

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

Excise Appeal No.55306 of 2023

[Arising out of Order-in-Appeal No.21(RLM)CE/JPR/2023 dated 28.04.2023 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur]

National Engineering Industries Limited

Khatipura Road,
Jaipur-302 006.

Appellant

VERSUS

Commissioner of CGST and Central Excise,

NCR Building, Statue Circle, Jaipur.

Respondent

APPEARANCE:

Ms. Sukriti Das and Ms. Aarushi Prabhakar, Advocates for the appellant.
Shri Rohit Issar, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO.55807/2024

DATE OF HEARING: 10.05.2024

DATE OF DECISION: 22.05.2024

BINU TAMTA:

The impugned order-in-appeal no.21(RLM)CE/JPR/2023 dated 28.04.2023, whereby the Commissioner (Appeals) upheld the recovery of the refund amount, which was allowed to the appellant as a consequential relief pursuant to the order of the CESTAT dated 22.05.2017, is under challenge by the appellant.

2. The appellant is, *inter alia*, engaged in manufacture of Ball Bearing and Axle Box and in 'Consultancy Services'. The appellant is registered with the Service Tax Department vide Registration No.AAACN9969LST006 and is duly paying service tax on the taxable services provided and received by it.

3. Electro Motive Diesel, Inc ('EMD'), a company incorporated in USA, engaged in manufacture of diesel locomotive, entered into a Sales Representation Agreement with the appellant, for appointment as sales representative of EMD in India. The Indian Railways procured various components of locomotive from EMD, through appellant, however, the purchase orders were placed by the Indian Railways directly on EMD. As per the terms and conditions mentioned in the purchase order, Indian Railways undertook to pay commission to the appellant out of the total consideration payable by Indian Railways to EMD, i.e. instead of paying the entire consideration to EMD and thereafter the appellant receives back the commission from EMD. The commission payable is deducted by converting into equivalent Indian Rupees, and balance is remitted to EMD.

4. Treating such services rendered to EMD as export of services, the appellant filed refund claim of service tax paid thereon relying on several decisions of the Tribunal including those passed in their own case for the period from 2005 onwards.

5. Heard Ms. Sukriti Das and Ms. Aarushi Prabhakar, Advocates for the appellant and Shri Rohit Issar, Authorised Representative for the respondent.

6. The present case has a chequered history and the learned counsel for the appellant has placed on record the chronology of events giving rise to the present appeal, which is set out below:-

Date	Particulars
1ST ROUND OF LITIGATION	
25.2.2009	An application for refund of Service Tax amounting to Rs. 11,11,899 paid vide Challan dated 5.5.2008 on export of services to EMD, pertaining to April 2008 was filed
22.5.2009	A Show Cause Notice (SCN) was issued proposing rejection of the refund claim on the ground that the services provided to EMD do not qualify as export of services inasmuch as Appellant had not received the commission in convertible foreign exchange.
16.12.2009	Vide Order-in-Original No. 56/ST/Ref/09 ('OIO'), the Ld. Assistant Commissioner rejected the refund claim on the ground it did not satisfy the conditions stipulated in Rule 3(2) of the Export Services Rules, 2005.
27.9.2010	On appeal, the Ld. Commissioner (Appeals) vide Order-in-Appeal No. 351(DKV)ST/JPR-I/2010 ('OIA') rejected the Appeal in toto and upheld the OIO dated 16.12.2009.
22.5.2017	The Hon'ble CESTAT vide Final Order No. A/53395/2017 set aside the aforesaid OIA dated 27.9.2010 and allowed the appeal following the Tribunal's decisions passed in Appellant's own case for earlier periods, vide Final Order No. 52873-52874/2017 dated 7.4.2017. Hon'ble CESTAT's Order dated 22.5.2017 has attained finality, since no appeal has been preferred by department before higher forum.
IMPLEMENTATION PROCEEDINGS	
13.9.2017	Pursuant to the aforesaid Hon'ble CESTAT's Final Order dated 22.5.2017, Appellant filed a letter apprising the Ld. Assistant Commissioner about favorable Order decided in its case and requesting for disbursement of the amount
17.11.2017	In compliance to the aforesaid CESTAT's Order, the Ld. Assistant Commissioner vide Order-in-Original No. 36/Ref/2017-18 ("Refund Order") sanctioned an amount of Rs. 11,11,899 as a consequential refund to the Appellant, based on a verification report of the jurisdictional range officer. This refund Order has attained finality, since no appeal has been preferred by the department before the higher forum.
2ND ROUND OF LITIGATION – PRESENT PROCEEDINGS FOR RECOVERY OF CONSEQUENTIAL REFUND ALLEGED AS SANCTIONED ERRONEOUSLY	
12.11.2019	The impugned Show Cause Notice (SCN) has been issued under Section 11A of the Excise Act, proposing recovery of an amount of Rs. 11,11,899 refunded to the Appellant, as erroneous inasmuch as commission received by Appellant was in convertible Indian rupees, therefore the condition of export of service contemplated under Rule 3(2) of Export of Service Rules, 2005 was not complied. Hence, <u>the Hon'ble CESTAT had erred in allowing the appeal.</u> Further, the decisions of Hon'ble CESTAT pertaining to earlier periods and affirmed by Hon'ble Rajasthan High Court, is pending in SLP No. 14081-14084/2018 filed by department before Hon'ble Supreme Court.
30.7.2021	Vide Order-in-Original no. 04/CE/Dem/2021-22/CGSTDiv-G, Jaipur, the Ld. Deputy Commissioner confirmed recovery of Rs. 11,11,899 from Appellant alleging erroneous sanction of refund pertaining to April 2008, under Section 11A of the Excise Act read with Section 73 of the Finance Act, 1994 ('Finance Act') along with interest under Section 11AA of the Excise Act read with Section 75 of

