

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

REGIONAL BENCH - COURT NO. 3

Service Tax Appeal No. 20128 of 2021

[Arising out of Order-in-Appeal No.408 to 412/2020 dated 29.10.2020
passed by the Commissioner of Central Tax (Appeals-I), Bangalore.]

M/s. Samsung R & D Institute India Bangalore Pvt. Ltd.,

2870 Phonenix Building,
Bagmane Constellation Business Park,
Doddanekkundi Circle, Marathalli Post,
Bangalore-560 037.

.....Appellant(s)

VERSUS

Commissioner of Service Tax (Appeals – I),

Traffic Transit Management Centre,
BMTc Building, 4th Floor,
Above BMTc Bus Stand, Domlur,
Old Airport Road,
Bangalore – 560 071.

.....Respondent(s)

WITH

1. Service Tax Appeal No. 20129 of 2021

(M/s. Samsung R & D Institute India Bangalore Pvt. Ltd. Vs.
Commissioner of Central Excise, Bangalore)

2. Service Tax Appeal No. 20130 of 2021

(M/s. Samsung R & D Institute India Bangalore Pvt. Ltd. Vs.
Commissioner of Central Excise, Bangalore)

3. Service Tax Appeal No. 20131 of 2021

(M/s. Samsung R & D Institute India Bangalore Pvt. Ltd. Vs.
Commissioner of Central Excise, Bangalore)

4. Service Tax Appeal No. 20132 of 2021

(M/s. Samsung R & D Institute India Bangalore Pvt. Ltd. Vs.
Commissioner of Central Excise, Bangalore)

[Arising out of Order-in-Appeal No.408 to 412/2020 dated 29.10.2020
passed by the Commissioner of Central Tax (Appeals-I), Bangalore]

APPEARANCE:

Mr. Sumeet Khurana, Chartered Accountant for the Appellant
Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

CORAM:

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER NOS. 22059 - 22063 /2025

Date of Hearing: 26.06.2025
Date of Decision: 24.12.2025

Per: Pullela Nageswara Rao

These 5(five) appeals have been filed against Orders-in-Appeal No. 408 to 412/2020 dated 29.10.2020 passed by the Commissioner of Central Tax (Appeals-I), Bangalore.

2. The brief facts are M/s. Samsung India Software Operations Pvt., Ltd (Presently known as Samsung R&D Institute India-Bangalore Private Limited), the appellant is registered with the Service Tax Department to provide "Information Technology Software Services (ITSS)". The appellant is a 100% EOU registered with Software Technology Parks of India (STPI) and engaged in providing 'ITSS' to their overseas / foreign client viz. M/s. Samsung Electronics Co. Ltd. Korea. The appellant receives certain services in their unit and takes CENVAT credit of service tax paid on such services. The appellant filed 5(five) refund claims under Notification No. 5/2006-CE (N.T) dated 14.03.2000 read with Rule 5 of CENVAT Credit Rules, 2004 for refund of unutilised CENVAT credit availed on input services said to have been used in export of services for the period from July 2008 to September 2009. The Jurisdictional Assistant / Deputy Commissioner of Service Tax, Division-III, Service Tax Commissionerate, Bangalore processed the said claims and rejected the refund claim vide Orders-in-Original as per details mentioned in the table below;

(Amt. in Rs.)

| Sr. No. | Order-in-Original No. and date | Period of Claim | Claim Date | Amount claimed |
|---------|--------------------------------|-----------------------------|------------|----------------|
| 1 | 486/2010 dated 30/31.08.2010 | July 2008 to September 2008 | 12.02.2009 | 2,46,59,112 |

| | | | | |
|---|---------------------------------|----------------------------------|------------|-------------|
| 2 | 487/2010 dated 30/31.08.2010 | October 2008 to December 2008 | 24.06.2009 | 5,07,50,784 |
| 3 | 378/2010 dated 30.07.2010 | January 2009 to March 2009 | 03.09.2009 | 3,50,66,235 |
| 4 | 405/2011 dated 5/7.07.2011 | April 2009 to June 2009 | 29.03.2010 | 2,67,70,912 |
| 5 | 406/2011 dated 5/7.07.2011 | July 2009 to September 2009 | 29.03.2010 | 2,25,51,467 |

