CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 21393 of 2015

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-019 to 021-15-16 dated 28.04.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.)

Sree Chakra Living Space
Govind, XXI/270, Chinmaya Road,
Tripunithura,
Kerala. **………Appellant(s)**

VERSUS

Commissioner of Central Excise,
Customs and Service Tax,
C R Building, I S press Road,
Ernakulam, Cochin, Kerala - 682018 **......Respondent(s)**

APPEARANCE:
Mr. K. Hariharan, Chartered Accountant (CA) for the Appellant
Mr. Rajashekar B.N.N, Superintendent (AR) for the Respondent

CORAM:
Hon'ble Mr. P. A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20582 /2026

Date of Hearing: 03.03.2026
Date of Decision: 28.04.2026

Per: Pullela Nageswara Rao

This appeal is filed against Order-in-Appeal No. COC-EXCUS-000-APP-019 to 021-15-16 dated 28.04.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

2. The brief facts of the case are, the appellant M/s. Sree Chakra Living Space is a builder and developer in Cochin engaged in construction and selling of residential flats and is registered under "construction of complex service". The appellant enters into agreements with prospective customers for construction of dwelling units in a residential complex being composite contracts of construction involving supply of goods and services.

3. Details of the appeal are as under;

Particulars	Appeal No. ST/21393/2015
Period Of Dispute	04/2007 to 12/2008
Show Cause Notice No./ Date	69/2009 (R)17/2010-ST
Order-in- Original	No.174/2009 (R)- dated 30.10.2009
Order-in-Appeal	Nos. 19-21/15-16 dated 28.04.2015
Refund/Demand of Service Tax	Refund of Rs.9,19,768/-
Service provided	Construction of Complex Services

4. The above appeal is filed against a combined Orders-in-Appeal dated 28.4.2015 passed by Commissioner (Appeals), Cochin.

5. The issues involved in the present appeal for consideration are whether:-

a) the services under dispute classified as "construction of complex service" as per section 65 (105) (zzzh) of the Finance Act, 1994 are exempt from service tax during the relevant period.

b) the refund claim of Rs. 9,19,768/- filed on 18.08.2009 is within the time limit as per section 11 B of the Central Excise Act, *1944 and also attract unjust enrichment provision in view of the clause 11 of the agreement with customers which provides that all taxes should be borne by the clients.*

6. The learned Adjudicating Authority vide Orders-in-Original 30.10.2009, rejected the refund claim of Rs. 9,19,768/- based on merits, unjust enrichment and limitation. On merits the refund was rejected on the ground that the appellant is not entitled to exemption as per Circular No. 108/02/2009-ST dated 29.01.2009 and that the appellant is not the actual owner of the properties and they have only possessory right to develop the land and construction of the building, therefore the service rendered by the appellant cannot be considered as self-service, hence the exemption in terms of the Board Circular No. 108/02/2009-ST dated 29.01.2009 cannot be extended to the appellant. Aggrieved by the Order-in-Original dated 30.10.2009 appellant filed an appeal before Commissioner (Appeals), who vide the common impugned order dated 28.04.2015, dismissed the appeal of the Appellant and upheld the Order-in-Original. Aggrieved by the impugned order appellant filed this appeal before this Tribunal.

7. The learned Chartered Accountant (CA) for the appellant during the hearing as regards the applicability of Circular No. 108/02/2009-ST dated 29.01.2009, submits that; the Hon'ble Bangalore Tribunal and other benches have held that builders and developers are not liable for payment of service tax under 'construction of complex' services for the period up to 01.07.2010 based on the Circular No. 108/02/2009-ST dated 29.01.2009 and 151/2/2012-ST dated 10.02.2012 and also as per the amendment to section 65(105) (zzzh) by the insertion of explanation from 01.07.2010, the relevant decisions are as below:

I. **Skyline Builders (Trivandrum) Vs. Commissioner, Trivandrum-2025-TIOL-996-CESTAT-Bang-Final Order No. 20511/2025 dated 01.04.2025**

II. **CCE & ST Vs. Desai Homes Final Order No. 20226 /2025- dated 28.02.2025- (Tri-Blr)**

III. **Commissioner of C. Ex. & S.T., Bangalore-LTU Vs. Keerthi Estates Pvt. Ltd.- 2019 (26) G.S.T.L. 227 (Tri. - Bang.)**

IV. **Commr. Of Cus., C.E. & S.T., Visakhapatnam-I Vs Pragati Edifice Pvt. Ltd. - 2019 (31) G.S.T.L. 241 (Tri. - Hyd.)**

V. **Krishna Homes Vs. Commissioner Of Central Excise, Bhopal -2014 (34) S.T.R. 881 (Tri.-Del.)-Composite Contracts cannot be taxed under "Construction Of Complex" services.**

