

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 21732 of 2014**

(Arising out of Order-in-Appeal No. 125/2014-S.T dated 24.02.2014  
passed by the Commissioner of Central Excise, Customs & Service  
Tax (Appeals), Cochin.)

**M/s. SK Constructions,**  
6/260/24, Amc, 2<sup>nd</sup> Floor,  
Palmlands Building, Temple Road,  
Aluva, Kerala - 683 101.

Appellant(s)

*VERSUS*

**Commissioner of Central  
Excise, Customs & Service Tax  
(Appeals),**  
C.R. Building, I.S. Press Road,  
Cochin - 18.

Respondent(s)

**APPEARANCE:**

Mr. T.T. Biju, Advocate for the Appellant

Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)  
HON'BLE MRS R BHAGYA DEVI, MEMBER  
(TECHNICAL)**

**Final Order No. 21975 /2025**

DATE OF HEARING: 01.12.2025

DATE OF DECISION: 01.12.2025

**PER : DR. D.M. MISRA**

This is an appeal filed against Order-in-Appeal No.  
125/2014-S.T dated 24.02.2014 passed by the Commissioner of  
Central Excise (Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellant had adjusted an amount of Rs.2,00,291/- against their service tax liability for the month of January 2007 and June 2007 against the outstanding liability of Rs.3,22,926/-. Alleging that *suo moto* adjustment of service tax amount not permissible under Rule 6(4A) and Rule 6(4B), show-cause notice was issued to them on 08.04.2008. On adjudication, the demand was confirmed against them. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, learned advocate for the appellant submits that they had paid an excess amount of Rs.9,28,492/- towards service tax. Out of that, they have filed a refund claim for an amount of Rs.7,28,201/- and balance amount of Rs.2,00,291/- was adjusted *suo moto* against their other liability. Since, the excess amount of Rs.2,00,291/- after deducting the refund claim lies with the Department, they have adjusted the same taking Rule 6(4B) of the Service Tax Rules, 1994. Learned AR for the Revenue vehemently opposes to *suo moto* adjustment paid by the appellant which according to the Revenue is not permissible.

4. Heard both sides and perused the records.

5. The short issue involved in the present appeal is whether the appellant can adjust an amount of Rs.2,00,291/- which they had not included while claiming refund of Rs.9,28,492/- for their other liabilities under Rule 6(4A) and Rule 6(4B) of the Service Tax Rules, 1994. We find that the learned Commissioner (Appeals), after analysing the issue, observed as follows:

9 i. I have examined the appeal memorandum and the submissions made at the time of hearing. The issue to be decided is as to whether the appellant is eligible to set off the payment he had made for an earlier period against the service

tax payment for the subsequent period as per rule 6 (4A) of the Service Tax Rules 1994. The contention of the appellant is that the Appellate Authority had decided in their favour in the case relating to the earlier period. stating that since the builder has paid the service tax, the appellant is not liable to pay service tax. Therefore, there is no objection in adjusting the amount as they were granted refund of the balance amount by the respondent.

9 ii. The appellant had paid the amount of Rs.9,28,492/- on 30.03.2007 towards service tax arrears for the period from 9/2005 to 12/06. Out of this amount, the appellant had adjusted and utilized an amount of Rs.1,50,291/- towards payment of service tax for the quarter Jan-March, 2007 and also an amount of Rs.50,000/- towards payment of service tax for the quarter April-June 2007. The adjustment came to the knowledge of the department on filing the ST-3 Return on 25.04.2007, From the records it is seen that the appellant had filed refund application on 8.02.2008 for the amount of Rs.7,28,701/-. The refund application was rejected by the respondent on 7.05.2008 and the Appellate Authority had allowed the appeal on 31.07.2008.

9 iii. We may examine Rule 6 (4A) of the Service Tax Rules 1994, which reads:-Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust, such excess, amount paid by him against his service tax liability for the succeeding month or quarter, as the case, may be.

**(4B)** The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the following conditions, namely:-

(i) excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification,

(ii) excess amount paid by an assessee registered under sub-rule (2) of rule 4, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit,

(iii) in cases other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit of

Rupees fifty thousand for a relevant month or quarter, as the case may be,

(iv) the details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.

9 iv. It is evident that during the relevant period the amount paid by the appellant was towards payment of service tax. It was not an amount coming under any of the provisions of rule 6 (4B) of the Service Tax Rules 1994, at the time when the appellant had adjusted the amount under rule 6 (4A) *ibid*. The adjustment made was against the provisions of law at the relevant point of time. It may be correct that the appellant had applied for refund on 8.02.2008, which was rejected by the respondent and later allowed by the Appellate Authority on 31.07.2008. That issue is pending with Hon'ble CESTAT, Bangalore. Therefore, even that issue has not reached finality. Therefore, I do not find any infirmity in the impugned order.

6. We agree with the findings of the learned Commissioner (Appeals) in the circumstances that the appellant are not entitled to adjust *suo moto* the amount of service tax not claimed as refund under Rule 6(4A) and Rule 6(4B) of the Service Tax Rules, 1994. However, in the circumstances of the case, we do not find reason for imposition of penalty on the appellant. Consequently, the impugned order is modified to the extent of setting aside the penalty imposed on the appellant. Appeal is partly allowed to the above extent.

(Order dictated and pronounced in Open Court.)

**(D.M. MISRA)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

Gb/Raja...