

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

Division Bench – Court No. – I

**Service Tax Appeal No. 30363 of 2021
with Application No. ST/CROSS/30080/2022**

(Arising out of Order-in- Appeal No.HYD-RRC-SVTAX-APP-018-20-21 (APP-I) dt.16.09.2020
passed by Principal Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

**Commissioner of Central Tax
Rangareddy – GST**

Posnett Bhavan, Tilak Road, Ramkoti,
Hyderabad, Telangana – 500 001

.....Appellant

VERSUS

**M/s GMR Hyderabad International
Airport Ltd**

GMR Aero Towers, RGI Airport,
Shamshabad, Hyderabad – 500 018

.....Respondent

Appearance:-

Shri A. Rangadham, AR for the Appellant.
Shri Anil Kathuria, Advocate for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30566/2025

Date of Hearing: 16.06.2025
Date of Decision: 12.12.2025

[Order per: ANGAD PRASAD]

The Department has come in appeal against OIA dt.16.09.2020, whereby, the Commissioner (Appeals) has upheld the order passed by the Refund Sanctioning Authority vide OIO dt.22.01.2020 sanctioning refund of Rs.7,42,87,260/- along with interest amounting to Rs.4,74,29,871/- (impugned order).

2. Learned AR has submitted that while there is no dispute regarding grant of refund holding that service tax amount has already been paid and there is no time bar, however, certain infirmities in this order has crept in

with regard to upholding the payment of interest. He has further reiterated the grounds of appeal filed by the department and also has invited attention to the grounds of appeal filed by the department before the Commissioner (Appeals) against the OIO dt.22.01.2020.

3. Learned Advocate for the respondent, M/s GMR Hyderabad International Airport Ltd, has mostly submitted that refund on merit is not being disputed by either side as there was no duty required to be paid. The issue regarding non-payment of service tax and claiming refund is also now settled in view of the fact that whatever amount was debited by them through CENVAT account, the same has been already appropriated by the adjudicating authority as duty paid and hence, it cannot be said that there was no payment of service tax. Insofar as payment of interest is concerned, it has been paid correctly because they had debited their Cenvat account for payment of service tax on User Development Fee (UDF) charges under protest and the same protest was not dealt with or disposed of by the adjudicating authority while passing the OIO dt.28.10.2009 confirming the demand, hence, there is no time bar also. Learned AR, however, pointed out that issue of refund being non tenable was dealt with by original authority confirming demand at Para 33 of OIO dt.28.10.2009.

4. This matter was heard on 16.06.2025 and the Order was kept reserved, however, it was noticed that certain factual details were not clear from the submissions made by the department and contested by the respondent and therefore, the matter was posted for hearing for clarification on 13.11.2025.

5. Heard both sides and perused the records.

6. Insofar as the issue of cross application by the respondent, we find that it is not sustainable in view of the fact that the respondents were not at all aggrieved by the impugned order, which has upheld the entire refund along with interest in their favour. However, the grounds taken by them may be considered as counter submissions vis-à-vis the ground taken by the department against the impugned order.

7. The main grounds, on which department has come in appeal are as under.

- a) The amount was actually debited in September, 2009, so they could not claim refund in March, 2009. The amount was actually paid on 23.10.2009 and the appropriation of the amount was done on 28.10.2009 in OIO and hence, proper. Therefore, the refund claim filed on 04.12.2019 has to be construed as proper claim for refund.
- b) The relevant date to file refund claim is three months from the date of CESTAT Final Order as per clause B(ec) to the explanation to section 11B(1). The refund claim is filed on 04.12.2019 and refund was sanctioned on 22.01.2020 i.e., within 3 months. Hence payment of interest by the Refund Sanctioning Authority is illegal.
- c) There is no intimation to the department that they have paid duty under protest after actual payment.

8. We find that insofar as refund of service tax paid on account of UDF charges is concerned, there is no dispute as the same was held not leviable to service tax and to that extent, they were entitled to refund of service tax. We also note that it is not being contested on the grounds of time bar inasmuch as there was a protest letter, which has not been disputed, though purportedly the same letter was earlier withdrawn by the respondent but not allowed at the time of adjudication. We find that in the OIO dt.28.10.2009, the Commissioner has not only confirmed the demand of Rs.7,42,87,260/- and appropriated an amount of Rs.7,42,87,260/- already paid through Cenvat account and adjusted the same and appropriated towards the service tax due and also rejected their refund claim dt.03.03.2009. The Commissioner has, in his order, taken note of the fact that they had paid the entire amount of Rs.7,42,87,260/- under protest for the period up to December, 2008 through their Cenvat account and they have also filed for refund of the same amount vide refund claim dt.03.03.2009. We also note that subsequently, once the issue was settled in favour of respondent, the refund has been sanctioned by the refund sanctioning authority pursuant to the order of the Tribunal vide Final Order No.A/30739/2019 dt.16.09.2019. We note that in the grounds that impugned order passed by the Commissioner (Appeals) is not legal and proper, the department, inter alia, has taken grounds that the relevant date to decide that the claim to be filed within time was the date of Tribunal's order as per clause B(ec) to the