8. The learned CA submits that; without prejudice to the above submission of tax exemption as per the Circulars and Tribunal decisions, the Hon'ble Supreme Court has held in **Commissioner, Central Excise & Customs, Kerala Vs. Larsen & Toubro Ltd - 2015 (39) STR 913 (SC)** that "works contracts" are taxable only from 01.06.2007 and only under the category of "works contract" services as defined under section 65 (105) (zzzza), only pure services were held as taxable under existing categories of 'commercial or industrial construction' service [65(105)(zzq)] and 'construction of complex' services [65(105) (zzzh)]. Accordingly, service tax demand on composite contracts comprising of materials and labour are not sustainable for the period before and after 01.06.2007 under "construction of complex" services; further, relying on the **M/s. Larsen & Toubro Ltd**., decision (supra), the Hon'ble Chennai /Hyderabad benches of CESTAT have also held that composite contracts of construction involving supply of goods and services are taxable only from 01.06.2007 under the classification of "works contract service" and post 01.06.2007, the demand is not sustainable under any other service categories.

9. The learned CA in support of the above contention relied on the following case laws:

a. **Commr. of Cus., C.E. & S.T., Visakhapatnam-I Vs. Pragati Edifice Pvt., Ltd. - 2019 (31) G.S.T.L. 241 (Tri. - Hyd.)**

b. **Real Value Promoters Pvt. Ltd. Vs. Commissioner Cestat-Mad 2018-Tiol-2867-**
c. **Jain Housing & Construction Ltd. Vs. Commissioner Of Service Tax, Chennai - (2023) 10 Centax 170 (Tri.-Mad) - Affirmed by SC in-(2023) 10 Centax 171 (SC).**

10. The learned CA further submits that; the Refund claim of Rs.9,19,768/- is not barred by limitation, it is well settled that time limit stipulated in section 11B of Central Excise Act, 1944, as applicable to service tax vide section 83 of Finance Act, 1994, is not applicable to taxes paid under 'mistake of law' on exempted services. He relied on following decisions:-

a. **Commissioner Of Central Excise (Appeals), Bengaluru, Vs. KVR Construction [2012 (26) S.T.R. 195 (Kar.)] Hon'ble Apex Court dismissed the SLP on 11.07.2011** and is reported as **Commissioner Vs. KVR Construction- [2018 (14) G.S.T.L. J70 (S.C.)]**
b. **Way 2 wealth Brokers Pvt. Ltd. Vs. Commissioner Of C.T., Bengaluru - [2022 (61) G.S.T.L. 349 (Kar.)]**
c. **Commissioner Vs. Motorola India Pvt. Ltd. -2006 (206) E.L.T. 90 (Kar.), 2008 (11) S.T.R. 555 (Kar.)**

11. The learned CA submits that; in Para 11 (iii) of the Orders-in-Appeal, dated 28.4.2015 it was held that the refund claim is barred by unjust enrichment in view of the clause 11 of the agreement with customers which provides that all taxes should be borne by the clients and therefore the appellant has no *locus standi* to claim the refund; the terms regarding the statutory levies in the agreement with customers are identical and do not contain any stipulation about service tax; on the other hand, it is concluded in the Order-in-Original at Para 21 that the assessee had not collected service tax showing it as separately from the clients; however it is presumed that the assessee collected service tax from the clients as the amounts collected from clients could be treated as only cum-tax value and further being an indirect tax could

have been passed on to the clients; it cannot be inferred that service tax is collected merely based upon any clause in the agreement, also the tax authorities have not brought on record any material to establish that the appellant has collected service tax; in this regard, he relied on the case of **M/s. Krishna Homes Vs. Commissioner-[2014 (34) STR 881 (Tri-Del)].**

12. The learned CA also relied on the following case laws in this regard:-

a. **CCE & C Belgaum Vs. Mahakoshal Beverages Pvt., Ltd. 2014 (33) S.T.R. 616 (Kar.)**
b. **Steel Authority of India Ltd. Vs. CCE, Mysore-[2023) 9 Centax 78 (Tri.-Bang)].**
c. **Commissioner Vs. Sun Pharmaceuticals Inds. Ltd. E.L.T. 3 (S.C.). 2015 (326)**
d. **CCE, Bangalore Vs. Brindavan Beverages (P) Ltd. [2007 (213) ELT 487 (SC)]**

13. The learned Authorized Representative (AR) for the Revenue reiterated the findings in the impugned order of Commissioner (Appeals) and relied on the decision of the jurisdictional Hon'ble High Court of Kerala in the case of **M/s. Southern Surface Finishers Vs. Asstt. Commr. Of C. Ex., Muvattupuzha-2019 (28) G.S.T.L.202 (Ker.)**

