

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO.384 of 2012**

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

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COMMISSIONER OF CUSTOMS - AHMEDABAD

Versus

ARCELORMITTAL NIPPON STEEL INDIA PRIVATE LIMITED (FORMERLY
ESSAR STEEL LTD)

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Appearance :

PARAM V SHAH for the Appellant.

MS DIMPLE K. GOHIL for the Opponent.

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

Date : 23/09/2026

JUDGMENT

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

1. Heard Mr. Param V. Shah, learned Senior Standing Counsel for the appellant and Ms. Dimple K. Gohil, learned advocate for the respondent.

2. The present appeal is filed under Section 130 of the Customs Act, 1962 (for short 'the Act') by the appellant - Revenue

against the order dated 20.09.2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad (for short 'CESTAT') in Appeal No.C/770/06.

3. This appeal was admitted by order dated 19.6.2012 for consideration of the following substantial question of law :-

“Whether the principle of unjust enrichment is applicable to the refund arising out of finalisation of the provisional assessment pending before amendment of Section 18 of the Customs Act, 1962 ?”

4. At the outset, learned advocates for both the sides submitted that the issue raised in this appeal is no more *res integra* in view of the decision of the Hon'ble Supreme Court in the case of **Commissioner of Customs v. Hindustan Zinc Limited through its Managing Director rendered on 23.3.2023 in Civil Appeal No.10691 of 2011 and other allied matters.**

5. On perusal of the order passed by the CESTAT, it appears that the first Appellate Authority decided the issue in favour of the assessee based upon the Chartered Accountant's Certificate produced before him by the assessee to come to the conclusion that the issue of unjust enrichment is not arising in the case of refund on the basis of finalization of the provisional assessment.

6. The CESTAT also referred to the decision of the Larger Bench of the Apex Court in the case of **Allied Photographics**

India Limited reported in 2004 (166) ELT 3 (S.C.) as well as the decision of this Court in the case of **Commissioner of Customs v. Hindalco Industries Limited reported in 2008 (231) ELT 36 (GUJ.)** wherein this Court has clearly held that the provisions of the principles of unjust enrichment as found in Section 27 of the Customs Act, 1962 cannot be read into provisions of Section 18 prior to the amendment of Section 18 w.e.f. 13.7.2006.

7. The CESTAT following the aforesaid decisions rejected the appeal of the revenue by observing as under :-

“It can be noted from the above that the law is now squarely settled to the effect that the provisions of unjust enrichment will not apply to the refund claims arising out of finalisation of provisional assessment under Section 18 of the Customs Act, 1962, prior to 13.07.06. In the case in hand, the finalisation of the provisional assessment took place prior to 13.07.06 and letters claiming the amounts were also filed prior to 13.07.06, hence we hold that the impugned order of the learned Commissioner (Appeals) is correct and there is no infirmity in the said order.”

8. The Hon'ble Supreme Court in the case of **Commissioner of Customs v. Hindustan Zinc Limited through its Managing Director** (Supra) has reiterated the decision in the case of **Allied Photographics India Limited** (Supra) as under :-

“In all these cases the common question which arises is whether claim for refund of amounts deposited towards provisional duty, as a condition for clearance of imported goods can be the subject matter of refund after conclusion of assessment proceedings and having regard to its outcome, under Section 18 of the Customs Act. It is not disputed that this issue has been considered both in the context of provisional assessment under Rule 9-B of the Central Excise Rules by judgments of this Court as well as in the context of Section 18 of the Customs Act, in “Commissioner of Customs, New Delhi vs. M/s Oriental Exports, New Delhi” [2003 156 ELT 161]. The Court held that even though Rule 9-B of the Customs Rules (applicable in that case) was not retrospective, nevertheless pending applications were entitled to the relief prescribed by it. This Court had occasion again to consider the issue in the light of the conflict of decision by a three Judge Bench, in a three Judge Bench decision in “Commissioner of Central Excise, Mumbai-II vs. Allied Photographics India Ltd.” [(2004) 4 SCC 34]. The Court held that the doctrine of unjust enrichment was not applicable to provisional assessment even after finalization of the proceedings.

The impugned judgments in all these appeals have followed view expressed in “Oriental” and “Allied”.

It is brought to the notice of this Court that a judgment subsequent to the ruling in “Allied” i.e. “Sahakari Khand Udyog Mandal Ltd. vs. Commissioner of Central Excise & Customs” [(2005) 3 SCC 738] appears to have expressed a different view in that the Court held that to maintain a claim for refund, the assessee has to establish that he or it had paid the amount for which relief is sought and had not passed on the burden to the consumers. This judgment though rendered by a three Judge Bench, overlooked the ruling in Allied (supra). Furthermore, even though the judgment has generally referred to the nine Judge Bench ruling in “Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors.” [(1997) 5 SCC 537], nevertheless the specific observations in para 104 appears to have escaped the attention of the Court. Para 104 in Mafatlal Industries Ltd., is extracted below :

104. Rule 9-B provides for provision assessment in situations specified in clauses (a), (b) and (c) of sub-rule (1). The goods provisionally assessed under sub-rule (1) may be cleared for home consumption or export in the same manner as the goods which are

finally assessed. Sub-rule (5) provides that "when the duty leviable on the goods is assessed finally in accordance with the provisions of these Rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisional assessed falls short of or is in excess of the duty finally assessed, the assessee shall pay the deficiency or be entitled to a refund, as the case may be". Any recoveries or refunds consequent upon the adjustment under sub rule (5) of Rule 9-B will not be governed by Section 11-A or Section 11-B as the case may be. However, if the final orders passed under sub-rule (5) are appealed against - or questioned in a writ petition or suit, as the case may be, assuming that such a writ or suit is entertained and is allowed/decreed - then any refund claim arising as a consequence of the decision in such appeal or such other proceedings, as the case may be, would be governed by Section 11-B. It is also made clear that if an independent refund claim is filed after the final decision under Rule 9-B(5) reagitating the issues already decided under Rule 9-B - assuming that such a refund claim lies - and is allowed, it would obviously be governed by Section 11-B. It follows logically that position would be the same in the converse situation. Nature and character of refund claims under the Central Excises and Salt Act and the Customs Act."

The judgment in "Sahakari Khand Udyog Mandal Ltd.", in this Court's considered view, has to be confined to the facts of that case for the reasons mentioned above. In this view of the matter, there is no infirmity with the findings and conclusions recorded in the impugned judgments, which are in accord with the ratio in Allied (supra). The revenue's

appeals are, accordingly, dismissed.”

9. In view of the above dictum of law, we answer the question in favour of the assessee and against the revenue. Accordingly, the appeal is dismissed.

(BHARGAV D. KARIA, J)

(NIRZAR S. DESAI, J)

SAVARIYA

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RAJNISH NARENDRA SAVARIYA(HC00179), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 03/10/2026 11:13:03