CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH NO.5

Service Tax Appeal No. 85336 of 2021

(Arising out of Order-in-Appeal No. DL/118/APPEALS THANE/MC/2020-21 dated 27.11.2020 passed by the Commissioner of GST & Central Excise (Appeals), Thane.)

RABO SHARED SERVICES PVT LATD ....Appellant
20th FLOOR, TOWER A,
PENINSULA BUSINESS PARK,
LOWER PAREL, MUMBAI-400013.

VERSUS

COMMISSIONER OFCGST & CENTRAL EXCISE, MUMBAI-CENTRAL, ...Respondent
4TH FLOOR, GST BHAVAN, 115 M K ROAD, CHURCHGATE, MUMBAI 400020.

APPERANCE:

Shri Harish Shukla, Advocate for the Appellant
Shri S. K. Yadav, A.C., Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 85195/2025

Date of Hearing: 18.12.2024
Date of Decision: 17.02.2025

PER: DR. SUVENDU KUMAR PATI

Confirmation by the Commissioner (Appeals) of the demand of Service Tax of Rs.1,39,14,246/- paid in excess during month of September, 2012 that was adjusted between October, 2012 and February, 2014 is assailed in this appeal. Interest and penalty with extended period proposed on such confirmed demand is also assailed in this appeal.

2. Bereft of unnecessary detail, what is required to be placed on record is that Appellant had paid an excess amount of Rs. 1,64,14,630/- while discharging Service Tax Liability for the month of September 2012, which was adjusted against Service Tax liability accrued for the period from October 2012 to March 2013 and January 2014 to February 2014. Respondent Department treated such adjustments as improper as Rule-6(4A) of the Service Tax Rules 1994 permits such adjustments of excess Service tax against Service Tax liability for the succeeding month or quarter and not for several month and quarter succeeding to the month of payment of excess Service Tax. Appellant was put to show-cause with proposal for recovery of such Service Tax that was adjusted, alongwith interest and equal penalty for the extended period. Matter was adjudicated, demand with interest and penalty got confirmed and Appellant's unsuccessful attempts before the Commissioner (Appeals) has brought the dispute to this forum.

3. We have heard on the appeal and perused the relevant provisions as well as relied upon decisions passed on the issue. As could be noticed Appellant had reversed the entire credit, though on protest, before issue of show-cause but ultimately was fastened with the liability of payment of service tax as proposed with interest at applicable rate and penalty under section 77 as well equal penalty under section 78 of the Finance Act, 1994. Learned Adjudicating Authority has appropriated the reversal of cenvat amount but no such express order is passed by the Commissioner (Appeals). On merit of the case, as we have observed that learned Counsel for the Appellant Mr. Harish Shukla, has cited several decisions including the decisions of-

- *Larsen & Toubro Ltd. Vs, Commr of Service tax, Mumbai II (2017).*
- *Jubilant Organosys Ltd. v. Commissioner of C. Ex. Meerut (2015)*
- *Arun Excello Foundation v. Commissioner of GST& C.Ex. Chennai (2020)*
- *Radha R. Deshpande v. Commissioner of C.T., Bangalor North (2019)*
- M/s. Celo Houseware v. CCE & SERVICE TAX, , Dehradun (2017),

to the effect that *'Month' as provided under Rule 6(4A) of the Service Tax Rules, 1994 should be interpreted as "Months" and also cited decisions to the effect that* judicial precedents as well as section 13 of the General Clauses Act, 1897 have been cleared terms stated that "Singular" should be interpreted as "plural", in support to which he has also submitted decisions passed in the case of –

- *Schwing Stetter (India) Pvt. Ltd. v. Commr of C.Ex, LTU, Chennai (2016)*
- *Commercial Taxes Officer, Circle-B, v. Bhagat Singh (2021)*
- *Collector of Customs, Bombay v. United Electrical Industries Ltd (1999)*

4. Learned Advocate Mr. Harish Shukla has also relied upon decision passed by this Bench on 12.09.2023 in the case of M/s. IL & FS Transportation Network Ltd V/s. Commissioner of Service Tax-IV, Mumbai dated (Order No. 86356/2023 dated 12.09.2023), to justify that "Succeeding month" is not necessarily mean "immediate succeeding month" and therefore, adjustment made by Appellant in subsequent two months in January 2014 and February 2014 has also to be treated as valid adjustment of service tax paid in excess in the month of September 2012, for which relief sought by the Appellant is required to be granted in its favour.