	the Act, on the ground that the said transaction do not qualify as export of services. It was further held in Para 13, pg. 56 of appeal memo that the "<u>Hon'ble CESTAT has erred in allowing the appeal of the assessee</u>". Further, non-filing of appeal by department against refund Order/CESTAT order and issuance of protective of SCN for recovery of erroneous refund are both separate issues and cannot be clubbed together.
28.4.2023	Vide the impugned Order-in-Appeal No. 21(RLM)CE/JPR/2023, the Ld. Commissioner (Appeals) dismissed the appeal of Appellant upholding the aforesaid OIO dated 30.7.2021, on the ground that basic condition of receipt of service in convertible foreign exchange, as per Rule 3(2) of the Export of Services Rule, 2005 is not complied. It was further held in Para 6.6, pg. 42 of appeal memo, that identical issues for earlier periods, in case of same appellant is pending decision before the Hon'ble Supreme Court, therefore the appeals are rejected.
	Hence, the present appeal.

7. From the facts set-out above, the submission of the learned counsel for the appellant, Ms. Sukriti Das is that the issue raised in the present appeal whether the refund granted to the appellant pursuant to the order of the Tribunal can be challenged by way of show cause notice under Section 11 A of the Central Excise Act for recovering the amount refunded to the appellant is no longer *res integra*. Several decisions have been passed by the Tribunal on the issue under consideration including the orders passed in favour of the appellant on the earlier occasions. According to her, the said decisions have binding precedent and, therefore, the refund amount granted to the appellant could not have been directed to be recovered. The learned counsel next submitted that reopening the question of admissibility of refund claim in execution or implementation proceedings is not sustainable once an order has been passed by the Tribunal and on the basis thereof, the refund has been allowed. Neither the final order dated 22.05.2017 nor the refund sanctioned order dated 17.11.2017 has been challenged by the Revenue. The learned Counsel stressed on the issue that the impugned order suffers from the vice of

judicial discipline referring to the relevant paras from the show cause notice as well as the orders passed by the lower authorities.

