel submits that Rule 41 confers the widest possible amplitude to the Tribunal to pass directions in relation to its orders. As held by the Hon'ble Supreme Court in ***Doypack Systems Pvt. Ltd. v. Union of India*** reported in***(1988) 2 SCC 299***, the phrase *"in relation to"* is expansive, encompassing everything "concerning" or "connected with" the subject matter. Therefore, the Tribunal is fully empowered to issue consequential directions, such as the payment of interest, to ensure its final orders are not rendered otiose. Furthermore, the appellant never challenged the Tribunal's jurisdiction during the proceedings, instead, they filed a report on the merits of the refund implementation, thereby unequivocally submitting to the Tribunal's jurisdiction. Raising a new jurisdictional plea at the appellate stage is not permissible.

15. On the merits of the interest on delayed refund, the learned Counsel submits that interest is an automatic and statutory consequence of any refund sanctioned beyond three months from the date of the application. The appellant's contention that the three-month period should be reckoned from the date of the Tribunal's order, i.e., August 9, 2024 is a fundamental misinterpretation of the law. The Hon'ble Supreme Court in ***Ranbaxy Laboratories (supra)*** settled that interest under Section 11BB is payable from the expiry of three months from the date of receipt of the original application under Section 11B(1), regardless of when the refund is finally ordered by an appellate body.

16. In the present case, the original applications were filed on January 5, 2012 and March 20, 2012. The respondent's letter dated September 12, 2024, was merely a follow-up representation requesting the implementation of these long-pending claims and cannot be construed as a fresh application. This is supported by the fact that the Department's own correspondence and the final refund sanction order dated January 6, 2025, explicitly reference the 2012 application dates. Consequently, the three-month window for interest-free refund expired in 2012, making the interest obligation absolute.

17. The learned Counsel further addresses the rate of interest, arguing that the 6% statutory rate is inapplicable because the amounts were deposited under a "mistake of law". It is a settled principle that money paid under a mistake of law does not partake the nature of duty and thus falls outside the restrictive ambit of Section 11B of the Act. In such instances, courts have consistently granted compensatory interest at higher rates. The Hon'ble Calcutta High Court in ***Dilichand Shreelal v. Collector of Central Excise*** reported in ***1986 (26) E.L.T. 298 (Cal.)*** granted 12% interest and other High Courts have upheld a 9% rate for similar refunds of amounts not legally due as tax. The Tribunal's grant of 9% interest is, therefore, just and compensatory.

18. Finally, the Counsel clarifies that there was no suppression of facts. The respondent explicitly disclosed the filing of a "technical appeal" before the Commissioner (Appeals) in their Rule 41 application. This appeal was a purely protective measure to safeguard the respondent's rights and was subsequently withdrawn with the permission of the Commissioner (Appeals). Therefore, the appellant's allegations of procedural impropriety are baseless. In light of these submissions, the learned Counsel prays that the appeal be dismissed as non-maintainable and devoid of merit.

19. Having heard learned counsel for the parties and upon perusal of the pleadings and materials on record, this

20. Having heard learned counsel for the parties and upon perusal of the materials on record, this Court is of the view that the present appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 is ex-facie non-maintainable and devoid of merits.

21. The primary jurisdictional challenge concerns the maintainability of an appeal under Section 35G against an order passed by the CESTAT in exercise of its inherent powers under Rule 41 of the CESTAT (Procedure) Rules, 1982. An appeal under Section 35G is maintainable only against an order passed "in appeal" by the Tribunal under Section 35C (arising from appeals under Section 35B). Conversely, Rule 41 empowers the Tribunal to issue procedural and implementation directions necessary to give effect to its final orders or secure the ends of justice. As established by the Karnataka High Court in ***Toyota Kirloskar (supra)*** and the Bombay High Court in ***Pride Foramer (supra)***, orders passed under Rule 41 are not orders "in appeal" and do not fall within the appellate jurisdiction of the High Court. Thus, the present appeal is incompetent and liable to be dismissed on this preliminary ground.