explanation to section 11B(1) of Central Excise Act, 1944 and since refund claim was filed on 04.12.2019 and the refund was sanctioned on 22.01.2020, i.e., within three months, hence, in the instant case, payment of interest of Rs.4,74,29,871/- under section 11BB of the CEA, 1944 is not legal and proper. Thus, essentially, their claim is that computation of interest has been done wrongly in the given factual matrix and evidence on record. Therefore, the impugned order to the extent upholding the payment of interest on the said refund amount is not correct.

9. We have noted that on appeal before Commissioner (Appeals) against the refund sanctioning authority's order sanctioning refund along with interest i.e., OIO dt.22.01.2020, the department had, inter alia, taken various grounds for non-entitlement of refund and interest thereon including non-payment of service tax itself, the claim being time barred and payment of interest. We find that Commissioner (Appeals) has examined these grounds and negated the contention of the department that respondents had not paid the service tax keeping in view the service tax returns filed by them and the Chartered Accountant's certificate dt.07.02.2020. Therefore, insofar as this issue is concerned, there is no further dispute and the department has no ground to agitate that no service tax, as such, has been paid on said service warranting any refund admissible. Insofar as the issue of limitation for filing refund claim dt.04.12.2019 being time barred in the given factual matrix of the case is concerned, after taking into account the department's argument that respondent had themselves withdrawn the payment of tax under protest, vide their letter dt.06.08.2009, held that the department has completely ignored the fact that Commissioner of Central Excise, Hyderabad, in his adjudication order dt.28.10.2009, has not accepted the respondent's conditional offer made vide their letter dt.06.08.2009 and has rejected their proposal for withdrawal of refund and payment under protest. Therefore, the observation of the Commissioner (Appeals) that the respondent had themselves withdrawn the protest letter will not be tenable and in fact, it has to be held that payments were made under protest during the material time. We, however, find that while Commissioner (Appeals) has considered filing of refund claim dt.03.03.2009 within time limit of one year from date of payment of tax, he has made an observation that even department's argument that they had withdrawn their payment under protest vide letter dt.06.08.2009, the fact would remain that

claim was filed within time limit. In other words, he has upheld the date of filing of refund claim as 03.03.2009, as against 04.12.2019, when the claim for refund was consequent to the order of the Tribunal. Moreover, in the OIO, while withdrawing was denied and refund rejected, no specific order was passed setting aside the protest letter, as such.

10. Therefore, on these two counts above i.e., refund on merit and limitation, we do not find that there is any infirmity in the impugned order vis-à-vis the grounds raised by the department.

11. However, we find that despite the issue of payment of interest being one of the grounds raised by the department, the Commissioner (Appeals) has not duly examined this aspect after taking into account the fact whether it was a consequential refund arising out of Tribunal's final order dt.16.09.2019 or normal refund in terms of refund application dt.03.03.2009. The department has raised substantive question of law concerning the relevant date for deciding the interest and this aspect has not been duly examined by the Commissioner (Appeals). Therefore, we find that while the issue on merit and limitation has already been adequately dealt with the issue regarding relevant date of filing of refund application and consequent payment of interest on the said refund amount in terms of provisions under section 11B, explanation B(ec), has not been exercised and to that extent, the Commissioner (Appeals) has not examined this aspect. Therefore, to that extent, the department's appeal is maintainable and accordingly, it would require the matter to be remanded back only to the extent of deciding the issue of interest after examining the relevant date in terms of aforesaid provisions. We also make it clear that we have not expressed any opinion on law points concerning the payment of interest or otherwise in the given factual matrix and have left the issues open for determination by the Refund Sanctioning Authority, who shall quantify the interest payable, if any, accordingly.

12. Therefore, the impugned order is set aside only to the extent of upholding the payment of interest on the sanctioned refund amount and the same is remanded back for redetermination of the issue and admissibility of interest, in view of observations in foregoing paras.

13. Appeal allowed partly by way of remand.

(Pronounced in the Open Court on 12.12.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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