IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO.883 of 2024

FOR APPROVAL AND SIGNATURE :

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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Approved for Reporting	Yes	No
		NO

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M/S FILATEX INDIA LIMITED
Versus
THE COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX VADODARA - II

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Appearance :
MR AMAL PARESH DAVE FOR MR PARESH M DAVE for the Appellant.
MR UTKARSH R SHARMA for the Opponent.

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 08/10/2026
JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Amal P. Dave for learned advocate Mr. Paresh M. Dave for the appellant and Mr. Utkarsh Sharma, learned Senior Standing Counsel for the respondent.

2. This appeal is filed under Section 35G of the Central Excise Act, 1944 (for short ‘the Act’) proposing the following

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substantial questions of law arising out of the judgment and order dated 20.3.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (for short "the CESTAT') in Excise Appeal No.10231 of 2020 :-

> "1) Whether the order of the Appellate Tribunal is perverse because it is based on incorrect and non-existent facts, whereas the true and incorrect facts recorded in the order itself have been bypassed while deciding the appellant's appeal ?
>
> 2) Whether the Appellate Tribunal has committed an error in rejecting the appellant's refund claim which was permissible by virtue of Section 142(3) of the CGST Act, 2017, and in view of several decisions rendered by various Benches of the Appellate Tribunal in absolutely similar facts ?
>
> 3) Whether the order of the Appellate Tribunal rejecting the appellant's appeal for refund of Rs.36,34,040/- incorrect and erroneous in the facts and circumstances of this case ?"

3. The appellant is a "registered person" under the Central Goods and Service Tax Act, 2017 ('CGST' for short) as the goods produced and supplied by the appellant are chargeable to Goods and Service Tax (GST) w.e.f. 1.7.2017. Prior to coming into force of the CGST Act, the goods produced by the appellant attracted levy of excise duty and the appellant was also liable to pay service tax on various services under the provisions of the

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Finance Act, 1994. The appellant was also holding a Central Excise registration as well as Service Tax registration till 30.6.2017 and was maintaining all statutory records, returns etc. in compliance with provisions of the said Acts and Rules.

4. The appellant was also availing Cenvat Credit of duties paid on the inputs, raw materials and capital goods and also service tax paid on service in accordance with provisions of the Cenvat Credit Rules.

5. The appellant entered into a banking and financial services, in the nature of external borrowings, availed during the period from January 2013 to June 2017 for raising funds. The services of overseas banking and financial institutions were availed for this purpose by the appellant during the said period and services were provided by the agencies/persons located in foreign countries, but according to the appellant, it was not aware about the liability of paying service tax on such banking and financial services under reverse charge mechanism and, therefore, service tax was not paid by the appellant on such banking and financial services, in the nature of external borrowings, at the relevant time.

6. The Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit initiated an enquiry about the payments made by the appellant in foreign currency for availment of External Commercial Borrowings for the aforesaid period and letter dated 10.1.2018 was issued by the Deputy Director calling upon various information, documents etc. in respect of the payment made in foreign currency for external commercial borrowings, foreign remittance etc.

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7. The appellant on receipt of such letter, collected all the information, calculated the amount of service tax payable on the payments made to the overseas service providers and voluntarily paid service tax aggregating to Rs.36,34,040/- with interest and penalty in response to the said letter. By letter dated 28.12.2018, the appellant informed the authority that the payment of service tax aggregating to Rs.36,34,040/- with interest of Rs.13,07,657/- and penalty of Rs.5,45,106/- and challans evidencing such payments on 21.4.2018, 9.10.2018 and 29.11.2018 were submitted.

8. By letter dated 7.2.2019 issued by the Director of DGGI, the appellant was informed that investigation was on the limited and specific issue of non-payment/short payment of service tax by the appellant and the investigation had been concluded by the competent authority in view of the appellants' request for waiver of service tax along with interest and penalty, in light of Circular No.137/46/2015-ST dated 18.8.2015 issued by the CBEC, which was accepted and the proceedings of investigation were closed by the authority.

9. The appellant thereafter on conclusion of the investigation and on payment of the Service tax, made an application dated 8.3.2019 for refund of the Service tax as the appellant was not able to get Cenvat Credit of the amount of service tax paid by it in view of coming into force of CGST Act w.e.f. 1.7.2017. However, the said application was rejected by passing Order-in-Original dated 9.10.2019.

10. The appellant, therefore, preferred an appeal before

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the Commissioner (Appeals), who by order dated 14.11.2019 dismissed the appeal. The appellant, therefore, preferred an appeal before the CESTAT and contended that the refund of amount of Service tax liability was admissible because the appellant had paid this amount in 2018 when Cenvat Credit of such payment was not allowed in view of introduction of GST regime. The appellant also referred to and relied upon various decisions rendered in similar situation in support of the submission that refund of amount paid as excise duty or service tax was admissible when such payment was made after 30.6.2017 for discharging the liability that arose for the period when Central Excise and Service Tax regime were in force.