22. Even on merits, the appellant revenue's case is unsustainable. The respondent executed a turnkey drinking water supply and distribution project for the Kerala Water Authority, a statutory government body under the Public Health Engineering Department. It is settled law, following ***M/s Nagarjuna Construction Co. Ltd. v. CCE, Hyderabad*** reported in ***2010 (19) STR 259 (Tri-Ban)***, that laying water pipelines for potable water supply projects for state agencies does not constitute a taxable commercial or industrial construction service. As the project was a sovereign public welfare initiative, it attracted no service tax. The service tax paid during the dispute period was deposited under a mistake of law. Any amount paid under a mistake of law do not bear the character of a duty or tax under Article 265 of the Constitution. Therefore, the restrictive procedural limitations and limitation boundaries of Section 11B of the Act do not apply to such refunds.

23. The revenue's argument that interest is not payable because the refund was sanctioned on January 6, 2025 i.e., within three months of the submission of supporting documents on October 24, 2024is legally fallacious. The Supreme Court in ***Ranbaxy Laboratories Ltd. (supra)*** settled that the State's liability to pay interest under Section 11BB commences automatically upon the expiry of three months from the date of receipt of the original refund application under Section 11B(1) and not from the date of any appellate order. The respondent's original claims were filed on January 5, 2012, and March 20, 2012. The subsequent communication dated September 12, 2024, was merely a follow-up representation for implementation and cannot be deemed a fresh application. This is confirmed by the refund sanction order itself, which explicitly references the 2012 applications. The interest-free window expired in 2012, making the interest obligation absolute.

24. Furthermore, because the deposit was made under a mistake of law, the statutory interest rate cap of 6% under Notification No. 24/2014-CE (NT) is inapplicable. The respondent is entitled to compensatory interest. The Tribunal's award of 9% interest is just and equitable and is supported by this Court's precedent in ***Dilichand Shreelal (supra)*** of granting 12% and other High Court decisions. The Tribunal validly exercised its powers under Rule 41 to ensure its final order was not rendered otiose.

25. For the foregoing reasons, this Court answers the substantial questions of law formulated for consideration as follows:

i. Substantial Question (1) is answered in the affirmative, i.e., against the revenue and in favor of the assessee, holding that interest is indeed payable under Section 11BB in the facts and circumstances of this case because the three-month period must be reckoned from the original 2012 applications and not from the subsequent submission of requested administrative documents.

ii. Substantial Question (2) is answered in the affirmative, i.e., against the revenue and in favor of the assessee, holding that the Learned Tribunal was fully correct and justified in awarding interest at the rate of 9% per annum in favor of the respondent.

iii. Substantial Question (3) is answered in the negative, i.e., against the revenue and in favor of the assessee, holding that the Tribunal's direction to pay interest at 9% is compensatory for a refund arising from a mistake of law and is not contrary to Notification No. 24/2014-C.E.(NT).

iv. Substantial Question (4) is answered in the negative, i.e., against the revenue and in favor of the assessee, holding that the Learned Tribunal did not exceed its jurisdiction or act contrary to Section 35B or the CESTAT Rules by invoking its inherent powers under Rule 41 to ensure the implementation of its final order.

v. Substantial Question (5) is answered in the affirmative, i.e., against the revenue and in favor of the assessee, holding that the Tribunal's order is correct and there was no suppression of facts by the respondent.

vi. Substantial Question (6) is answered in the negative, i.e., against the revenue and in favor of the assessee, holding that an appeal under Section 35G of the Central Excise Act, 1944 is not maintainable against a procedural direction passed by the Tribunal under Rule 41.

26. Therefore, this Court upholds the order of the Tribunal, the substantial questions of law are answered against the revenue and in favor of the assessee and the present appeal filed by the revenue is dismissed.

27. There shall be no order as to costs.

28. Urgent certified copy, if applied for, be supplied upon compliance with requisite formalities.

(RAJARSHI BHARADWAJ, J)

(UDAY KUMAR , J)

<u>Kolkata</u>
08.09.2026
PA(BS)