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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75193 of 2017

(Arising out of Order-in-Appeal No. 96/ST/B-II/2016 dated 27.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Emami Paper Mills Limited : Appellant
Balgopalpur, Rasulpur,
Balasore – 756 020 (Odisha)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Bhubaneshwar-II Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

WITH

Service Tax Appeal No. 75194 of 2017

(Arising out of Order-in-Appeal No. 95/ST/B-II/2016 dated 27.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Emami Paper Mills Limited : Appellant
Balgopalpur, Rasulpur,
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VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Bhubaneshwar-II Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

WITH

Service Tax Appeal No. 75195 of 2017

(Arising out of Order-in-Appeal No. 87/ST/B-II/2016 dated 30.09.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Emami Paper Mills Limited : Appellant
Balgopalpur, Rasulpur,
Balasore – 756 020 (Odisha)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Bhubaneshwar-II Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

WITH

Service Tax Appeal No. 75196 of 2017

(Arising out of Order-in-Appeal No. 98/ST/B-II/2016 dated 27.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Emami Paper Mills Limited : Appellant
Balgopalpur, Rasulpur,
Balasore – 756 020 (Odisha)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Bhubaneshwar-II Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

AND

Service Tax Appeal No. 75197 of 2017

(Arising out of Order-in-Appeal No. 97/ST/B-II/2016 dated 27.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Emami Paper Mills Limited : Appellant
Balgopalpur, Rasulpur,
Balasore – 756 020 (Odisha)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Bhubaneshwar-II Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

APPEARANCE:

Shri Saurabh Bagaria, Advocate,
Shri Indranil Banerjee, Advocate
Ms. Samrita Das, Advocate
For the Appellant

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

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75727-75731 / 2026

DATE OF HEARING / DECISION: 16.06.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned orders whereby the orders of rejection of refund claims filed by the appellant have been upheld.

2. Since all the above appeals involve common issues, they are taken up together for disposal by way of this common order.

3. The present appeals, cumulatively covering the period from August, 2010 to March, 2012, are directed against five Orders-in-Appeal passed by the Ld. Commissioner (Appeals), Central Excise, Customs and Service Tax, Bhubaneswar, whereunder the respective Orders-in-Original, all dated 31.10.2012, were upheld and the appellant's claims for refund of Service Tax under a mistake of law under Section 83 of the Finance Act, 1994 read with Section 11B of the Central Excise Act, 1944 were rejected. The details of the present appeals are set out hereunder: -

Sl. No.	Appeal No.	Impugned Order-in-Appeal No. and Date	Period involved	Amount of refund of service tax in dispute	Order-in-Original No. and Date	Show Cause Notice No. and Date
1.	ST/75193/2017	96/ST/B-II/2016 dated 27.10.2016	October, 2011 to March, 2012	Rs. 12,08,370/-	AC/BLS/ST/REFUND/S.TAX-BLS/EPML/19/2012(R) dated 31.10.2012	V(18)18/ST/REFUND/EMAMI/BLS/2012/9310 dated 04.09.2012
2.	ST/75194/2017	95/ST/B-II/2016 dated 27.10.2016	May, 2011	Rs. 1,90,123/-	AC/BLS/ST/REFUND/S.TAX-BLS/EPML/17/2012(R) dated 31.10.2012	V(18)10/ST/REFUND/EMAMI/BLS/2012/9279 dated 31.08.2012
3.	ST/75195/2017	87/ST/B-II/2016 dated 30.09.2016	June, 2011 to September, 2011	Rs. 9,05,034/-	AC/BLS/ST/REFUND/S.TAX-BLS/EPML/18/2012(R) dated 31.10.2012	V(18)17/ST/REFUND/EMAMI/BLS/2012/9293 dated 03.09.2012

4.	ST/75196/ 2017	98/ST/B-II/ 2016 dated 27.10.2016	April, 2011	Rs. 69,017/-	AC/BLS/ST/REFUND/S.TAX-BLS/ EPML/21/2012(R) dated 31.10.2012	V(18)20/ST/REFUND/EMAMI/BLS/2012/9312 dated 04.09.2012
5.	ST/75197/ 2017	97/ST/B-II/ 2016 dated 27.10.2016	August, 2010 to March, 2011	Rs. 4,96,962/-	AC/BLS/ST/REFUND/S.TAX-BLS/ EPML/20/2012(R) dated 31.10.2012	V(18)19/ST/REFUND/EMAMI/BLS/2012/9314 dated 04.09.2012

4. During the relevant period, the appellant procured waste paper from various suppliers located at Chennai and Bangalore for use in the manufacture of paper and allied products. The transportation arrangement involved movement of the goods partly by road through M/s. Rapid Road Lines of India (hereinafter referred to as "M/s. Rapid") and partly by rail through M/s. Container Corporation of India Limited (hereinafter referred to as "M/s. CONCOR").