8. Learned Authorised Representative for the Revenue has reiterated the findings of the authorities below.

9. There is no doubt that the issue has been considered in the earlier decisions passed in the case of the appellant themselves, where the Tribunal in **National Engg. Industries Ltd. Vs. Commissioner of Central Excise, Jaipur**¹ dealt with the similar issue while allowing the appeal observed as under:-

"6. It appears from the Annexure to Purchase Order that necessary foreign exchange would be released to the Indian Railways for payment to GMC. It further appears that the appellant shall raise the bill to the consignee (Indian Railways) at 5% agency commission at USD which shall be paid in equivalent to non-convertible Indian rupees. Ld. Advocate submits that Indian Railways deducted the commission of the appellant in their bill raised to M/s. GMC, USA and the less amount of foreign-exchange was released. Thus, if GMC would pay the appellant agency commission in foreign-exchange, then the same amount of foreign-exchange shall be released to Indian Railways to pay GMC, USA. In effect, the amount of foreign-exchange was not released to the Indian Railways, which may be treated as the appellant received payment in convertible foreign-exchange. Rule 4 of Export of Services Rules, 2005 provides any service, which is taxable under Clause (105) of Section 65 of the Act, may be exported without payment of Service tax. Sub-rule (2) of Rule 3 of the Rules, is as under :

“(2) The provision of any taxable service shall be treated as export of service when the following conditions are satisfied, namely :-

- (a) such service is delivered outside India and used outside India; and
- (b) payment of such service provided outside India is received by the service provides in convertible foreign exchange”.

¹ 2008 (11) STR 156 (Tri.-Delh.)

7. In order to avail the benefit of Rule 4, the assessee has to fulfil the conditions of Rule 3(2) of the said Rules. I agree with the submission of the Id. DR that the purpose of Rule 3(2) of the said Rules is to earn convertible foreign exchange and then benefit of exemption of Service tax would be extended to the assessee. In the present case, it is revealed from the Purchase Order that payment would be made to the appellant by convertible foreign exchange from USA company through Indian Railways, who paid in Indian Rupees as the same amount of foreign exchange was not released by them. It is well settled that machinery of a statute should be interpreted so as to promote the object and purpose of the scheme. Further, once the legislative intention is properly understood, then the case should be decided in fulfilment with the legislative intention. In the present case, it is revealed from contract that the appellant would be paid USD equipment (sic) (equivalent) to non-convertible Indian Rupee at the Rate of Exchange prevailing on the date of supply order. It is noted that the equivalent amount of foreign exchange payable to the appellant was not released to the Indian Railways, and therefore, the appellant complied with the provision of Rule 3(1)(b) of the Rules."

10. Similarly, in the final order in the case of the appellant – **National Engineering Industries Ltd. Vs. Commissioner of Central Excise, Jaipur**², the issue decided in favour of the appellant was whether the service provider – appellant in India getting rupee value equivalent to commission amount of 5% US \$ shall be liable to service tax on the allegation of non-fulfilment of condition of Rule 3(1)(3) of Export Service Rules, 2005. The Tribunal noted as under:-

"8. From the aforesaid discussion, we note that instead of foreign exchange going out of India, there is conservation of foreign exchange in India to the extent of commission earned by the service provider appellant in view of the arrangement made by the service recipient abroad in that behalf through Indian Railways. Instead of appellant earning foreign exchange, the foreign exchange which otherwise would have flown out of India, due to import by Indian Railways, has been conserved. This appears to have fulfilled the object of export of service."

² 2011(24)STR 683 (T-Delhi) vide Final Order No.ST/456/2011(PB) dated 5.9.2011

11. The matter was taken up to the Rajasthan High Court by the Revenue and the decision was rendered as reported in **Commissioner of Central Excise, Jaipur-I Vs. National Engineering Industries Ltd.**³ deciding the issue in favour of the appellant and against the Department. The case of the Revenue is that the decision of the Rajasthan High Court has not been accepted by the Department and a Special Leave Petition has been preferred before the Supreme Court, which is pending consideration and hence, the amount refunded to the appellant needs to be recovered. I do not agree with the submissions of the Revenue in view of the judicial pronouncement on the binding nature of the decision rendered by the higher forum on the principle of judicial discipline. The final order dated 22.05.2017 passed by the Tribunal had allowed the amount to be refunded to the appellant. Consequently, the Asstt. Commissioner vide order dated 17.11.2017 had sanctioned the consequential refund to the appellant based on a verification report of the jurisdictional range officer.