11. However, the CESTAT by the impugned order dated 20.3.2024 dismissed the appeal on the ground that as per the provisions of Section 142 (8) (a) of the CGST Act, the appellant would not be entitled to the Cenvat Credit as the appellant did not make the voluntary payment as such payment was made pursuant to the investigation made by the DGGI and, therefore, the payment made by the appellant was considered towards the recovery of the tax, interest and penalty by the authority.

12. Being aggrieved by the order passed by the CESTAT, the appellant has preferred this appeal.

13. Mr. Amal P. Dave, learned advocate appearing for learned advocate Mr. Paresh M. Dave for the appellant submitted that the appellant had voluntarily paid the amount of service tax along with interest and penalty and the same was accepted by the authority as per letter dated 7.2.2019 closing the investigation. It

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was, therefore, submitted that the CESTAT could not have referred to the provision of Section 142 (8) (a) of the CGST Act to deny the refund claim of the appellant as the appellant would be entitled to claim refund under Section 142 (3) read with Section 174 of the CGST Act.

13.1 In support of his submissions, learned advocate Mr. Dave referred to and relied upon the following decisions :-

1. **Assistant Commissioner of GST & Central Excise, Puducherry-II v. Ganges International Private Limited**, reported in 2023 (68) GSTL 134 (Mad).

2. **Bajaj Foods Limited v. Commissioner of Central Excise & Service Tax, Ahmedabad-II**, reported in (2025) 37 Centax 403 (Tri – Ahmd).

3. **Union of India v. Slovak India Trading Company Private Limited**, reported in 2008 (10) S.T.R. 101 (Kar.)

4. **Union of India v. Slovak India Trading Company Private Limited**, reported in 2008 (223) E.L.T. A170 (S.C.).

5. **Indo-Nippon Chemicals Company Limited v. Union of India**, reported in 2005 (185) E.L.T. 19 (Guj.).

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6. **M/s. Epigral Limited and another v. Union of India and others** rendered on 30.1.2025 in Special Civil Application No.13695 of 2024.

14. On the other hand, Mr. Utkarsh Sharma, learned Senior Standing Counsel appearing for the respondent, on advance copy, submitted that there are concurrent findings of fact recorded by the Commissioner (Appeals) as well as the CESTAT that the appellant did not make the payment voluntarily but the same was made pursuant to the inquiry and investigation initiated by the DGGI and, therefore, it would amount to payment made as recovery of the tax, interest and penalty. It was, therefore, submitted that CESTAT has rightly referred to and relied upon the provisions of Section 142 (8) (a) of the CGST Act. It was, therefore, submitted that no question of law arises from the impugned order of the Tribunal.

15. Having heard learned counsel for the parties and considering the facts of the case, the appeal is admitted for consideration of the following proposed substantial questions of law which reads as under :-

"1) Whether the order of the Appellate Tribunal is perverse because it is based on incorrect and non-existent facts, whereas the true and incorrect facts recorded in the order itself have been bypassed while deciding the appellant's appeal ?

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2) Whether the Appellate Tribunal has committed an error in rejecting the appellant's refund claim which was permissible by virtue of Section 142(3) of the CGST Act, 2017, and in view of several decisions rendered by various Benches of the Appellate Tribunal in absolutely similar facts ?

3) Whether the order of the Appellate Tribunal rejecting the appellant's appeal for refund of Rs.36,34,040/- incorrect and erroneous in the facts and circumstances of this case ?"

16. Considering the controversy in narrow compass, with the consent of learned advocates appearing for the parties, the appeal is taken up for final hearing.

17. On perusal of the impugned orders passed by the Commissioner (Appeals) and CESTAT, it appears that it is not in dispute that the appellant is entitled to the refund of the amount of service tax paid pursuant to the investigation initiated by the DGGI. The only question which arises for consideration is as to whether the amount paid by the appellant in response to the details called for by the DGGI can be considered as voluntary or it would be considered as a recovery of the tax, interest and penalty towards payment of Service Tax.

