

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41040 of 2019

(Arising out of Order-in-Appeal No. 150/2019 (CTA-I) dated 07.05.2019 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. UR Options,

No. 1, Sriram Nagar North Street,
TTK Road, Alwarpet,
Chennai – 600 018

: Appellant

VERSUS

The Commissioner of G.S.T. & Central Excise,

Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

: Respondent

APPEARANCE:

Shri. J. Shankaraman, Advocate for the Appellant

Shri. S. Sivaramakrishnan, Advocate for the Appellant

Shri. V. Shanmuganathan, Advocate for the Appellant

Ms. T. Usha Devi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 41021 / 2019

DATE OF HEARING: 26.07.2019

DATE OF DECISION: **09.08.2019**

This appeal is filed by the appellant wherein it has assailed the findings of the First Appellate Authority who has rejected its refund claim of the pre-deposit paid in excess, by mistake, of the mandatory requirement.

2.1.1 Shri. J. Shankaraman, Ld. Advocate appearing for the appellant, contends that the Adjudicating Authority demanded Service Tax on :

- (i) Short Term Accommodation Service;
- (ii) Renting of Immovable Property Service; and
- (iii) Business Auxiliary Service;

and vide Order-in-Original No. 03/2018 dated 31.01.2018 appropriated an amount of Rs. 14,02,265/- and Rs. 3,05,714/- apart from charging interest and imposing penalty at relevant rates. Aggrieved by the above order, the appellant preferred an appeal before the First Appellate Authority, who vide Order-in-Appeal No. 321/2018 (CTA-I) dated 27.06.2018 remanded the matter to the Adjudicating Authority for verification of documents with regard to the eligibility of abatement under Notification No. 34/2011-ST dated 25.04.2011, granting partial relief to the appellant.

2.1.2 Ld. Advocate submits that while filing appeal before the First Appellate Authority, the appellant had made by mistake excess pre-deposit of Rs. 1,21,947/- and further submits that the appropriated amount of Rs. 14,02,265/- was much more than the required pre-deposit which is at the rate of 7.5%. Hence, the appellant filed an application for refund of the wrongly paid pre-deposit of Rs. 1,21,947/- before the Adjudicating Authority. The Adjudicating Authority, considering the above claim of refund, issued a Show Cause Notice dated 03.12.2018 and vide Order-in-Original No. 12/2019(R) dated 07.02.2019 rejected the refund claim. The appellant having not met with success in its appeal against the above rejection of refund before the First Appellate Authority, who vide impugned Order-in-Appeal No. 150/2019 (CTA-I) dated 07.05.2019 rejected the same, has filed the present appeal.

2.2 Ld. Advocate also submitted that although the appropriated amount of Rs. 14,02,265/- was itself much

more than the required pre-deposit of 7.5%, the appellant is not seeking for refund of this excess amount so deposited, rather the appellant's claim is restricted to the additional pre-deposit made by mistake of Rs. 1,21,947/-.

2.3 Drawing attention to paragraph 3.1 of the C.B.E.C. Circular No. 984/8/2014-CX dated 16.09.2014, Ld. Advocate submits that it is very clear that even the payment made during the course of investigation prior to the date of filing of the appeal is required to be considered as pre-deposit and is itself sufficient compliance with the requirement of pre-deposit qua Section 35F of the Central Excise Act, 1944.

3.1 *Per contra*, Ms. T. Usha Devi, Ld. AR appearing for the Revenue, vehemently contended that the authorities below have strictly followed the Board Instruction vide Circular No. 984/8/2014-CX dated 16.09.2014 wherein the guidelines for refund of pre-deposit have been provided.

3.2 Ld. AR specifically drew attention to paragraph 5 of the Circular to emphasize that the appellant would get the refund only when an appeal is decided in its favour and that the first appeal having been decided against the appellant, in terms of paragraph 5.3, the appellant is not entitled to any refund at the moment. Hence, she supports the findings of the lower authorities.

4. I have considered the rival contentions, gone through the orders of the lower authorities as also the Board Instructions (*supra*) relied on by both the assessee as well as the Revenue. The only issue in this appeal to be decided is the eligibility of the appellant for the refund of Rs. 1,21,947/- paid by mistake as pre-deposit, while preferring the first appeal.

6.1 The Adjudicating Authority as well as the Commissioner (Appeals) have relied only on paragraph 5 of the above Circular, which is one of the instructions as

regards treating of pre-deposit post first appeal. Hence, it can be very safely assumed that the Revenue has no disputes with regard to the payment made, as canvassed, during the course of investigation, which amount has been appropriated vide the Order-in-Original. If the Revenue is going strictly by the requirements of Section 35FF read with the Circular (*supra*), then the liability of the appellant remains at paying either 7.5% or 10% and not a penny more. Consequently, the appellant could also claim refund of every penny in excess of that 7.5% or 10%, as the case may be.

6.2 Admittedly, the appellant is not claiming refund of any part of the amount it paid during the investigation which is shown to have been appropriated, but is only claiming refund of the excess pre-deposit made by mistake while filing its first appeal; it would have been different if no such amounts were paid during investigation.

7. The purpose of pre-deposit has been satisfactorily met by the appellant and hence, in view of the specific facts of the case as discussed above, I am of the considered view that the appellant should get back the excess pre-deposit made by mistake. When the legislature makes it clear what is to be collected as pre-deposit, in the absence of any finding with regard to the non-satisfaction of such conditions as to the pre-deposit, the Revenue cannot retain such excess amount remitted by mistake. Therefore, the impugned order cannot sustain and same is set aside. The Revenue shall refund the excess pre-deposit as claimed by the appellant.

8. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **09.08.2019**)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)