CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85168 OF 2021

[Arising out of Order-in-Appeal No: DL/35-37/APPEALS THANE/ME/2020-21 dated 27th August 2020 passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai.]

Wheelabrator Alloy Castings Limited
4th Floor, Runwal, Eastern Express Highway
Sion, Mumbai - 400022 … ***Appellant***

versus

Commissioner of GST & Central Excise
Mumbai East
Lotus, Parel East, Lotus Infocentre, Mumbai 400012 ***…Respondent***

WITH

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Wheelabrator Alloy Castings Limited
4th Floor, Runwal, Eastern Express Highway
Sion, Mumbai - 400022 … ***Appellant***

versus

Commissioner of GST & Central Excise
Mumbai East
Lotus, Parel East, Lotus Infocentre, Mumbai 400012 ***…Respondent***

AND

SERVICE TAX APPEAL NO: 85175 OF 2021

[Arising out of Order-in-Appeal No: DL/35-37/APPEALS THANE/ME/2020-21 dated 27th August 2020 passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai.]

Wheelabrator Alloy Castings Limited
4th Floor, Runwal, Eastern Express Highway
Sion, Mumbai - 400022 … ***Appellant***

versus

Commissioner of GST & Central Excise
Mumbai East
Lotus, Parel East, Lotus Infocentre, Mumbai 400012 ***…Respondent***

APPEARANCE:

Shri Prasanna Sudka, Chartered Accountant for the appellant

Shri Adeeb Pathan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 85215-85217/2025

DATE OF HEARING: 07/02/2025
DATE OF DECISION: 07/02/2025

These appeals lie against rejection of claims for refund of ₹4,38,605, ₹ 2,91,440 and ₹ 4,73,072 by the competent authority under section 11B of Central Excise Act, 1944 for having been preferred well after the period of limitation from the appropriate relevant date in each of the cases. Upholding of the rejection in order[1] of Commissioner of GST & Central Excise (Appeals-Thane), Mumbai

[1] [order-in-appeal no. DL/35-37/APPEALS THANE/ME/2020-21 dated 27th August 2020]

has brought these appeals before the Tribunal.

2. Learned Chartered Accountant submitted that three customers who had taken up the offer of the appellant herein for allotment of space to be developed cancelled their booking owing to which regular payments made with them had, inclusive of tax component, been returned. He submitted that, thereafter, appellant herein had sought refund of the service tax discharged as and when the amounts had been received from the customers. He further submitted that the original authority had rejected the claim erroneously as the cancellation of the booking had effectively terminated the intent of delivery of service before it was completed. He relied upon the decisions of the Tribunal in *Pramukh Realty v. Commissioner of Central Excise & Service Tax, Daman,* in order[2] of Tribunal disposing off appeal[3] against order[4] of Commissioner of Central Excise & Service Tax (Appeals), Surat-I, and order[5] of the Tribunal in *Ramesh Kumar Agarwal v. Commissioner of Central Excise & CGST, Jaipur – I*, disposing off appeal[6] against order[7] of Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jaipur.

3. Learned Authorised Representative submitted that every claim for refund was to be processed in accordance with section 11B of

[2] [final order no. A/10213/2022 dated 22nd February 2022]
[3] [service tax appeal no. 12327 of 2019]
[4] [order-in-appeal no. CCESA-SRT-APPEAL-PS-186-2019-20 dated 28th June 2019]
[5] [final order no. 51646/2201 dated 25th June 2021]
[6] [service tax appeal no. 52742 of 2019]
[7] [order-in-appeal no.269 (SM) ST/JPR/2019 dated 11th July 2019]

Central Excise Act, 1944. He further submitted that the original authority had at the threshold, evaluated the claim for refund and rightly concluded that the claim had been preferred well after the period of limitation and that the upholding the order of the original authority by the first appellate authority was entirely correct and did not merit disturbance.

4. The appellant herein is a provider of taxable service and it has been settled by the decision of the Hon'ble Supreme Court in *All India Federation of Tax Practitioners and Others v. Union of India and Others [(2007) 9 SCR 147]* that service tax is 'destination based consumption' that, to be manifest, requires 'provider' and recipient to be connected by consideration for the taxable service to subsist within the meaning of section 65(105)/65B(51) of Finance Act, 1994. Point of Taxation Rules, 2011 were notified to enable tax liability to be discharged upon receipt as a matter of convenience and efficiency without touching upon the expressional integrity of section 66/66B of Finance Act, 1994 which effectively creates the taxable event. The payment of tax at any stage before the completion of service by the provider to the satisfaction of recipient is, thus, nothing but payment in advance and the curtailment of the proposed service at any stage occurring upon non-payment of obligation at any time render the accumulated collection to be nothing but advance of amount which ceases to be available for tax adjustment upon termination of proposed

service. Consequently, the 'relevant date' would, in terms of

> *'so far as may be, in relation to service tax as they to a duty of excise'*

of section 83 of Finance Act, 1994 and, in particular, to the consequence of termination of contract rendering the fulfillment of service to be *non est*, have to be determined on facts of the case. The provision of law, in section 11B of Central Excise Act, 1944, intended to apply to duties paid on clearance of goods as taxable event, cannot be read, letter to letter, for the purpose of Finance Act, 1994 intended to levy tax on rendering, or agreeing to render, service. As the claims were sifted for limitation at the threshold without assigning any reason for denial on merit, the applications are restored to the original authority for processing in accordance with law.

5. Appeals are accordingly allowed by way of remand.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*