CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70534 of 2024

(Arising out of Order in Appeal No.191-ST-ALLD-2024, dated -20/03/2024 passed by Principal Commissioner (Appeals) CGST & Central Excise, Allahabad)

Capt. Chris Haebel Tharkan .....Appellant

(S/0 Mathew Tharakan TT, Flat No. G-101, Shriram Suhana, Yelahanka,
Suryananshi, Layout, Doddaballapur Road
Opp. Bmsit Colleage Yelahanka
Bengaluru Urban, Karnataka 560064)

VERSUS

Commissioner, Service Tax, Allahabad ....Respondent

(38, M.G Marg, Civil Lines, GST Bhawan,
Prayagraj, Uttar Pradesh 211001)

APPEARANCE:

Shri Nitin Kumar Kesharwani, Advocate for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70796/2025

DATE OF HEARING : 18.07.2025
DATE OF DECISION : 13.11.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No.191-ST-ALLD-2024, dated - 20/03/2024 passed by Principal Commissioner (Appeals) CGST & Central Excise, Allahabad.

2. Briefly stated, the facts of the case are that the Appellant Capt. Chris Haebel Tharakan T., S/o Mathew Tharakan T. was a student of Ab-initio CPL Course of November 2011 (Batch No. 1111) of Indira Gandhi Rashtriya Uran Akademi

(IGRUA), Fursatganj, Amethi, UP and graduated from therein in June 2014.

3. Vide CBEC Instruction No.137/132/2010-ST dated 11.05.2011 Service Tax was levied on Flying Training Institutes providing training for obtaining Commercial Pilot License and during the training program (November 2011 - June 2014), the Appellant was charged Service Tax @ 10.3%/12.36% along with fees as "Commercial Pilot Training" by IGRUA authorities.

4. The Appellant along with 9 other Pilots who were ex-students of IGRUA filed a writ petition before the Hon'ble High Court of Delhi vide no. W.P(C).7305/2023 Captain Mansi Batra & Ors. v. Union of India & Ors. and the Hon'ble High Court passed the order in their favour on 29.05.2023 for refunding of service tax paid by them.

5. The Superintendent, CGST & Central Excise, Range, Amethi send a letter dated 04.07.2023 to Indira Gandhi Rashtriya Uran Akademi (IGRUA), Fursatganj, Amethi asking the IGRUA to intimate the candidates / Pilots to file Service Tax Refund Application before the Office of the Assistant Commissioner, CGST & Central Excise, Division Raebareli in the light of Hon'ble Delhi High Court's Order within prescribed time limit, so that the compliance of the Order dated 29.05.2023 of Hon'ble High Court, Delhi, may be done by his office.

6. IGRUA vide Letter No. IGRUA:ADMIN(WP 7305/2023)59-63 dated 10.07.2023 advised Appellant and other pilots to file refund application immediately before the Assistant Commissioner, Raebareli, so that Hon'ble High Court's order could be complied within the prescribed time limit i.e. 3 months from the date of Hon'ble High Court's order.

7. Appellant had filed an application for refund of Service Tax on 12.07.2023 for Refund of Rs.2,99,730/- deposited as Service Tax while studying AB-initio CPL Course at IGRUA along with

seeking interest @ 9% amounting to Rs. 2,92,237/- on the said service tax, before the Assistant Commissioner, CGST & Central Excise, Division Raebareli.

8. The Assistant Commissioner, CGST & Central Excise, Division Raebareli, sanctioned the refund of service tax amounting to Rs. 2,99,730/- vide Order-In-Original No: R/26/ST/AC/RBL/2023 dated 21.08.2023 and refund was issued on 22.08.2023. He had rejected the claim for interest on the ground that "No direction was given (in the Court's order) regarding the refund of interest on service tax deposited by the trainees".