14. Heard both sides and perused the records.

15. We find that the appellant has filed a refund claim for the service tax paid on the services of 'construction of complex' service falling under section 65 (30a) read with section 65(105)(zzzh) of the Finance Act, 1994. The claim was rejected on the grounds of limitation under section 11B of the Central Excise Act, 1994 as applicable to service tax as per section 83 of the Finance Act, 1994 and also on unjust enrichment. As regards the rejection of refund claim, we find from the averments of the appellant and the case laws relied upon, the plea is

that that appellant has paid the service tax by 'mistake of law'. The Adjudicating Authority /Appellant Authority held that payment of service tax was not by mistake of law. The adjudicating authority has held that the appellant has not provided any evidence to show that service tax is not collected from the customers /clients by the appellant. We also find that the appellant has not adduced any evidence with regard to not passing on the incidence of service tax to the customer /clients of the appellant. Further, as per the law declared by the Hon'ble Supreme Court in the case of **Mafatlal Industries Ltd Vs. Union of India reported in 1997 (89) ELT (247) SC,** it is held that all refund claims have to satisfy the conditions of section 11B of the Central Excise Act, 1944. We find the appellant has relied upon the case of **M/s. KVR Construction (supra)** and this decision is being followed by this Tribunal. However, we find that the jurisdictional Hon'ble High Court of Kerala in the case of **M/s. Southern Surface Finishers Vs. Asstt. Commr. Of C. Ex., Muvattupuzha-2019 (28) G.S.T.L.202 (Ker.)** held that;

> ***"7.*** *K.S. Paripoornan, J., who delivered a separate judgment, concurred with the majority view that the refund of duty is always not automatic, especially, when the assessee had passed on the duty to the buyers or any other person. A different view was expressed in respect of any and every claim of refund of illegal or unauthorised levy being only in accordance with the provisions of the Act, i.e.: Section 11B as of now. It was held that the action by way of a suit or under Article 226 of the Constitution was maintainable when the levy is illegal, void or unauthorised or without jurisdiction. Such action was held to be governed by "the general law and the procedure and period of limitation provided by the specific statute will have no application" (sic). The categories to which the general law was applicable were specified as :*
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> ***Category (I)*** *where the levy is unconstitutional - outside the provisions of the Act or not contemplated by the Act :*

Category (II) *where the levy is based on misconstruction or wrong or erroneous interpretation of the relevant provisions of the Act, Rules or Notifications; or by failure to follow the vital or fundamental provisions of the Act or by acting in violation of the Fundamental Principles of judicial procedure:*

Category (III) *Mistake of law - the levy or imposition was unconstitutional or illegal or not exigible in law (i.e. without jurisdiction) and, so found in a proceeding initiated not by the particular assessee, but in a proceeding initiated by some other assessee, either by the High Court or the Supreme Court and as soon as the assessee came to know of the judgment (within the period of limitation) he initiated action for refund of the tax paid by him, due to mistake of law :*

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331. Subject to the above, if a levy or imposition of tax is held to be unconstitutional or illegal or not exigible in law i.e. without jurisdiction, it is open to the assessee to take advantage of the declaration of the law so made, and pray for appropriate relief inclusive of refund on the ground that tax was paid due to mistake of law, provided he initiated action within the period of limitation prescribed under the Limitation Act. Such assessee should prove the necessary ingredients to enable him to claim the benefit under S.72 of the Contract Act read with S.17 of the Limitation Act. Dulabhai's case (supra) - para 32 - Clauses (4) and (5).

332. It should be borne in mind, that in all the three categories of cases, the assessee should prove the fundamental factor that he has not "passed on" the tax to the consumer or third party and that he suffered a loss or injury. This aspect should not be lost sight of, in whatever manner, the proceeding is initiated - suit, Art.226, etc.

8. *B.L. Hansaria, J. concurred with K.S. Paripoornan, J., Suhas C. Sen, J. wrote a dissenting judgment, holding the amended provisions to be a mere device and a cloak to confiscate the* *property of the taxpayer; but concurred with K.S. Paripoornan, J. on the question of an action by way of suit or writ petition being maintainable. Ahmadi C.J., though concurring with B.P. Jeevan Reddy, J. expressed a different view on two aspects. In cases of the levy being held to be unconstitutional or void for lack of inherent jurisdiction, the claim of refund as tax paid under mistake of law, was held to be outside the ambit of the Excise Act and the limitation applicable was held to be that specified under Section 17(1)(c) of the Limitation Act. The other aspect on which dissent is expressed, was with respect to an assessee's challenge to the constitutionality having failed and later, the view being reversed. In such cases Ahmadi, C.J., was of the opinion that the assessee's remedy cannot be held to be foreclosed and he should be left to legal remedies of review etc. of the earlier order.*