12. Admittedly, neither the final order nor the consequential order of refund was challenged by the Revenue and had thereby attained finality. If the Revenue was agreed by the grant of the refund amount, the proper remedy was to approach the proper forum by way of appeal and not by issuing the show cause notice as they have done in the present case. May be, the matter was subjudiced before the Supreme Court, however, there was no stay of the impugned order and, therefore, the Revenue was bound to implement the order of the Tribunal as confirmed by the High Court of Rajasthan.

13. I find support from the decisions relied upon by the learned counsel for the appellant in the case of **M/s.Gap International Sourcing (India) Pvt.**

³ 2019 (30) GSTL 211 (Rajasthan)

Ltd. Vs. Commissioner (Appeals-I), Service Tax, New Delhi ⁴, where similar situation had arisen and the Commissioner (Appeals) displayed gross judicial indiscipline and refused to follow the orders of this Tribunal on the ground that the decision in **Paul Merchant** was not accepted by the Department and an appeal had been preferred before the Supreme Court. Referring to the decision of the Apex Court in the case of **Union of India Vs. Kamlakshi Finance Corporation Ltd.** ⁵, where it has been observed:-

"6.....The mere fact that the order of the appellate authority is not "acceptable" to the department – in itself an objectionable phrase – and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.

7.....In the light of these amended provisions, there can be no justification for any Asstt. Collector or Collector refusing to follow the order of the Appellate Collector or Appellate Tribunal, as the case may be, even when he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under Section 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

The Supreme Court further emphasised that :-

"8.....We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the Adjudicating Authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them. "

⁴ 2024(4)TMI 911 –CESTAT New Delhi

⁵ 1991(55) ELT 433 (SC)

14. The Tribunal, accordingly concluded that the Commissioner (Appeals) was bound to have followed the order of this Tribunal since it was not stayed, suspended or set aside by the higher courts. It was further observed that the judgement of the Supreme Court on judicial discipline is over three decades old and is well known, however, the Commissioner (Appeals) has not only followed the decision of this Tribunal but displayed scant regard to the principles of judicial discipline.

15. The subsequent decision of the Tribunal in **Commissioner, CGST & Central Excise-Alwar Vs. Balkrishna Industries Limited (Vice versa)**⁶ took note of the objection raised by the assessee on the averments made by the Revenue that the final order passed by the Tribunal did not have binding effect in so far as the instant cases involving similar issue for further period were concerned and the Adjudicating Authority had erred by following the final order passed by the Tribunal which has never been accepted by the Department. It was observed as under:-

"9. We agree with the objections so raised. The revenue ought not to have made such averments. The Counsel representing the revenue ought to have been conscious in drafting the pleadings and avoid making such offensive submissions before a judicial forum. The statement appears to be in complete defiance of the principles of judicial discipline. The judgement of the Tribunal is definitely binding on the adjudicating authority and similarly the decision of the High Court is binding on the Tribunal and so are the same binding on the Revenue."

16. In the context in issue, I would like to take note of the decision relied on by the learned counsel for the appellant in **Andhra Sugars Limited Vs.**

⁶ 2023(3)TMI 293 (CESTAT New Delhi)

Commissioner of Central Tax – Guntur GST Commissionerate⁷, where the learned single Member commenced the order by saying, **“in this unique case of violation of judicial discipline**, the impugned order dated 18.08.2017 passed by the Commissioner (Appeals), Guntur is under challenge.” The issue considered was whether the department can reopen and review the order of the Tribunal by way of a show cause notice on the ground that the refund granted was erroneous, where no appeal was filed against the order of the Tribunal. The observations relevant to the said issue are as under:-

“I am of the considered opinion that Commissioner (Appeals) cannot sit in judgement of the Tribunal’s order and to hold the same to be issued “per incuriam”, whereas no appeal has been filed against the CESTAT order and an appeal filed earlier on a case involving identical issue was withdrawn on monetary grounds. I find that it is curious to note that whereas some 10 to 12 orders were passed on the issue against the very same appellant covering the periods before and after the period covered in the impugned order. The Revenue contends that there is no “estoppel” in Revenue’s matter. May be it so, it is not open to the Department to open up a case which attained finality. **In passing an order contrary to the order of the CESTAT and holding that the CESTAT order was “per incuriam”, learned Commissioner (Appeals) has exceeded his brief.**”