9. On 15.11.2023, Commissioner, CGST & CX, Commissionerate, Allahabad passed a Review Order by invoking it's Revisionary Power provided under section 84(1) of the Finance Act, 1994 and ordered for Review of the decision of the Assistant Commissioner passed vide Order-in-Original No. R/26/ST/AC/RBL/2023 dated 21.08.2023. Accordingly, he directed the Deputy/Assistant Commissioner, CGST & Central Excise Division Raebareli, to file an appeal before the Commissioner (Appeals), CGST & Central Excise, Allahabad against the said refund order.

10. On 16.11.2023 Superintendent (Review) CGST & Central Excise, Allahabad issued a letter to The Assistant Commissioner CGST & Central Excise, Raebareli stating that the Commissioner, CGST & Central Excise, Allahabad has reviewed the above mentioned Order-in-Original under section 84(1) of the Finance Act, 1994 vide Review Order No. 27/2023-ST dated 15.11.2023.

11. The Assistant Commissioner, CGST Central Excise, Division Raebareli, (same authority who had issued the refund) issued a Demand-cum-Show Cause Notice[1] No. 09/R/SCN/ST/AC/RBL/2023-24 dated : 23.11.2023 under

[1] SCN

Section 73 of the Finance Act, 1994, to the Appellant which was received vide email dated 04.12.2023.

12. Learned Authorized Representative appearing on behalf of the Revenue submits that in the said SCN, the authority alleged that no such order was passed by the Hon'ble Delhi High Court to refund the service tax to the individual pilots. He further stated in the SCN that the application filed by the Appellant which is for the period of November 2011 to June 2014 is a part payment of the application made by IGRUA for the period December 2009 to October 2012, which has been rejected by the Tribunal and is under sub-judice at Lucknow bench of Hon'ble Allahabad High Court in CEA No. 29/2019, thus, individual applications are not sustainable. Further, she added that refund claim filed by the individual pilot has to be independently adjudged in the light of Section 11B of the Central Excise Act, 1944. The relevant date is the date of payment of duty and the refunds, if any, are required to be filed within a period of one year from the relevant date. The claim made by the Appellant for refund of service tax was erroneously accepted and refunded erroneously as well.

13. Heard both the sides and perused the appeal records.

14. Before proceedings in this matter, the Order-In-Original No.R/26/ST/AC/RBL/2023 dated 21.08.2023 passed by the Assistant Commissioner, CGST, Division-Raebareli sanctioning the refund is reproduced as under:-

> *1. Capt. Chris Haebel Tharakan T. S/e Mathew Tharakan TT, Flat No. G-101, Shrtram Suhaana, Suryavanshi Layout, Doddaballapur Road, Opp. BMSIT College, Yelahanka, Bengaluru - 560064 (hereinafter referred to the party'), a student of Ab-initio CPL Course of November 2011 (Batch No. 1111) of Indira Gandhi Rashtriya Uran Akademi (IGRUA), and successfully graduated from there in June 2014 and currently, he is employed as a Pilot (SFO) with AIX Connect Pvt. Ltd. a subsidiary of Air India Ltd. He was also one of the Petitioners in W.P. (C) 7305/2023.*

2 The party has filed an application dated 12.07.2023 received in this office on 18.07.2023 for refund of Rs. 2,99,730/- along with interest of Rs. 2,92,237.00, deposited as service tax while studying AB-initio CPL Course at IGRUA

3. The party submitted the copies of

a) Order of Hon'ble High Court, Delhi dated 29.05.2023 passed in WP No. 6692/2023.

b) Copy of the letter of IGRUA vide ref No. IGRUA: ADMIN((WP-6692/2023):65 to 69 dated 11.07.2023.

c) Copy of details of service tax paid issued by the M/s IGRUA.

d) Bank A/C No. & details thereof.

DISCUSSION AND FINDINGS:

4. I have carefully gone through the facts of the case and the relevant documents submitted by the party along with the refund claim.

5. I find that the writ petition (Writ) is filed before Hon'ble High Court, Delhi by the aggrieved commercial pilots for seeding directions for directing the respondents to refund of the service tax amounting to Rs. 2,99,730/- for the each petitioner, wrongly charged by M/s IGRUA, as the part of their Commercial Pilot License (CPL) Course.