3. The appellant aggrieved by the above Orders-in-Original, preferred an appeal with the Commissioner of Service Tax (Appeals) vide Appeal Nos. 759, 758, 639 of 2010 and 579, 580 of 2011-ST. Commissioner (Appeals) vide Orders-in-Appeal No. 856 to 860/2014 dated 17.12.2014 dismissed the appeals stating that the appellant failed to establish that they have fulfilled the conditions of Rule 3(2)(a) of Export of Service Rules, 2005. Aggrieved by the above Orders-in-Appeal No. 856 to 860/2014 dated 17.12.2014, the appellant preferred an appeal before Hon'ble CESTAT (Bangalore). The Hon'ble CESTAT (Bangalore) vide Final Order Nos. 20543-20553/2019 dated 16.07.2019 read with Miscellaneous Order Nos. 20079-20089 dated 12.03.2020 set aside the Orders-in-Appeal No. 856 to 860/2014 dated 17.12.2014 and remanded the matter to Commissioner (Appeals). In deference of said Hon'ble CESTAT Order, the appellant filed appeals with Commissioner (Appeals) vide Appeal Nos. 187 to 191/2020 A-1. Commissioner (Appeals) vide Orders-in-Appeal no. 408 to 412/2020 dated 29.10.2020 ('impugned order') allowed the appeals by the way of setting aside the Orders-in-Original passed by Assistant Commissioner of Service Tax, Division-III, Bangalore, and remanded back all the cases for fresh adjudication. Aggrieved by the impugned Orders-in-Appeal no. 408 to 412/2020 dated 29.10.2020, the appellant filed these 5(five) appeal before the Tribunal.

4. Further, in the meantime as per the Orders-in-Appeal No. 408 to 412/2020 dated 29.10.2020 the matter was taken up for fresh adjudication and the adjudicating authority vide Orders-in-Original No. 06 to 10/2021 (R) dated 22.06.2021, rejected the refund claims on account of non-submission of documents / information as per the directions of Commissioner (Appeals) in Orders-in-Appeal No. 408 to 412/2020 dated 29.10.2020.

5. The learned Chartered Accountant (CA) for the appellant during the hearing on 26.06.2025 submitted that; the Appellant had made a specific request for grant of interest; however, the Respondent did not consider the same and has nowhere provided any comment on the said interest claim in the Orders-in-Appeal No. 408-412/2020 dated 29.12.2020; aggrieved by the said order the Appellant had preferred the present appeal against the order passed by Commissioner (Appeals) for grant of interest.

6. The learned Chartered Accountant (CA) further submits that; in case of Prakash M. Dugad Vs. Deputy Commissioner of Income-Tax [[2006] 154 TAXMAN 46 (PUNE) ITAT PUNE Bench] it has been held that if an issue is raised before Commissioner (Appeals) and if he fails to deal with it, such an issue would be said to have arisen out of order of Commissioner (Appeals) and Tribunal would be within its power to adjudicate such issue; in this regard, relevant extract of the said Judgement is reproduced below;

"The matter was highly contested before the CIT (A) which is apparent from the written submissions of the assessee dated March 15, 2001 before the CIT(A), copy of which appears at pp. 7 and 9 of the paper book. However, CIT(A) had chosen not to deal with such issues in his order dated March 30, 2001. In view of the above facts, we hold that the issue regarding time-barring assessments arises from the order of the CIT(A), dated March 15, 2001, and the Tribunal is within its powers to adjudicate such issue. Hence, the objection of the senior Departmental Representative is hereby rejected".

7. The learned Chartered Accountant (CA) submits that; the powers laid out in section 35C of Central Excise Act, 1944 and Income Tax Act, 1961 are principally the same and hence, the said judgement would squarely apply in the instant case. In this regard, he draws my attention to the relevant extracts of the both the laws for ease of reference;

Section 35C of Central Excise Act, 1944: Orders of Appellate Tribunal.-

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

Section 254 of Income Tax Act: Orders of Appellate Tribunal.

(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

8. The learned Chartered Accountant (CA) submits that based on the above, it is clear that even if an issue was raised but the same was not dealt with in the Commissioner (Appeals) order, then the same would be considered to be arisen from such order passed by Commissioner (Appeals) and the Tribunal would be within its powers to adjudicate the same.