17. In view of the judicial pronouncements on the issue of judicial discipline, it is necessary to take note of the contents of the show cause notice and the order-in-original in the present case. The show cause notice dated 12.11.2019 was issued by the Asstt. Commissioner, Jaipur. After referring to the past history of the case, it was noted that the decision of the Tribunal dated 22.05.2017 was found to be not correct and proper and the Tribunal had erred in allowing the appeal of the assessee. The relevant paras of the show cause notice are quoted below:-

⁷ 2023(7)TMI 579 –CESTAT Hyderabad

"3. On examination of Hon'ble Tribunal's Final Order No. A/53395/2017-SM (BR) dated 22.05.2017 regarding its correctness, proper and legality in terms of Section 35G of the Central Excise Act, 1944 as made applicable in Service Tax matters vide Section 83 of the Finance Act, 1994, the Final Order No. A/53395/2017-SM(BR) dated 22.05.2017 passed by the hon'ble CESTAT, New Delhi regarding export of services even after the assessee had not received the payment in convertible foreign currency and had thus contravened the provisions of Rule 3(2)(b) of the export of service Rules, 2005 are found to be not correct and proper to the extent of sanction of refund of Rs. 11,11,899/- as per the ground mentioned below:

3.2 Whereas, in the instant case, commission was received by the assessee in non-convertible Indian Rupees, therefore, the services provided by them cannot be treated as "export of taxable service" as they have not fulfilled the condition/requirement as stipulated under Rule 3(2) of Export of Services Rules, 2005. Accordingly, the assessee was required to pay due service tax under the provision of Finance Act, 1994/ Service Tax Rules, 1994 and was not eligible for refund against such payment of tax under the provision of Export of Services Rules, 2005. **Hence, the Hon'ble CESTAT has erred in allowing the appeal of the assessee.**

3.3. And whereas, in the earlier cases pertaining to the same assessee, on the same issue, the Hon'ble CESTAT's Final Order No. 770/2008-SM(BR) dated 13.12.2007, No ST/105/2009-CU(DB) dated 05.03.2009 and ST/185/2011-CU(DB) dated 19.05.2011 have not been accepted by the Department and appeal bearing no. EXCISE APPEAL NO. 07/2009-DB, EXCISE APPEAL 37/2009-DB and EXCISE APPEAL 05/2012-DB respectively were filed by the Department before the Hon'ble High Court of Rajasthan, Jaipur against the same, The Hon'ble High Court of Rajasthan Bench at Jaipur vide order dated 06.10.2017 has dismissed appeal filed by the department against DB Central Excise no. 05/2012, 7/2009, 37/2009 & 09/2012. Further, SLP bearing no. 14081-14084/2019 has been filed by the Department before the Hon'ble Supreme Court against the High Court order dated 06.10.2017, which is pending as on date."

18. On adjudication, the Dy. Commissioner in the Order-in-Original dated 30.07.2021 also observed as under:-

"Therefore, I have no hesitation to hold that the assessee was required to pay due service tax under the provisions of Finance Act, 1994/Service Tax Rules, 1994 and they were eligible for refund against such payments of tax under the provisions of Export of Services Rules, 2005 as **the Hon'ble CESTAT has erred in allowing the appeal of the assessee.**"

19. The paragraphs noted above clearly show that the authorities below have absolutely no regard for the orders passed by the Tribunal, though, as per the judicial discipline, they are binding on them and they are required to follow the same. There have been decisions after decisions by the Tribunal and also by the Apex Court, specifically conveying the that the orders by the Tribunal are binding on the lower authorities and there is no reason to differ from the same. Mere filing of an appeal to challenge the order of the Tribunal or the High Court before the Apex Court is not really a valid ground to ignore or to disregard the orders of the Tribunal, unless and until the same are stayed or suspended or finally set aside, which is not the case here and, therefore, I am of the firm opinion that the authorities below have seriously erred in passing such an order, which is beyond their jurisdiction and is a matter of concern, to be taken note of by the Department.

