IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

SERVICE TAX APPEAL No. 41671 of 2019
[Arising out of Order-in-Appeal No.227 & 228/2019 (CTA-I) dated 30.07.2019 passed by Commissioner of GST & Central Excise (Appeals-I), Chennai]

M/s.TVS Supply Chain Solutions Ltd. **Appellant**
[Formerly Known as TVS Logistics Services Ltd.]
No.226, Cathedral Road,
Chennai 600 086.

Vs.

The Commissioner of GST & CE **Respondent**
Chennai North Commissionerate
No.26/1, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.

WITH

SERVICE TAX APPEAL No. 41672 of 2019
[Arising out of Order-in-Appeal No.227 & 228/2019 (CTA-I) dated 30.07.2019 passed by Commissioner of GST & Central Excise (Appeals-I), Chennai]

M/s.TVS Supply Chain Solutions Ltd. **Appellant**
[Formerly Known as TVS Logistics Services Ltd.]
No.226, Cathedral Road,
Chennai 600 086.

Vs.

The Commissioner of GST & CE **Respondent**
Chennai North Commissionerate
No.26/1, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.

AND

SERVICE TAX APPEAL No. 40342 of 2021
[Arising out of Order-in-Appeal No.103/2020 dated 15.12.2020 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore, Circuit Office @ Madurai]

M/s.T.V.Sundram Iyengar & Sons Ltd. **Appellant**
"TVS Building"
No.7B, West Veli Street,
Madurai 625 001.

Vs.

The Commissioner of GST & CE **Respondent**
Madurai Commissionerate,
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai 625 002.

APPEARANCE:

Shri S. Muthuvenkatraman, Advocate for the Appellant
Shri L.Nandakumar, AC (AR) for the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing: 29.06.2021
Date of Decision:29.06.2021

FINAL ORDER No. 41618-41620 / 2021

All the above appeals relate to the same issue of refund and hence were heard together and are disposed by this common order.

2. On behalf of the appellant, Ld. Counsel Shri S. Muthuvenkatraman appeared and argued the matter. He submitted that the company M/s.T.V. Sundaram Iyengar & Sons Private Ltd. is situated at Madurai (appellant in Appeal ST/40342/2021) and this company was taken over by M/s.TVS Supply Chain Solutions Ltd., Chennai. The Company M/s.TV

Sundaram Iyengar & Sons Private Ltd. had procured services from the service provider for which they paid service tax as per the invoices raised by the service provider. Later when this company was taken over by M/s.TVS Supply Chain Solutions Ltd., the said service provider insisted on paying GST for which GST invoices were raised against the appellant. The provision of services started prior to introduction of GST and was completed after the coming into force of GST law. The appellant in order to satisfy the customer on his insistence had paid the GST also as per invoices raised. Later, upon understanding that they had paid tax twice on the very same service, they opted for claiming refund. However, since from 01.07.2017, as the GST Act had come into force and being the transitional period, the appellant was under dilemma as to whether to seek refund of service tax or GST. So they submitted refund claim of GST in Chennai Commissionerate and also a refund claim of service tax within the Madurai jurisdictional Commisssionerate. The refund claims filed before Chennai Commissionerate were rejected. Against such orders appellant preferred appeal Nos.ST/41671/2019 and ST/41672/2019 before this Tribunal. The refund claim filed before the Madurai Commissionerate was rejected against which appeal was filed before Commissioner (Appeals). The matter was remanded by the Commissioner (Appeals) to the original authority, with the direction that the same is to be kept pending till the outcome of the appeals pending before CESTAT filed by M/s.TVS Supply Chain Solutions Ltd. Ld. Counsel contends that since the appellant has paid tax twice on the very same service, would be eligible for refund of either service tax or GST. If all the three matters are adjudicated by the common authority, it would be possible to resolve the issue more correctly. Thus, Ld. Counsel for appellant sought for remand of all these matters to be adjudicated by a common authority.