5. The appellant had entered into a contract with M/s Rapid for transportation of containers of waste paper from the concerned suppliers' warehouses to CONCOR's ICD at Bangalore/Chennai by road and from the ICD at Balasore to the appellant's factory in Balasore by road. The inland transportation by rail was being done by CONCOR, which used to raise invoices by charging Service Tax on M/s Rapid, duly endorsed in the appellant's favour. It has been submitted that as and when M/s Rapid directly made payment on the appellant's behalf to CONCOR for railway freight, the appellant used to reimburse at actuals. It is also seen from the records that apart from M/s Rapid raising invoice upon the appellant for providing service of transportation by road, it also raised debit notes on the appellant for the amount

paid to CONCOR as railway freight. The said debit notes included the service tax component charged by CONCOR, for reimbursement by the appellant at actuals as per agreement. As stated, M/s Rapid did not take CENVAT credit on the basis of invoices raised by CONCOR as declared by M/s. Rapid on the debit notes.

6. Insofar as transportation by road through M/s. Rapid was concerned, the appellant discharged the applicable service tax liability under the reverse charge mechanism and there is no dispute in respect thereof. The dispute in the present appeals relates to the Service Tax paid by the appellant on the transportation of goods by rail undertaken by CONCOR, which, as per the appellant, has been paid under reverse charge on the wrong assumption of law that such services were categorizable as goods transportation agency. According to the appellant, service tax on such services had already been discharged by CONCOR as the service provider and the appellant, under the impression that reverse charge was applicable, also paid service tax on the same services. Consequently, the appellant filed separate refund claims under Section 11B of the Central Excise Act, 1944, as made applicable to Service Tax matters, claiming refund of the service tax so paid.

6.1. Show cause notices came to be issued proposing rejection of the refund claims. The appellant contested the proposals by filing replies and producing documents in support of its claims.

6.2. The matters were adjudicated vide separate Orders-in-Original, wherein the refund claims filed by the appellant were rejected on the ground that (i) no documentary evidence as regards payment of service tax had been provided by the appellant and that there was no proof that CENVAT Credit had not been availed by the appellant on the invoices raised by CONCOR and also (ii) that the refund claims were barred by limitation of time since the same had been filed beyond the period of one year prescribed under Section 11B of the Central Excise Act, 1944. (Appeal Nos. ST/75196/2017 and ST/75197/2017).

6.3. Aggrieved by the rejection of their refund claims, the appellant preferred appeals before the Ld. Commissioner (Appeals), who, by way of the impugned orders, has upheld the rejection of the refund claims as ordered by the authorities below.

6.4. Against the said orders, the appellant is before us.

7. The Ld. Counsel appearing on behalf of the appellant have made various submissions in support of their contentions, which can inter alia be summarized as under: -

I. Commissioner (Appeals) failed to acknowledge the fundamental issue that there can be no tax twice on the self-same services and even otherwise, there was no liability on the appellant under RCM is respect of service of transportation of goods by rail

(i) The liability to pay service tax for the service of transportation of goods by rail was on the service provider i.e. CONCOR, which it had duly discharged. This was evident from a combined reading of specimen Inward Way Bills of CONCOR charging service tax and the Auditor's Report dated 22.05.2012 for the audited accounts of CONCOR for the Financial Year 2011-12. There was no justification for the findings in the impugned order that the appellant was unable able to satisfy the adjudicating authority that the amount paid to CONCOR has been duly credited to the government's account. This is all the more so, since CONCOR also confirmed having discharged service tax liability by consolidating all its customers. The appellate authority clearly fell in error by drawing adverse presumptions against the appellant.

(ii) The appellant had mistakenly paid service tax under Reverse Charge on the services of CONCOR on the assumption that the same were Goods Transportation service, whereas it had no liability to pay tax under the Service Tax law. In such circumstances, the appellant had rightly claimed refund of such tax paid at its end under Section 11B of the Central Excise Act read with Section 83 of the 1994. The Revenue had no authority in law to retain amounts paid under a mistaken notion and doing otherwise was in patent violation of Articles 265 and 300A of the Constitution of India. In any event whatsoever, CONCOR's outstanding liability to service tax, if any, could not have impacted the appellant's eligibility to refund.

