

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. III

SERVICE TAX APPEAL NO. 50112 OF 2020

[Arising out of the Order-in-Appeal No. ST/DLH/2020 dated 23/10/2019 passed by Commissioner (Appeals-I), Central Excise, Delhi.]

M/s Indiamart Intermesh Ltd.

.....Appellant

First Floor, 29, Netaji Subhash Marg, Daryaganj,
New Delhi – 110 002.

Versus

**Commissioner, CGST &
Central Excise – Delhi North,**

....Respondent

Room No. 134, Central Revenue Building,
I.P. Estate, New Delhi.

APPEARANCE:

Ms. Shagun Arora and Shri Kunal Aggarwal, Advocates for the appellant.

Shri Aejaz Ahmad, Authorized Representative for the Department

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51886/2025

DATE OF HEARING : 08.09.2025

DATE OF DECISION: 18.12.2025

P.V. SUBBA RAO

M/s Indiamart Intermesh Ltd.¹ filed this appeal to assail the order dated 23.10.2019² passed by the Commissioner (Appeals) in which he upheld rejection of refund to the appellant by the Assistant Commissioner's order dated 13.05.2019.

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- 1. the appellant**
 - 2. impugned order**

2. The facts which led to the issue of impugned order is as follows :-

(i) The appellant provides market place service on which it paid service tax. This service is in the form of an online portal to which vendors can subscribe after paying a subscription fees. Several packages are offered to the clients by the appellant. The appellant would collected the full fee at the beginning as per the subscription package. Sometimes, the client wishes to change the package, say from an annual package to a three year package. In such cases, the appellant would collect the full value of the new package from the client and return proportionate amount for unused part of the previous package. The following is an illustration:

Sl. No.	Particulars/Event	Calculation
1.	One year subscription package taken by client w.e.f. 01.04.2016	Rs. 50,000/- plus 10% service tax of Rs. 5,000/-
2.	Subscription terminated on 1.10.2016	
3.	Credit Note issued by Appellant	Rs. 25,000/- + 10% service tax of Rs. 2,500/-
4.	Fresh subscription for three (3) years	Rs. 1,25,000/- + 10% service tax of Rs. 12,500/- Total - Rs. 1,37,500/-
5.	Net Payment to Appellant after adjustment of credit note	Rs. 1,37,500/- minus Rs. 27,500 = Rs. 1,10,000/-

(ii) Since the appellant collected service charges as soon as the client subscribed, it also paid service tax on the entire amount of subscription so collected. As per Rule 6 (3) of the Service Tax Rules, 1994³, whenever any amount is returned to the client for not providing the services, the service tax paid on such amount can be taken as credit by the assessee

3. ST Rules

and used for paying service tax for the subsequent period.

Rule 6 (3) of the Service Tax Rules, reads as follows :-

“(3) Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract the assessee may take the credit of such excess service tax paid by him, if the assessee –

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

(iii) However, from January 2017 service tax was abolished and it was replaced by GST and therefore there was no scope to take credit of service tax paid. The appellant filed refund claim of the excess service tax paid during July 2017 to December 2017 on 28.01.2019. The reason for filing the refund claim was that the appellant could not follow the procedure under Rule 6 (3) of ST Rules because the service tax law no longer existed from July, 2017. The appellant filed his refund application under section 11B of the Central Excise Act, 1944⁴ as made applicable the provisions of service tax of section 83 of the Finance Act, 1994⁵.

(iv) The Assistant Commissioner rejected the refund application on the ground that it was filed after one year from the date of payment of service tax and, hence, it was

4. Excise Act

5. the Finance Act

time barred under section 11B. This rejection of refund claim was upheld by the Commissioner (Appeals) in the impugned order.

(v) The refund application was filed since the appellant could not avail credit of the service tax paid because of abolition of the provision of service tax from 2017. Under the erstwhile law, the appellant would have been entitled to take credit of the service tax on its own under Rule 6 (3) of the Service Tax Rules and use it to pay service tax.

(vi) As per section 142 (3) of the CGST Act, any claim of refund under the erstwhile laws [Excise Act and the Finance Act] shall be dealt with as per those laws and shall be paid in cash notwithstanding anything contained in those laws. Therefore, the appellant was entitled to the refund of the excess service tax paid.

3. Learned authorized representative, on the other hand, emphasized the fact that the refund application has to be processed as per the law existing prior to the introduction of CGST. In other words, the refund application should be processed as per section 11B of the Excise Act. Section 11B provides for a limitation of one year for filing the refund claim. Section 142 (3) of the CGST Act, does not override the limitation under section 11B. Therefore, the denial of refund of service tax paid was correct and proper and calls for no interference.

4. We have considered the submissions advanced by learned counsel for the appellant and learned authorized representative for Revenue and perused the records.

5. There is no dispute that the appellant had received consideration for services on which it paid service tax but some portion of the service could not be delivered and accordingly the service charges were returned to the client. Had the service tax provisions been in place, the appellant would have been entitled to take credit of the service tax paid on its own under Rule 6 (3) of the ST Rules. There was no limitation within which the appellant had to take credit under this Rule. If the service tax provisions were in place, the appellant could have taken credit of the excess service tax paid. As per section 142 (3) of the CGST Act, any amount which accrues to the assessee under the service tax law shall have to be paid in cash to the assessee. Although the appellant had filed an application under section 11B of the Central Excise Act, it would not have been necessary to file such a refund application if the service tax provisions were in place. The appellant could have taken credit of the surplus service tax paid on its own without seeking any permission or sanction from any officer. There is also no time limit within which such credit could have been taken. For instance, if consideration was received but part of the service could not be delivered after, say, two years and the consideration was returned to the client the assessee could take credit of the service tax paid. In view of the above, the credit of excess service tax paid would have,

undisputedly, accrued to the appellant under Rule 6 (3) of the Service Tax Rules and as per section 142 (3), that amount has to be paid in cash.

6. The submission of the learned authorized representative that since the refund application was filed after one year, it deserves to be rejected is not correct. Had this been a case of only refund under section 11B and not an amount of which credit would have been taken under Rule 6 (3) of the ST Rules, the situation would have been different. In view of the above, we find that the appellant was entitled to the benefit of the refund of excess service tax paid as per section 142 (3) of the CGST Act.

7. Accordingly, we set aside the impugned order and hold that the appellant was entitled to the refund of the excess service tax paid as per Rule 6 (3) of the ST Rules read with Section 142 (3) of the CGST Act.

8. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced in open court on 18/12/2025.)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)