3. Ld. A.R. Shri L. Nandakumar supported the findings in the impugned orders passed in respect of all these appeals.

4. Heard both sides.

5. Ld. Counsel for appellant is seeking for a remand for the reason that the disputes relating to the tax paid on the very same service are pending before different jurisdictional authorities. From the submissions made by the Ld. Counsel as well as from records, it is seen that though tax paid is in the nature of service tax and GST, it is paid on the very same service. If the matter is adjudicated by a common authority, such authority would be able to look into all aspects and give a correct decision in the matter. Further, though they had sent a representation dt. 19.11.2019 to the Principal Chief Commissioner to provide clarity as to which jurisdiction would apply for refund in their case, they have not received any response till date. They have also filed letter dated 27.3.2018 which reads as under :

> "With reference to the above, we enclose herewith the application for refund of Service Tax paid during the period January 2017 to March 2017. The application is filed along with grounds of refund.
>
> We wish to inform you that, Telecom & Networking division of TVS & Sons Private Limited has been hived off as going concern to TVS Logistics Services Limited with effect from 21st June 2017

vide agreement dated 29th May 2017. As an abundant caution and to avoid limitation, the application is being filed by both Transferror Company (TVS & Sons Private Limited) as well as Transferree company (TVS Logistics Services Limited). We request you to examine as per law and issue us suitable directions. On receipt of your directions, we will withdraw one application either at Madurai or at Chennai. Our intention is not to claim two refunds, but to ensure filing of application within the time stipulated as per Law."

From the facts placed before me, it is seen that appellant had paid both service tax as well as GST. This has occurred during the transition period to new tax regime of GST. As abundant caution they have made such claim of refund as paid by the earlier company as well as the Merged/new Company of TVS Logistics Services. The Commissioner (Appeals) in the impugned order OIA No.103/2020 dt. 15.12.2020 has also been at confusion to resolve the issue and has remanded the matter to be kept pending till the appeals pending before CESTAT are decided. His discussion reads as under :

"13. I have gone through grounds of appeal and records available before me, the submissions and various statutes related to this appeal. The facts and Acts/Rules presented before me are only with reference to the Finance Act, 1994 and relevant Central Act / Rules related to service tax refunds. The similar refunds filed by the transferee, TVSLSL, of the business of the Appellant [the transferor] were rejected by the orders of Commissioner (Appeals), Chennai as given below:

TABLE : 1

OIA passed by CCE (A-1) Chennai GST	Date	CESTAT appeal reference against the OIA	Amount in Rs.
OIA/227/2019	30.7.2019	S/41671/2019	Rs.45,03,575/-
OIA/228/2019	30.7.2019	S/41672/2019	Rs.28,33,446/-

> It is ascertained by the letter of reference from Chennai North Commissionerate [File.No.GEXCOM/REV/MISC/270/2020-REV-O/o-Pr-COMMR-CGST CHENNAI (N)] that, TVSLSL has filed appeals with CESTAT, Chennai discussed in the para above bearing Case number : Service Tax/41671 & 41672/2019 involving the same amounts, against the Orders in Appeal referred in Table.1 above, which are still pending. The decision of the Honourable CESTAT, Chennai in the above cases will have a direct bearing to this present appeal. In order to meet the ends of justice, the issue needs to be remanded back to the Original Adjudicating Authority by setting aside the impugned order in the appellant's own case, with a direction to keep the matter pending till the outcome of final judgment of the Honourable CESTAT, Chennai, in the case of M/s.TVSLSL stated supra. Subsequent to the passing of order/judgment by the Tribunal, the adjudicating authority will be at liberty to pass orders afresh."

Since the issue involved in all these appeals are connected or rather dependant on each other, I am convinced that unless these refund claims are adjudicated by a common authority the situation cannot be resolved.

6. Rule 40 as well as Rule 41 of CESTAT (Procedure) Rules, 1982 read as under :

> **RULE 40. Control over departmental authorities in certain matters. -** The Tribunal shall exercise control over the departmental authorities in relation to all matters arising out of the exercise of the powers or of the discharge of the functions of the Tribunal.
>
> **RULE 41. Orders and directions in certain cases. -** The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice.

In the present case, without appointing a common authority for adjudication of these refund claims, the matter cannot be resolved since tax is paid under two different tax laws, i.e. Finance Act, 1994 and G.S.T. Act, 2017. Taking note of this fact, in the interest of justice, I direct the Principal Chief

Commissioner of GST and Central Excise of Tamil Nadu to nominate a common adjudicating authority for denovo-processing of all these three refund claims. The appeals are allowed by remand with the above direction.

7. Registry is directed to endorse a certified copy of this order to the Principal Chief Commissioner of GST and Central Excise, Tamil Nadu.

(Dictated and pronounced in open Court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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