

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL**

1st Floor, WTC Building, FKCCI Complex, K.G. Road,  
Bangalore – 560 009

**COURT NO. 3**

**Appeal No. : ST/20359/2021**

[Arising out of the Order-in-Appeal No. 381/2020 dated  
24/08/2020 passed by the Commissioner of Central Tax  
(Appeals-1) Bengaluru]

**Ubona Technologies Pvt. Ltd.**

**....Appellant**

1<sup>st</sup> & 3<sup>rd</sup> Floor, No. 442  
17<sup>th</sup> Cross, 4<sup>th</sup> Sector  
HSR Layout,  
Bengaluru – 560 102

**Vs.**

**Commissioner of Central Tax  
Bengaluru South Commissionerate**

**...Respondent**

5<sup>th</sup> Floor, C.R. Buildings  
P.B. No. 5400, Queens Road  
Bangalore – 560 001

**Appearance:**

Mr. Dayananda, CA

....For Appellant

**Vs.**

Mr. K. Vishwanath, AR

.... For Respondent

**CORAM:**

**Hon'ble Mr. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**

Date of Hearing : 28/06/2023

Date of Decision : 28/06/2023

**FINAL ORDER No. 20674 /2023**

**As Per Bench**

The appellant is involved in providing Information Technology Software Service to M/s. Vodafone India Ltd. and was paying service tax. The services are carried out based on the contract executed by the appellant which was valid up to 31/03/2017. Presuming that services may have done even after the period, the appellant continued the services to Vodafone India and raised the invoices pertains to transaction in the month of April 2017. Subsequently, the recipient of the services M/s. Vodafone India objected the invoices and informed that as per the amended provision of law the appellant has to furnish invoices showing GST at the prevailing rate and prescribes the invoices reflecting ST @ 18% element raised by the appellant. Service tax was paid on 05/06/2017 subsequently on raising the invoices under GST, the appellant submitted a credit note on 01/08/2017 nullifying the effect of the invoices issued under the service tax regime. Thereafter a refund application was submitted on 08/01/2018. By considering the above said refund application, a show-cause notice was issued by the respondent alleging that as per Rule 6(3) (b) of the Service Tax Rules, 1994, where an assessee has issued an Invoice, or received any payment, against any service to be provided which is not so provided by him either wholly or partially for any reason, the

assessee may take credit of such excess Service Tax paid by him, if the assessee-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received;

or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an Invoice had been issued.

Thereafter adjudication authority issued impugned order and rejected the refund application on the ground that as per Rule 3 of the Point of Taxation Rules, 2011 date of completion of the provision of service for continuous service is the date of completion of each event as specified in the contract.

Aggrieved by the said order, the appellants filed an appeal before the lower appellate authority and submitted that the show-cause notice and issue considered by the adjudicating authority are contradictory. However, appellate authority dismissed the appeal on the ground that the services were provided by the appellant to M/s. Vodafone India Ltd. on continuous basis. The liability to pay service tax arises at the time of services completed in terms of Rule 3 of Point of Taxation Rules, 2011. Since the service is deemed to be provided on the date of completion, there is no requirement for

the respondent of the service to accept the invoice and make appellant for service tax liability of the service received. Aggrieved by said order, the appellant filed present appeal.

2. The learned counsel submitted that they have paid the service tax based on the invoices raised by them in the month of May for the services of April 2017 and on realization of the objections made by the recipient, they have raised fresh invoices in the month of August 2017 by paying excess tax @ 18% GST. He draws my attention to the findings of the Hon'ble High Court of Karnataka in the case of ***TPI Advisory Services India Pvt. Ltd. Vs. Commissioner of Central Tax, Bangalore*** reported in ***2022 (62) G.S.T.L. 322 (Kar.)*** and submitted that the issue is squarely covered by the said judgment. He has also drawn my attention to the case-law referred at para 4 of the judgment namely, ***Total Environment Woodwork (P) Ltd. Vs. C.C.E., C & S.T., Bangalore-I*** reported in ***2017 (357) E.L.T. 1215 (Tri.-Bang.)*** where this Tribunal held that when the duty was paid twice, once through cenvat credit and in cash for the second time, re-credit has to be given.

3. Learned AR reiterated the findings in the impugned order and submitted that proper course for the appellant to claim refund is to re-avail the credit and to avail the same through transitional credit under GST. The learned counsel for the

appellant submitted that in those cases also the Department objected the refund and draws my attention to the finding of the Tribunal in the matter of ***Pujan Builders Engineers & Contractors Vs. Commr. of C. Ex. & S.T., Vadodara-II*** reported in ***2021 (48) G.S.T.L. 24 (Tri.-Ahmd.)***.

4. I have gone through the submissions made by both sides, this is a case where the invoice was raised as per the contract which is expired and when the service recipient made reasoned objection regarding the procedure to be adopted by the appellant, appellant reversed the invoice and paid GST as per the prevailing law under GST. I find that appellant has a strong case and accordingly, by following the finding given by the Hon'ble High Court of Karnataka in the case of **TPI Advisory Services India Pvt. Ltd.**, the appeal is allowed with consequential relief as per law.

(Order dictated and pronounced in open court)

**(P.A. AUGUSTIAN)**  
**MEMBER ( JUDICIAL)**

...iss

