# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
## REGIONAL BENCH
## COURT No.

**Service Tax Appeal No. 86187 of 2014**
**ST/CO/91144/2014**

(Arising out of Order-in-Appeal No. 455 dated 12.02.2014 passed by the Commissioner of Central Excise & Service Tax (Appeals-V), Mumbai)

**M/s. Technocrat Engineers** **Appellant**
Plot No. 96, Ground Floor,
Dadar (E), Mumbai 400 014.

Vs.

**Commissioner of Service Tax, Mumbai-II** **Respondent**
Shri Mahavir Jain Vidyalaya,
C.D. Burfiwala Road, Juhu Lane,
Andheri (W), Mumbai 400 058.

Appearance:

Shri H.G. Dharmadhikari with Shri D.A. Bhalerao, Advocates, for the Appellant
Shri Prabhakar Sharma, Superintendent, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**
**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

Date of Hearing: 26.07.2023
Date of Decision: 13.09.2023

**FINAL ORDER NO. 86369/2023**

PER: ANIL G. SHAKKARWAR

Heard both the sides and perused the records.

2. We find that the impugned order has confirmed the order-in-original dated 31.01.2014, through which a refund of Rs.21,99,353/- was denied to the appellant. Aggrieved by the said order, appellant is before this Tribunal.

3. Appellant had filed an application for refund on 10.11.2009 stating that earlier they had paid service tax at the rate of 12.36% and subsequently when Revenue allowed them to register their service under works contract service with effect from 28.01.2009, they claimed to have been eligible for service tax at the rate of 4.12% under works contract service and filed

all ST-3 returns stating the rate of service tax to be 4.12% and also stated that in the said manner they excess paid Rs.21,99,353/- and claimed refund for the same. The original authority has held that service tax paid on 30.05.2008, 05.07.2008 and 10.09.2008 were time barred. He has further held that the appellant had claimed service tax at the rate of 4.12% under Notification No. 32/2007-ST dated 22.05.2007 and held that the said notification was conditional one and the condition that the provider of taxable service shall not take Cenvat credit of duties or cess on any inputs, but the appellant had taken and utilized Cenvat credit on input services and, therefore, they were not eligible for refund. We note that on 27.06.2009, appellant paid service tax of Rs.20,00,000/- and on 10.07.2009, appellant paid service tax of Rs.10,03,229/-. We find that the above stated amounts paid towards service tax were not hit by limitation under Section 11B of Central Excise Act, 1944 made applicable to Service Tax. We further note that the condition for availing Notification No. 32/2007-ST dated 22.05.2007 was not to avail Cenvat credit of duties and cess paid on inputs. We note that the original authority stated that the appellant had availed Cenvat credit on input services. There is no finding by the original authority that the appellant had taken Cenvat credit of duties and cess paid on any inputs. In view of our finding, we hold that the appellant is entitled for refund of service tax of Rs.21,99,353/-. We, therefore, set aside the impugned order and allow the appeal.

4. In above terms, appeal is allowed with consequential relief, if any. C.O. is also disposed of.

(Order pronounced in the open court on 13.09.2023)

**(Anil G. Shakkarwar)**
**Member (Technical)**

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

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