18. On perusal of the documents placed on record, more particularly, letter dated 7.2.2019 issued by the DGGI accepting the payment made by the appellant towards service tax, interest and penalty and closing the investigation would clearly show that

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the appellant had made the payment voluntarily upon issuance of the letter dated 10.1.2018 (which is placed on record at page 14 Annexure A) calling for the information for non-payment of the service tax by the DGGI. In view of such facts, the CESTAT has committed a grave error in referring to and relying upon Section 142 (8) (a) of the CGST Act by observing in paragraphs 4 to 5.1 as under :-

> "4. Considered, It is found that in the case of Circor Flow Technologies India Pvt Ltd (cited supra) as is apparent from Para 9, the appellant had paid the service tax voluntary under self assessment. In the matter of Swami Construction Vs. CCE & ST Vadodara-I Final Order No. A/10558/2022 of this bench it was decided that even if Service Tax has been paid voluntarily, the CENVAT Credit is available. The decision has relied upon the ratio of Ineos Styrolution India Ltd as reported in 2022 (3) TMI 319 - CESTAT Ahmedabad. It is thus, clear from various case law cited by the appellant that on voluntary payment of tax under Reverse Charge Mechanism, appellants were held entitled to credit of duty paid by challan and also refund of the duty paid after the cut off date cannot be denied even as per various cases Including M/s, Bosch Electrical Drive India Pvt Ltd (referred supra), relied upon by the appellants.
>
> 5. Therefore, while for the proposition as to whether after the cutoff date benefit of duty paid

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voluntarily can be allowed by way of refund under the saving provision of Section 174, in the normal course to the appellant or party which pays duty after cut off date is decided in favour of party as a proposition. But, the distinguishing feature viz-à-viz the case law relied upon by the appellant in the present instance is that the impugned order held that duty was not paid voluntarily but was part of recovery action for duties paid, interest and penalty thereon. Same therefore was as per provisions of Section 11A to 11AC, In the Instant case on being pointed out by the DGCI for extended period. The duty, Interest, penalty was paid as part of enforcement action, it appears to save itself from higher penalty by the appellant. In this regard the para 2 and 3 and 3.1 of the impugned order is reproduced below :-

> *"2. Whereas it appears that the claimant has filed a refund application on 08.03.2019 for refund of Service Tax amounting to Rs.36,34,040/- (Rupees Thirty Six Lakh, Thirty Four Thousand and Forty Only) paid on Banking & Financial Services received for expenses made in foreign currency for availment of External Commercial Borrowings (ECB) during the period from January 2013 to June 2017 under Reverse Charge Mechanism (RCM). The claimant has submitted the following documents alongwith their refund application:-*
>
> *(1) Copy of Invoices raised by overseas bank regarding charges for ECB loan taken in connection with expansion at claimant's factory.*

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(2) Copies of challan 03 (three) nos. for deposit of Service Tax along with interest and penalty.

(3) Annexure showing details of calculation of service tax liability along with interest and penalty.

(4) Copy of letter No. DGCEI/AZU/12(4)84/2017-18 dated 10.01.2018 of DGCEI, Ahmedabad.

(5) Copy of letter No. DGGI/AZU/12(4)84/2017-18 dated 07.02.2019 of DGCEI, Ahmedabad.

3. Whereas it further appears that the claimant has claimed refund of Service Tax totally amounting to Rs.36,34,040/- which was pald by them vide Challan No. 20018 dated 21.04.2018, 50058 dated 09.10.2018 & 02926662911201820017 dated 29.11.2018 in an enquiry made by DGCEI, Ahmedabad vide DGCEI, Ahmedabad's letter No. DGCEI/AU/12(4)84/2017- 18 dated 10.01.2018 for non/short payment of service tax under Finance Act, 1944 and the rules made thereunder and also under Section 173 and Section 174 of GST Act, 2017.

3.1 Whereas it further appears that the claimant had imported some services in connection with an External Commercial Borrowings (ECB) loan from the banks in Germany for which service tax was payable under reverse charge mechanism but the claimant did not paid the same which resulted into non/short payment of service tax. However, on being pointed out by the DGCEI, Ahmedabad, the Service tax llability along with interest and penalty has been deposited by the claimant in the months of April 2018, October 2018 and November 2018 vide various challans as under :

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Sr. No.	Challan No. & Date	Amount (Rs.)
1	20018 dated 21.04.2018	Rs.34,83,260/-
2	50058 dated 09.10.2018	Rs.1,05,852/-
3	029266629112018200 17 dated 29.11.2018	Rs.44,928/-
	TOTAL	Rs.36,34,040/-

From the reproduced portion, it is clear that party has not only paid duty of extended period in 3 installments i.e. In April 2018, October, 2018 and November 2018 but has also paid interest and penalty there upon seggregating the three. On this issue, it is found at Commissioner (Appeals) has correctly held that payments made were part of the recovery action under the enforcement done by DGCI and therefore duty, interest and penalty were paid for extended period. It is also found that adjudicating authority whose findings have been endorsed in the Impugned order, has correctly held that the amount is paid as part of the recovery action. The input credit or refund of the same cannot be allowed. In this context, para 6.4 of the Order-in-Original is reproduced below :