6. Further, I find that Hon'ble High Court, Delhi disposed the W.P.(C) 7305/2023, Capt. Mansi Batra & ORS, Vs Union of India & ORS and W.P. (C) 6692/2023 and CM APPL. 26214/2023 Capt. Sunny Ahlawat & Ors. Vs Union of India & Ors. vide their Order dated 29.05.2023, wherein they directed as under:

> *"9. In the interest of the pilots, however, considering that the Union of India is before this court, it is directed that the issue of service tax refund for the individual pilots, be looked into by the Service Tax Department and the decision be communicated both to them. The UOI shall also place its decision qua the Pilots also, before the Allahabad High*

Court. The Pilots may aso avail of their remedies, it required, in accordance with law.

10. The said decision shall be taken within three months by the Service Tax Department.

11. The present petitions, along with all pending applications, are disposed of in these terms."

7. Further, I find that the party submitted a details of service Tax paid by the petitioners in W.3. No 7305/2023 Before the Hon'ble High Court, Delhi Issued by Shri Ashish Gupta, Account Officer, IGRUA Pursatganj, Amethi-229302, details in respect of the party tabulated as under:

S. No.	Particulars	Amount due for training fee	Amount Received as training fee	Service Tax @ 10.3%	Service Tax @ 12.36%	Total Amount of Service Tax
1	**Capt. Chris Heabal**	26,50,000.00				
	1st Installment		7,00,000.00	72,100.00	-	72,100.00
	2nd Installment		6,50,000.00	66,950.00	-	66,950.00
	3rd Installment		6,50,000.00	-	80,340.00	80,340.00
	4th Installment		6,50,000.00	.	80,340.00	80,340.00
	Total		**26,50,000.00**	**1,39,050.00**	**1,60,680.00**	**2,99,730.00**

In view of above, I find that the party deposited their training fee alongwith Service Tax on prescribed S.Tax rate at this time.

8. The party also submitted a certification bearing Ref. No. IGRUA:SC:PF:624 dated 25.08.2012 issued by Shri Sachin Tandon, Students Counsellor, IGRUA, Fursatganj Airfield, Distt. CSM Nagar-229302, wherein it was certified that:

"This is to certify that Mr. Chris Naebel Tharakan T. S/o Shri Mathew Tharakun T.T. has joined this Akademi in 1111 Ab-initio to Commercial Pilot License Course. The duration of the course is 18 Months, which may be extended for few months depending on circumstances. The training fee payable for the course is Rs. 26,50,000.00 plus Service Tax as applicable (Total Rs. 29,49,730.00)"

9. The Superintendent of C.G.S.T. Range-Raebareli-1/Amethi, was asked to submit his comment/verification report vide this office letter C.No. V(15) Ref/ST/Chris Heabel/RBL/23/2023/363-

64 dated: 18.07.2023 & its reminder C. No. 381 dated 27.07.2023. In reply, the Superintendent of CGS.T. Range Raebareli-I vide letter C. No. 20-R-1/GST/Misc/02/2022/436 dated 21.08.2023 submitted that-

"The Account officer, IGRUA vide his letter dated 05.08.2023 verified that the CPL Trainees Chrts Haebel T. Sunny Ahlawat, Arjun Sareen, Divya Thakur, Priyanka Singh & Mansi Batra have submitted Rs. 2,99,730/- each as service Tax along with training fee of Rs. 26,50,000/-

The service Tax amount deposited by these CPL Trainees is verified by the Account Officer, IGRUA Therefore, it is submitted that service tax amount of Rs. 2,99,730/- had been paid by each individual pilot namely Chris Haebel T. Sunny Ahlawat, Arjun Sareen, Divya Thakur, Priyanka Singh & Mansi Batru while studying AB-initio CPL Course."

10. Further, I also find that the party claimed the refund of interest on Service tax amount deposited while studying AB-Initio CPL Course at IGRUA.

11. In this regard, In view of order of Hon'ble High Court, Delhi dated 29.05.2023, I find that no direction were given regarding the refund of interest on service Tax deposited by the trainees.

