IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 77184 of 2018

(Arising out of Order-in-Appeal No.116-117/S.Tax-I/Kol/2018 dated 21.02.2018 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata)

Rites Limited **: Appellant**
Dy. General Manager (Finance), Regional Project Office, Kolkata
Metro Railway Service Building (2nd Floor), 56, C.R.Avenue,
Kolkata.

VERSUS

Commissioner of Central Goods & Service Tax & Central Excise, Kolkata **: Respondent**
180, Shantipally, Kolkata-700107.

With

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Kolkata.

VERSUS

Commissioner of Central Goods & Service Tax & Central Excise, Kolkata
180, Shantipally, Kolkata-700107.

APPEARANCE:

Mr. Dipankar Majumdar, Advocate for the Appellant

Shri S.K.Dikshit, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 75050-75051/ 2025

DATE OF HEARING :14.01.2025

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Order : [Per Shri Ashok Jindal]

Both the appeals are having a common issue therefore, both are decided by a common order.

2. The facts of the case are that the appellant is a provider of various services namely operational and maintenance services and the appellant has provided services to Railways on which, no service tax was payable

but inadvertently initially the appellant paid service tax and the service recipient intimated that they are not liable to pay service tax on their services. Therefore, the service tax paid by the appellant to the Government was not remitted to the appellant by the service recipient and to that effect a certificate issued by Chartered Accountant has also being produced by the appellant today itself that the service recipient has not paid service tax to the appellant. In these set of facts, the appellant filed 2 refund claims which were rejected on the ground that appellant has failed to pass the bar of unjust engagement and also the refund claims are not maintainable in the light of the decision of the Hon’ble Apex Court in the case of ITC Ltd. vrs. Commissioner of Central Excise, Kolkata-IV, [2019 (9) TMI 802-SC] & [2019 (368) ELT 216].

3. Against the said orders, the appellant is before me.

4. Heard both sides. Considered the submissions.

5. The facts are not in dispute that service recipient has not paid service tax to the appellant as the service provided by the appellant are not liable to pay Service Tax as the service provided by the appellant to the service recipient are exempt from payment of service tax and the appellant has paid service tax inadvertently.

6. In that circumstances, the only issue arises whether the appellant has passed the bar of unjust engagement or not and whether the refund claim is maintainable in the light of the decision of the Hon’ble Apex Court in the case of ITC Ltd. (Supra).

7. As it is evident from the record that service recipient has not remitted any Service Tax towards the services rendered by the appellant. In that circumstances the appellant has passed the bar of unjust engagement, therefore, bar of unjust engagement is not applicable to the facts of this case.

8. Further, the decision of ITC Ltd. (Supra) was examined by the Larger Bench of this Tribunal in the case

of M/s. Viavi Solutions India Pvt. Ltd . versus the Commissioner of CGST, Gurgaon-I, 2024(6) TMI 187-CESTAT, Chandigarh wherein it has been held that in case of refund claims filed under Service Tax laws, the decision of ITC Ltd. (Supra) is not applicable as the same is related with the cases of Customs. In that circumstances I hold that decision of ITC Ltd. is not applicable to the facts of the case.

9. In that circumstances, the appellant is entitled to claim the refunds.

10. In view of this, I set aside the impugned orders and allow the appeals with consequential relief, if any.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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