> 6.4 I, however, find that Section 142 (8) (a) of the OGST Act, 2017, the relevant para of which, states as under:
>
> "Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed date, under the existing law, any amount of tax, Interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the

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> amount so recovered shall not be admissible as input tax credit under this Act".
>
> I find that in the instant case, the claimant has paid the Service tax amount under Reverse Charge Mechanism towards Banking & Financial Services received for expenses made in Foreign Currency for availment of External Commercial Borrowings (ECB) during the period from January-2013 to June- 2017. I also find that payments have been made vide Challan Nos. 20018 dated 21.04.2018, 50058 dated 09.10.2018 & 02926662911201820017 dated 29.11.2018 in pursuance of enquiry by DGCEI, Ahmedabad's letter F.No. DGCEI/AZU/12(4)84/2017-18 dated 10.01.2018 for non/short payment of said service tax under the Finance Act, 1994 read with Sections 173 and 174 of GST Act, 2017. Thus, the payments were result of an enquiry and it was not Suo-motu on the claimant's part, and therefore can be termed as 'recovery'. From the above governing provisions of Section 142 (8) (a), I find that service tax paid by the claimant is part of recovery proceedings and hence they are not eligible for the said refund as the claim amount was recovered as an arrears of service tax and the amount so recovered shall not be admissible as input tax credit under this Act."

The decision thus correctly relies on Section 142 (8) (a) of the CGST Act, 2017 to deny credit, as payments were made and appropriated towards duty, interest and penalty in pursuance of determination and paid by the appellant.

5.1 In view of the forgoing, concurrent findings lower authorities are maintained, holding that in

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> recovery action and when penalties imposed and are discharged and duty paid under extended period, the credit to person who has evaded tax and then paid duty, interest and penalty cannot be allowed."

19. The entire reasoning adopted by the CESTAT is based upon interpretation of provision of Section 142 (8) (a) of the CGST Act. It appears that CESTAT has considered the payment made by the appellant pursuant to the letter dated 10.1.2018 issued by the DGGI as recovery of tax upon assessment or adjudication proceedings. However, in fact, in the present case, there was no assessment or adjudication proceedings initiated by the Revenue. Therefore, in our view, the provisions of Section 142 (8) (a) of the CGST Act which starts with the words "*Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed date,.....*" would clearly take the case of the appellant out of the rigors of the provisions of Section 142 (8) (a) of the CGST Act in absence of any assessment or adjudication proceedings initiated by the revenue. Therefore, the only conclusion which can be reached is that the appellant paid the amount of service tax with interest and penalty voluntarily, without there being any assessment or adjudication proceedings and, therefore, the CESTAT could not have placed reliance upon the provisions of Section 142 (8) (a) of the CGST Act for the denial of the refund of the Cenvat Credit, which otherwise, would have been claimed by the assessee, but for the introduction of the CGST Act under the Excise and Service Tax regime. Therefore, as per the provisions of Section 142 (3) of the CGST Act, the respondent authorities are required to process the refund claim of the appellant in accordance with law. Section 142 (3) of the CGST Act

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reads as under :-

> "142 (3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):
>
> Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:
>
> Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

20. In view of the above referred provision of Section 142 (3) of the CGST Act, the appellant would be entitled to the refund of the Cenvat Credit which otherwise would have been allowed under the Excise and Service Tax regime read with Cenvat Credit Rules which have been repealed by Section 174 of the CGST Act with a saving clause. As per sub-Section (2) (c) of Section 174, the appellant would be entitled to get the refund of the amount of

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service tax of Rs.36,34,040/- paid by the appellant in the year 2018.

21. At this stage, learned advocate Mr. Dave, under instructions, submitted that the appellant would not claim the interest on the refund which he may be paid pursuant to the provision of Section 142 (3) as such refund was denied to the appellant by the respondent authorities and upheld by the CESTAT on misinterpretation and misapplication of the provisions of Section 142 (8) (a) of the CGST Act. The reliance placed by the appellant on the decisions would be applicable in the facts of the case and even otherwise, considering the facts of the case, we answer the questions admitted hereinabove in favour of the appellant and remand the matter back to the Adjudicating Authority to process the refund claim of the appellant in accordance with law, more particularly as per Section 142 (3) of the CGST Act keeping in mind the ratio laid down by the decisions which are relied upon by the appellant.

22. The appeal is accordingly allowed. The judgment and order dated 20.3.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad in Excise Appeal No.10231 of 2020 as well as the order dated 14.11.2019 passed by the Commissioner (Appeals), Commissioner of Central Excise, Customs and Service Tax, Vadodara – II are hereby quashed and set aside. No order as to costs.

(BHARGAV D. KARIA, J)

(NIRZAR S. DESAI,J)

SAVARIYA

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