5. On the contrary, Learned Authorised Representative Mr. S.K. Yadav, supported the reasoning and rationality of the order passed by the

Commissioner (Appeals) and also argued that CBEC Circular dated 28.02.2007, has amply clarified that adjustment can be made only in the succeeding *month or quarter* and therefore, adjustment made in several months and quarters are improper as contrary to the Rule for which he sought no interference in the order passed by the Commissioner (Appeals).

6. We have noted the submissions. Before giving our findings, we would like to reproduce Rule-6(4A) of the Service Tax Rules, 1994 to bring clarity to the issue. It reads:

> *"where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards Services Tax liability for a month or a quarter, as the case may be, the assesse may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be."*

7. Going by the above provisions, it appears that such excess amount paid by the Appellant against its Service Tax liability can be adjusted in the succeeding month or quarter but at this juncture it is also required to reproduce section 13 of General Clauses Act 1897, to give meaning to the use of words 'month or quarter', as provided in the Service Tax Rules, which is a statutory provision incorporated by the Central Government. Section 13 of the General Clauses Act 1897 reads as under:

> *"Section 13-*
> *Gender and number: In all (Central Acts) and regulations, unless there is anything repugnant in the subject or context,*
> *(1) Words importing the masculine gender shall be taken to include females; and*
>
> *(2) Words in the singular shall include the plural, and vice versa.*
>
> *(3) 13A [References to the Sovereign.] Rep. by the A.O. 1950."*

8. Going by sub-clause 2 of section 13 that is applicable to all Central Government Acts and Regulations, it is crystal clear that words used in singular would also mean its plural and vice-versa and therefore, adjustments of excess Service Tax paid in subsequent months/quarters can be held to be valid otherwise if, after adjustment in a quarter any balance amount would still be available, that was permitted to be adjusted against excess payment, would lapse to the detriment of the assesse. Apart from the statutory provision also, judicial pronouncements even at the Apex Court level are consistent in giving findings that in construing a statutory provisions words in the singular are to include also its plurals. It would be worth while to reproduce para 18 of the judgment passed by the Hon'ble Supreme Court in the case of *COMMERCIAL TAXES OFFICER, CIRCLE-B. BHARATPUR V/S. BHAGAT SINGH [SLP(C) No. 15870 of 2020] decided on January, 2021.*

> *"The court must interpret a statute in a manner which is just, reasonable and sensible. If the grammatical construction leads to some absurdity or some repugnancy or inconsistency with the legislative intent, as may be deduced by reading the provisions of the statute as a whole, the grammatical construction may be departed from to avoid anomaly, absurdity or inconsistency. To quote Venkatrama Aiyer, J. in Tirath Singh V. Bachittar Singh (AIR p. 833, para 7)*
>
> *"7,… 'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.'…*
> *This view has been reiterated by this Court."*

9. In obedience to the observation made above and judicial precedent set on the issue by this Tribunal and several Constitutional Courts, we are of the considered view that such adjustment of service tax made by the Appellant in different months after such excess payment come to its knowledge, is appropriate and in conformity to Rule-6(4A) of the Service Tax Rules. Hence the order:

<u>The order</u>

10 The appeal is allowed and Order-in-Appeal No. DL/118/APPEALS THANE/MC/2020-21 dated 27.11.2020 passed by the Commissioner of GST & Central Excise (Appeals), Thane, is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 17.02.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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