12. Further, I also find that in terms of provisions Section 11B of the Central Excise Act'1944, I find that the party is not entitled for refund of interest under Section 11BB of the CEA, 1944, which says as under:-

"Section 1188. Interest on delayed refunds. If any duty ordered to be refunded under sub-section (2) of section 118 to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under sub-section (2) of section 118 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there sholl be paid to the applicant Interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

In view of above provisions of the Act, I find that interest claimed by the party is not admissible to them.

In view of above discussions & findings, I find that the party are entitled for refund of service tax amounting to Rs. 2,99,730/- deposited while studying AB-initio CPL Course at IGRUA in compliance of order dated 29.05.2023 of Hon'ble High Court, Delhi.

Therefore, I pass the following order:

ORDER

I sanction the Refund of Rs. 2,99,730/- (Rupees Two Lakhs Ninety Nine Thousand Seven Hundred Thirty Only) to Capt. Chris Haebel Tharakan T., S/o Mathew Tharakan TT, Flat No. G-101, Shriram Suhaana, Suryavanshi Layout, Doddaballapur Road, Opp. BMSIT Colleger, Yelahanka, Bengaluru - 560064

15. I find that as an individual pilot and ex-student of IGRUA, he had filed an application for the refund of Service Tax deposited by him while studying in M/s IGRUA in November 2011 and graduated in June 2014. The Adjudicating Authority is not

correct while taking into cognizance that the sanctioned refund of Service Tax of Rs. 2.99,730/- is part of refund claim filed by M/s IGRUA for Rs. 3,86,51,321/-. M/s IGRUA filed a refund claim of Rs. 3,86,51,321/ on 22.04.2014 for refund of the Service Tax paid by them during the period December, 2009 to October, 2012. The said claim was made on the ground that the same was erroneously paid. Whereas in the present case, the refund claim by the Appellant is for the period subsequent to the period involved in the earlier set of proceedings and has got no relevance with the earlier demand proceedings. The same has to be independently adjudged.

16. The Appellant submitted that the process of refund of Service Tax was the outcome of the direction given by Hon'ble Delhi High Court in W.P.(C) 7305/2023 Captain Mansi Batra & Ors. v. Union of India & Ors and department had the full opportunity to put all these points before the Court and they did. Hon'ble Delhi High Court disposed of the matter with the direction to take decision in the interest of the pilots. On the one hand, department is issuing refund and showing that it is complying the direction given by Hon'ble Delhi High Court and on the other hand, had initiated process of recovery of the said refund which is not only bad in law as against the *principle of estoppel* and of *Res judicata* but showing disrespect also to the direction given by Hon'ble Delhi High Court.

17. I find that after the order of Hon'ble Delhi High Court in May 2013, there is no legality or legal approval for levy of service tax. Since the notification of CBEC (which enabled the Dept to collect service tax for Pilot Training) itself is quashed, the amount collected by the Department has to be refunded to the depositors without any hesitation as per the terms of the principles of natural justice which says that money collected by the Department which is not permitted by law should be returned to the depositors as soon as possible.

18. I find that Section 11B of Central Excise Act, 1994 is irrelevant in this context as Department has collected tax money which it is not authorised by law to collect. The act of the authority is also in violation of Constitution as Article 265 of the Constitution of India says that "No tax shall be levied or collected except by authority of law ". I find that without considering the reply of the Appellant an appeal was filed on 08-12-2023 vide appeal no. 980/ST/APPL Alld/2023 by Assistant Commissioner, CGST & Central Excise, Division Raebareli being directed by the higher authorities.

19. The Commissioner CGST & Central Excise (Appeals) vide order dated 20.03.2024 allowed the Department's appeal and rejected the contentions of the Appellant without applying judicial mind.