20. The principle has been concurrently reiterated by the Courts that once a judgement or judicial order is passed by the court of law against the department, the remedy available to the Department is by way of an appeal to a higher court for review and where no appeal or review is filed, the lis between the parties, viz. the petitioners and the department of Central Excise attains finality in respect of the issues, which are now sought to be re-opened by way of a show cause notice – **Topcem India Vs. Union of India**⁸. In the said case, the refunds were granted and sanctioned in terms of the judgement

⁸ 2021-TIOL-857-HC-GUW-ST

of the Apex Court in the case of **M/s.SRD Nutriets Pvt. Ltd.**, however, the said decision was later held to be *per incuriam* and in that view, the department issued the show cause notice to recover the refunded amount. In the circumstances, the High Court observed that finality of the issue inter party has been arrived at, where no appeal or review has been filed by the department in respect of the refunds granted earlier and also from the show cause notice, it is evident that there is no other ground on which the refund has been treated to be erroneous except that the law under which the refunds were granted earlier, has been held to be *per incuriam* by a later judgement of the Apex Court.

21. The Delhi High Court in a recent decision in the case of **Blackberry India Pvt.Ltd.- Earlier known as Research in Motion India Pvt. Ltd. Vs.The Commissioner CGST Delhi South Commissionerate & Anrs.**⁹, where also the amount of refund paid pursuant to the order of the Tribunal was sought to be challenged by way of a show cause notice on the ground that the department is preferring Special Leave Petition before the Supreme Court and the High Court observed as under:-

"12. Be that as it may, it is not in dispute that petitioner has been refunded the said amount after the petitioner was found eligible by the Tribunal for refund and further by this Court towards interest for delayed refund of the CENVAT Credit. Accordingly, there is no ground to demand the same from the petitioner."

22. Reference is invited to the decision of the **Commissioner of Central GST and Central Excise Vs. Krishi Rasayan Exports Pvt. Ltd. – 2023 (7) TMI 661 (J&K)**, where the Jammu & Kashmir High Court dealt with the issue

⁹ 2024(3)TMI 1108 –Delhi High Court

whether Section 11A is invocable even in a case where there is no erroneous refund and observed as under:-

"15. That apart, we are also in agreement with CESTAT that, once the excise duty in favour of assessee is sanctioned by the competent authority after passing a speaking order and which order is appealable under Section 35 of the Act, parallel proceedings seeking recovery of the sanctioned refund cannot be launched by the Adjudicating Authority. Unless the orders of sanctioning refund passed by the Adjudicating Authority are reversed in appeal or revision under the Act, Section 11 cannot be invoked by terming such sanctioned refund of excise duty as 'erroneous refund' by holding collateral proceedings under section 11A of the Act. Any duty, which is paid /refunded to the assessee after holding formal proceedings and passing speaking orders in favour of the assessee, cannot be termed as 'erroneous refund'. The revenue, if it is of the opinion that the Adjudicating Authority has made an erroneous refund in favour of assessee to which it was not otherwise eligible, can avail the remedy of filing appeal or revision under the Act. So long as the orders stand as having attained finality, the same cannot be tampered with by the Adjudicating Authority by launching collateral proceedings purportedly under Section 11A of the Act.

16. The judgment of the Hon'ble Supreme Court in the cases of **Priya Blue Industries Pvt. Ltd. -2004 (172)**

ELT 145 (SC) and Flock India Pvt. Ltd., 2000 (12) ELT 285 (SC), relied upon by the CESTAT are exactly on the point and leaves no manner of doubt that Section 11A of the Act is not invocable when refund has been sanctioned by the Adjudicating Authority by passing a speaking order and which order is appealable under Section 35 of the Act, more particularly, when such order has not been challenged by the revenue and has attained finality."

23. Thus, in view of the discussion above in the light of the various judicial pronouncements, I hold that the authorities below have seriously erred in upholding the recovery of the refunded amount from the appellant. Once the issue has been decided by the Tribunal that the appellant is entitle to the refund, the authorities below have no jurisdiction to order for recovery of the

said refunded amount unless the order of the Tribunal granting refund is stayed or set aside by a higher forum, which is not in the present case. Infact the lower authorities further exceeded the brief by commenting critics on the decision rendered by the Tribunal which is much superior in hierarchy. The impugned order is, therefore, set aside.

24. The appeal is, accordingly allowed.

[Order pronounced on 22nd May, 2024.]

(Binu Tamta)
Member (Judicial)

Ckp.