9. *The Learned Single Judge who referred the matter, rightly noticed the different views expressed, which however on the question of mistake of law and the manner in which refund has to be applied for; we have to concede to the majority view of five Learned Judges. From the above extracts, it has to be noticed that Justice B.P. Jeevan Reddy in his majority judgment; concurred to by a majority of five out of nine, held the refund to be possible only under the provisions of the Act. We need only refer to the category of payment under a mistake of law. We do not agree with the Learned Single Judge that the facts of the case discussed in WP (C) No. 18126/2015 do not fall under any of the categories. A payment made on a mistaken understanding of law finding the levy to be exigible for the services rendered, would be a levy made or paid under mistake of law and not one categorized as an unconstitutional levy or illegal levy. We cannot agree with the elastic interpretation made by the Learned Single Judge that the case would be one on account of mistake of fact in understanding the law. The mistake committed by the assessee may be one on law or on facts; the remedy would be only under the statute. Here we are not concerned with a case as specifically* *noticed in Mafatlal Industries Limited (supra) of an assessee trying to take advantage of a verdict in another case. Here the assessee had paid the tax without demur and later realised that actually there was no levy under the provisions of the statute. However, that again is a mistake of law as understood by the assessee and for refund, the assessee has to avail the remedy under the provisions of the statute and concede to the limitation provided therein.*

10. *B.P. Jeevan Reddy, J. after elaborate discussion, finds the Excise Act to be a self contained enactment with provisions for collecting taxes which are due according to law and also for refunding the taxes collected contrary to law, which has to be under Sections 11A and 11B. Both provisions were found to contain a uniform rule of limitation, namely six months at that time and then one year and now two years. Relying on the decision in AIR 1965 SC 1942 [Kamala Mills Ltd. v. State of Bombay], it was held that where a statute creates "a special right or a liability and also provides the procedure for the determination of the right or liability, by the Tribunals constituted in that behalf and provides further that all questions above the said right and liability shall be determined by the Tribunal so constituted, the resort to Civil Court is not available, except to the limited extent pointed out in Kamala Mills Ltd. (supra). Central Excise Act having provided specifically for refund, which provision also expressly declared that no refund shall be made except in accordance therewith, the jurisdiction of the Civil Court was found to be expressly barred. It was held that once the constitutionality of the provisions of the Act, including the provisions relating to refund is beyond question, then any and every ground, including violation of principles of natural justice and infraction of fundamental principles of judicial procedure has to be urged under the provisions in the Act, obviating the necessity of a suit or a writ petition in matters relating to a refund. The only exception provided was when there was a declaration of unconstitutionality* *of the provisions of the Act, in which event, a refund claimed could be otherwise than under Section 11B. We, specifically, emphasise the underlined portion in paragraph 79 of the cited decision as extracted hereinabove. The earlier view that the limitation was three years from the date of discovery of mistake of law was specifically differed from, since the refund had to be under the remedy as provided in the statute, which prescribed a limitation.*

11. *At the risk of repetition, here, the assessees paid up the tax and later realised that they are entitled to exemption. Going by the majority judgment, in Mafatlal Industries Limited (supra), we have to find such cases being subjected to the rigour of limitation as provided under Section 11B. The limitation, in the relevant period, being one year, there could be no refund application maintained after that period. We, hence, find the order impugned in the writ petitions to be proper and we dismiss the writ petitions. We hold that the judgment dated 6-7-2015 in WP (C) No. 18126/2015 [2015 (39) S.T.R. 706 (Ker.)] [M/s. Geojit BNP Paribas Financial Services Ltd. v. Commissioner of Central Excise] is not good law, going by the binding precedent in Mafatlal Industries Limited (supra). The writ petitions would stand dismissed answering the reference in favour of the Revenue and against the assessees. No costs."*

16. We find that in this case the service tax was paid by the appellant under the category of 'construction of complex service'. The disputed period was April 2007 to December 2008, and the 'works contract' service was introduced from 01.06.2007 and the appellant ought to have discharged his service tax liability, post 01.07.2007 under 'works contract service', instead the appellant chose to classify their activity under 'construction of complex service' and paid the service tax.

17. Therefore, following the decision of Hon’ble Apex Court in **Mafatlal Industries Ltd.,** supra and the decision of the jurisdictional High Court

of Kerala in the case of **Southern Surface Finishers Versus Asstt. Commr. of C. Ex., Muvattupuzha,** supra, we find that the rejection of the refund claim filed by the appellant by the learned lower authorities on grounds of not filing of the refund claim within the limitation period and also not discharged the burden of unjust enrichment, the prerequisites under Section 11B of the Central Excise Act, 1944, is sustainable. Hence, the impugned order is liable to be upheld.

18. In view of the above discussion, Appeal No. ST/21393/2015 against the rejection of refund claim is dismissed and the impugned order is upheld.

(Order pronounced in Open Court on 28.04.2026)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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