(iii) An erroneous payment of service tax by the appellant on a mistake of law belief ought to be refunded back to the appellant. The said amount of service tax had not been realized from the appellant's customers and the entire portion had been borne by the appellant. Since the amount had already been paid by CONCOR, the same would amount to double payment of tax. In other words, if the appellant had not paid those amounts, the Revenue could not have demanded the appellant to make such payments. In other words, the Department lacked authority ab initio to levy and collect such service tax from the appellant. In case the Department was to demand such payments, the appellant could have challenged it as unconstitutional and without authority of law.

(iv) It is trite law that for the same service, both the service provider and the service receiver had paid service tax and on such basis the Government could not have unjustly enriched itself. On the other hand, the Revenue should have refunded the amounts paid by the appellant suo motu.

(v) Service of transportation of goods by rail by CONCOR has not disputed. CONCOR is a registered service tax assessee and the details of the service tax and education cess are reflected in the Inland way bills of CONCOR. The department could have verified the payment details of CONCOR. The assessee's refund application cannot be prejudiced because of department's inadequate actions.

II. Instant appellant had duly reversed CENVAT in connection with CONCOR's services and the incidence of tax had also not been passed on. Refund ought to have been granted under Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994

(i) The appellant duly reversed the entire CENVAT Credit which was availed on duty-paid challans after making the said erroneous payment of service tax. The said CENVAT Credit of Rs. 12,08,370/- was availed vide Entry Nos. 1353, 1355, 1359, 2023, 2391,2393, 2721 and 2723 dated 30.12.2011, 30.12.2011, 16.01.2012, 29.02.2012, 29.03.2012, 29.03.2012, 31.03.2012 and 31.03.2012 and the same was suo-moto reversed before making the refund claim vide Entry Nos. 1358, 1489, 2024, 3006 and 280 dated 31.12.2011, 31.01.2012, 29.02.2012, 31.03.2012 and 22.06.2012 respectively, as evidenced by the Input Service Register. No credit was taken on the basis of invoices raised by CONCOR. Denial of refund in such a scenario tantamounted to vexing the assessee twice, which was impermissible. Reliance is also placed on the certificate of the Chartered Accountant in this behalf. The impugned order also does not dispute the fact that the incidence of tax had not been passed on.

<u>III. Impugned order travelled beyond the scope of show cause notice and there was no warrant for the Commissioner (Appeals) to give a finding on whether Explanation I to Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 had been satisfied</u>

(i) There can be no doubt that M/s. Rapid had acted as a pure agent of the appellant insofar as the transportation of goods by rail was concerned. CONCOR was raising invoices/IWBs on M/s. Rapid, duly endorsed in the appellant's name and M/s. Rapid was in turn raising Debit Notes on the appellant. The appellant duly paid M/s. Rapid on actuals. Lalita Logistics was also a sister concern of M/s. Rapid and the invoice of CONCOR clearly stated the consignee's name and further stated "C/o. Emami Paper Mills Limited". This clearly showed that the ultimate consignee for the said goods was the appellant herein. However, the Commissioner (Appeals) failed to appreciate the true nature and scope of the contractual agreement between M/s. Rapid and the appellant. Reliance is placed upon *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd. — 2018 (10) G.S.T.L. 401 (S.C.).*

(ii) Invocation of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 at the appellate stage was grossly illegal inasmuch as the said provision had not been invoked in the show cause notice. The Commissioner (Appeals) virtually set up a new case on behalf of the Revenue by framing the issue in appeal as to whether M/s Rapid could be considered as the appellant's pure agent and whether expenditure initially incurred for paying rail freight to CONCOR and subsequently re-imbursed could be abated from the value of Goods Transport service.

(iii) Without prejudice, it is submitted that Explanation I to Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 stood duly fulfilled. The adverse observations at para 5.4 of the impugned Order-in-Appeal at page 7 thereof cannot sustain being illegal, perverse and contrary to the materials on record. Para 4.1.10 of CBEC Circular under F.No. B-1/4/2006-TRU dated 19.04.2006 had no application in the given case. The said Circular, in fact, supports the appellant's arguments. There arose no question of intentional bifurcation of charges so as to evade payment of service tax by the appellant. During the relevant period both the services of GTA and railway transportation fell under distinct heads/entries under the 1994 Act. Transportation of goods by rail service fell under Section 65(105)(zzzp) of the 1994 Act while transportation of goods by road service was under Section 65(105)(zzp) of the 1994 Act. The value charged towards one service could not have been clubbed towards another. The Commissioner (Appeals) also erred in holding that the appellant "admittedly" failed to satisfy all the conditions of Rule 5(2) of the of the Service Tax (Determination of Value) Rules, 2006. It was not open to the appellate authority to render his findings without regard to the course of dealings between the appellant, M/s

Rapid and CONCOR and the documentary evidences on record.

