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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 78881 of 2018

(Arising out of Order-in-Appeal No. 82/ST/BBSR-GST/2018 Dated 21.05.2018 passed by Commissioner (Appeals) CGST, CX & Customs Central Revenue Building, Rajaswa Vihar, Bhubaneswar-7)

M/s. Oritrade Private Ltd, : **Appellant**
Shelter Square,Opp. 'The Shelter'
Tulsipur, Cuttack-753008

VERSUS

The Commissioner, CGST, Central Excise & Customs, Bhubaneswar : **Respondent**
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar-7

APPEARANCE:

Shri K. K. Acharya for the Appellant (Written Submission)

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

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO. 75247/2025

DATE OF HEARING / DECISION:03.02.2025

ORDER : [PER SHRI R. MURALIDHAR]

The appellant is engaged in providing clearing and forwarding agency services. During the month of June 2015, they have received the total consideration of Rs. Rs.127,535 from their clients. On this consideration, they are required to pay service tax of Rs.17,855. However, while paying the service tax, by mistake they have paid an amount of Rs.1,45,390 instead of paying only Rs.17, 855.

2. On 27-07-2015, the appellant has filed a refund claim in Form R stating that by mistake they have paid higher amount of service tax in the month of June 2015 and

requested that the excess payment to be refunded to them.

3. The lower authorities have dismissed the refund claim filed by the appellant. Being aggrived, the appellant has filed this present appeal before the Tribunal.

4. The appellant submits through their Written Notes today that the refund claimed is purely on account of excess service tax paid by them by mistake while calculating the service tax payable for the month of June 2015. They have filed their refund claim within one month after the excess Service Tax was paid. All the necessary documents evidence towards excess payment have been submitted to the lower authorities. They are also enclosed in the appeal papers.

5. Accordingly, they pray that the present appeal may be allowed and they should be granted the refund of the excess service tax paid by them.

6. The learned AR reiterates the findings of the lower authorities and justifies the denial of refund claim.

7. On going through the factual matrix of the case, I find that this is a simple clerical error on the part of the appellant. While they were required to pay only Rs. 17,855 for the consideration of Rs.1,27,535 received by them. By mistake, they have added the consideration amount plus service tax and paid total service tax of Rs.145,390. The lower authorities are not denying the fact that Rs.145,390 has been paid by the appellant. The only ground taken by them to deny the refund claim is that this refund being claimed was not being shown as part of the Returns filed by the appellant.

8. I find that it is a clear case of mistake on the part of the appellant and they have paid excess service tax which should have been refunded to the appellant based on the documentary evidence like the challan and Invoice etc.

9. I find that such an issue is covered by the decision of the The Punjab-Haryana High Court in the case **of Ex Engineer, Transmission System vs Central Excise & Service Tax Appellate – Appeal No. CEA 46/2018 judgement dated 13 August, 2024**, which has held as under :

> 15. Article 265 of the Constitution of India prevents the authorities from collecting tax illegally. *In other words, any amount which has been deposited with the State under a head can only be allowed to be retained if the same is deposited legally and not erroneously, illegally or without knowledge.*
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> 16. The claim of the appellant for refund therefore, cannot be allowed to be defeated solely on the basis that one year has elapsed from the date of deposit. *It is to be noticed that the appellant-company had come to know about the wrong deposit of amount as service tax on 30.08.2016 when they received an email seeking release of amount of Rs.4,46,187/- from the service provider namely TDS Management and immediately thereafter on 29.09.2016, an application was moved i.e. within 30 days. This aspect has not been noticed both by the authorities concerned as well as the appellant authority and this Court finds the orders passed by them therefore, as erroneous.*
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> 18. In the present case, *service tax has been paid twice and the service provider has claimed the said amount from the appellant company which cannot be passed on since the appellant company itself has deposited the amount with the state exchequers. It is a case of dual payment. The other party namely TDS Management has not moved any application for refund. In the circumstances, the refund of the appellant-company cannot be denied solely on account of delay which has actually not occurred as it is from the date of knowledge.*
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> 18. Keeping in view the above, *we allow the appeal and direct the respondents to refund the amount of Rs.,4,46,187/- deposited by the appellant-company along with interest*. The refund shall be released within six months from today.

10. In the present case, the appellant is in a much better footing. They have filed the refund claim in July 2015 for the excess Service Tax paid in June 2015, which is well within the time limit. Therefore, applying the ratio laid down in the cited judgement of Punjab & Haryana High Court, I set aside the imputed order and allow the appeal.

7. The appellant should be granted refund amount along with interest. The interest is to be calculated from 3 months from the date of their filing of refund claim (27.07.2015), till the date on which the refund is paid. The refund amount along with interest should be paid to the appellant within 2 months from the date of receipt of this Order.

(Dictated and pronounced in the open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

RKP