20. I find that while passing the order, Respondent interprets "relevant date" in the context of clause (f) of Explanation (B) to Section 11B of the Central Excise Act, 1944 whereas, according to the case of the Appellant clause (ec) of Explanation (B) to Section 11B of the Central Excise Act, 1944 is relevant. Thus, order passed by Commissioner (Appeals) is bad in law and liable to be set aside along with SCN dated 23.11.2023 issued by Assistant Commissioner CGST & Central Excise, Raebareli, and I do so.

21. In W.P.(C) 3513/2012 M/s Indian Institute of Aircraft Engineering v. Union of India & Ors the Hon’ble Delhi High Court has held as under:-

> *The levy of service tax on Flying Training Institutes providing training for obtaining Commercial Pilot Licence as per CBEC Instruction No.137/132/2010-ST dated 11.05.2011 has been quashed by Hon'ble Delhi High Court way back in 2013 by the Division bench chaired by then Hon'ble Chief Justice of Delhi HC. It is pertinent to mention here that Service Tax Department's appeals further in*

Hon'ble Allahabad High Court and before Hon'ble Supreme Court has been dismissed at the admission stage.

22. W.P(C).7305/2023 Captain Mansi Batra & Ors. v. Union of India & Ors.

"The appellant along with 9 other Pilots who were ex-students of IGRUA filed a writ petition with Hon'ble High Court of Delhi. In the Decree, Hon'ble High court directed that, "In the interest of the pilots, however, considering that the Union of India is before this Court, it is directed that the issue of service tax refund for the individual pilots, be looked into by the Service Tax Department and the decision be communicated both to them. The UOI shall also place its decision qua the Pilots also, before the Allahabad High Court. The said decision shall be taken WITHIN THREE MONTHS by the Service Tax Department." The legitimacy of these directives are unquestionable unless the judicial order passed was revised.

23. Mafatial Industries Ltd. V UOI, (1997) 5 SCC 536: 1997 (89) ELT 247 (SC): 2002-TIOL-54-SC-CX - The Hon'ble Supreme Court in Para 146 of the aforesaid judgment held that "it may be stated that duty paid in cases, which finally ended in orders or decrees or judgements of Courts, must be deemed to have been paid under protest and the procedure and limitation etc. stated in Section 11B(2) read with Section 11B(3) will not apply to such cases." Therefore, in the light of the above, payment of service tax by the appellant should be treated as 'paid under protest' because it also finally ended with the orders or decrees or judgements of Court.

24. **Jai Bhagwati Impex Pvt. Ltd. V UOI, 2009 (13) STR 24 (Bom.)** - It was held in this case that the assessee cannot be denied the right to claim a refund ordered by the Tribunal on the basis of SLP moved by the assessee. He is not only entitled to the claim of refund but also entitled to interest for the delay in payment of refund. Thus, order passed by Assistant Commissioner, CGST & Central Excise, Division

Raebareli to the extent of rejecting the claim of interest is also not correct and request of the appellant for refund of service tax along with interest is liable to be allowed.

25. In State of Madhya Pradesh & Anr. v. Bhailal Bhai: AIR 1964 SC 1006 the Hon'ble Apex Court has held that in this matter that "payment made under a mistake of law is required to be refunded".

26. Limitation under Sec.11B Not relevant/ not applicable- Department view that appellant's claim is time barred vide Section 11B of Central Excise Act, 1994 is irrelevant in this context as the service tax department has collected service tax, which itself is not authorised by law to collect. When a tax collection is not authorised by law, it amounts to "erroneous payment of tax" or "money paid by mistake" or "tax deposit which is not due" to the Department, and hence it is liable to be returned in terms of the well-established principles of law. Sec.72 of the Indian Contract Act reads as under: "Liability of person to whom money to whom money is paid, or thing delivered, by mistake or under coercion- A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or returned it. Thus, even without any court order, the Dept should have initiated steps to refund the unauthorised service tax collected from the appellant.

27. In view of the above discussions the impugned order cannot be sustained and is accordingly set aside. The Order-In-Original dated 21.08.2023 is upheld. The Appeal filed by the Appellant is allowed, with consequential relief, as per law.

(Order pronounced in open court on 13.11.2025)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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