9. The learned Chartered Accountant (CA) further submits that; in the subject appeals the matter involved is on legality of interest claims and does not involve any factual aspects and grant of interest on the said refund claims; alternatively, if the same is not allowed requests to provide a specific direction to the Commissioner of Central Tax (Appeals) where the said refund claims are pending under appeal stage

which was filed on March 28, 2013 to grant interest along with refunds under appeal; they would furnish any additional information and/or documents that may be required in this regard.

10. The learned Authorised Representative (AR) for the Revenue submitted that the matter in all the 5(five) appeals has been remanded for denova adjudication to the adjudicating authority by Commissioner (Appeals).

11. Heard both sides and perused the records.

12. I find that these 5 (five) appeals were filed before the Tribunal to pass orders for grant of interest on the refund claims filed by the appellant. I find that the impugned refund claims were rejected by the adjudicating authority vide Orders-in-Original No. 486, 487 both dated 31.08.2010, 378/2010 dated 30.07.2010, and 405, 406 both dated 05.07.2011 against which an appeal was filed before Commissioner (Appeals) who vide Orders-in-Appeal No. 856 to 860 dated 17.12.2014 dismissed the appeals stating that Appellant failed to establish that they have fulfilled the conditions of Rule 3(2)(a) of Export of Service Rules, 2005. Aggrieved by the said Orders-in-Appeal the appellant preferred an appeal with CESTAT, Bangalore, who vide Final Order Nos. 20543-20553/ 2019 dated 16.07.2019 read with Miscellaneous Order Nos. 20079-20089 dated 12.03.2020 allowed the appeals and remanded the matter to Commissioner (Appeals). The Commissioner (Appeals) vide Orders-in-Appeal no. 408 to 412/2020 dated 29.10.2020 ('impugned order') allowed the appeals by the way of setting aside the Orders-in-Original passed by Assistant Commissioner of Service Tax, Division-III, Bangalore, and remanded back all the cases for fresh adjudication. On denovo adjudication, the adjudicating authority vide Orders-in-Original No. 06 to 10/2021(R) dated 22.06.2021 rejected the refund claims. I find that the appellant during the hearing on 25.06.2025 before this bench has submitted that against the denovo adjudication order they have filed an appeal before the Commissioner (Appeals), however the details were not submitted. Therefore the appellant was informed to submit the details of the denova adjudication proceedings. The

appellant vide letter dated 27.11.2025 submitted the copy of the denova adjudication Order-in-Original No. 23/2024-25/AC(R) dated 27.01.2025 passed by the Assistant Commissioner, wherein the Adjudicating Authority has rejected all the 5(five) impugned refund claims.

13. I find from the copy of the denova adjudication Order-in-Original No. 23/2024-25/AC(R) dated 27.01.2025 passed by the Assistant Commissioner the Appellant aggrieved by the Orders-in-Original No. 06 to 10/2021(R) dated 22.06.2021 preferred a Writ Petition before the Hon'ble High Court of Karnataka seeking relief vide WP No. 2357 of 2022. The Hon'ble High Court of Karnataka vide their Order dated 06.08.2024 have allowed the Appellant's petition by setting aside the Order-in-Original dated 22.06.2021 and the matter was remitted back to the respondents for reconsideration afresh in accordance with law. Based on this, the appellants have filed an application for refund vide letter dated 29.10.2024 before the adjudicating and the adjudicating authority has passed the denova adjudication Order-in-Original No. 23/2024-25/AC(R) dated 27.01.2025. Further, I find that the appellant has preferred an appeal against this denova adjudication order before Commissioner (Appeals) on 28.03.2025.

14. In view of the above facts and circumstances, I find that the Appeal Nos. ST/20128, 20129, 20130, 20131, 20132/2021 filed by the appellant have become infructuous and are liable to be dismissed.

15. Accordingly, the Appeal Nos. ST/20128, 20129, 20130, 20131, 20132/2021 filed by the appellant are dismissed as infructuous.

(Order pronounced in Open Court on 24.12.2025)

(Pullela Nageswara Rao)
Member (Technical)