IV. Commissioner (Appeals) erred in holding that the debit notes raised by M/s. Rapid did not give any reference of the invoices of CONCOR so as to establish a co-relation

(i) A bare perusal of the debit notes read with the inland way bills raised by CONCOR which were relied upon by the appellant before the lower authorities would show that the same makes references to the relevant inland way bills in question. The Commissioner (Appeals) grossly erred in misconstruing the contract entered into by the appellant with M/s. Rapid and the relevant debit notes. Nothing turned on the appellant having failed to submit CONCOR's invoices.

V. SUBMISSION RELATING TO LIMITATION IN APPEALS NOS. ST/75196/2017 AND ST/75197/2017 :

(i) The adjudicating authority had failed to appreciate that time bar under Section 11B of the Central Excise Act, 1944 did not apply to refund of amounts paid under mistake, which the Revenue had no jurisdiction to collect or retain. Such payments were, at best, in the nature of mere deposit and were neither duty nor amount payable in law. Such submissions were in tune with the guarantees under Articles 265 and 300A of the Constitution of India. On such count, the appellate authority should have interfered and he erred in not doing so. Reliance is placed on the judgment of the CESTAT in the case of M*/s. McCann Erickson (India) Pvt Ltd Vs. The Commissioner (Service Tax Appeal No. 52352 OF 2024)* wherein this issue has been exhaustively discussed. Reliance has also been placed on the decisions in the cases of *Electrosteel Castings Ltd. v. Commissioner of Service Tax, Kolkata [(2026) 156 GSTR 209 (CESTAT-Kol)]* (Departmental appeal thereagainst dismissed by the Hon'ble Calcutta High Court as reported in *2025-TIOL-88-HC-KOL-ST*) and *Commissioner of Customs and Central Excise, Hyderabad GST Commissionerate, Telangana v. Credible Engineering Construction Projects Ltd., [(2026) 155 GSTR 745 (Telangana)].*

7.1. In view of these submissions, the Ld. Counsel for the appellant prayed for setting aside the impugned orders, with consequential reliefs to the appellant and for allowing the refund claims in question.

8. On the other hand, the Ld. Authorized Representatives of the Revenue reiterated the findings in the impugned orders. Accordingly, they prayed for rejection of the instant refund claims.

9. Heard the parties and considered their submissions.

10. On going through the submissions made by both the sides, we find that the following issues emerge: -

(a) Whether the appellant is entitled to claim refund of the amount of Service Tax paid by them on transportation of goods by CONCOR or not, on which CONCOR had already paid Service Tax and the appellant has also paid Service Tax under reverse charge mechanism.

(b) Whether the said refund claims filed by the appellant are barred by limitation or not.

Issue(a): Whether the appellant is entitled to claim refund of the amount of Service Tax paid by them on transportation of goods by CONCOR or not, on which CONCOR had already paid Service Tax and the appellant has also paid Service Tax under reverse charge mechanism.

11. We find that the fact has to be examined as to whether Service Tax has been paid twice on the transportation services rendered by CONCOR, i.e., whether Service Tax has been paid both by CONCOR and the appellant under reverse charge on the same services. If Service Tax has been discharged on the same activity by the appellant under reverse charge mechanism by mistake as well as by CONCOR, then, in such circumstances, the Service Tax paid by the appellant under reverse charge mechanism is to be refunded to the appellant. To ascertain the above facts, the payments are required to be examined by the adjudicating authority.

11.1. Therefore, as the matter needs examination at the end of the adjudicating authority, we remand the matter back to the adjudicating authority to examine the said facts and thereafter to pass an appropriate order in accordance with law.

Issue(b): Whether the said refund claims filed by the appellant are barred by limitation or not.

12. On the issue of rejection of the refund claims as time-barred, we observe that the appellant has submitted that that they have paid Service Tax, by mistake, under reverse charge mechanism, which was not payable by them. In such circumstances, we hold that the period of limitation as provided under Section 11B of the Central Excise Act, 1944 cannot be invoked, as has been held by the Hon'ble Calcutta High Court in the case of *Commissioner of Service Tax, Kolkata v. M/s. Electrosteel Castings Ltd. in CEXA/56/2024 & ors. decided on 03.01.2025 [2025-TIOL-88-HC-KOL-ST].* Therefore, the period of limitation is not applicable to the refund claims in question in the facts and circumstances of the case.

13. In conclusion, we remand the matter back to the adjudication authority, to pass an appropriate order in accordance with law, in terms of our directions hereinabove.

14. The appeal is disposed of by way of remand.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd