# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

## WEST ZONAL BENCH

## SERVICE TAX APPEAL NO: 87337 OF 2019

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/535/18-19 dated 28th February 2019 passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Nagpur.]

**R K Warehousing & Leasing**
194, Cement Road, Dharampeth Extension,
Nagpur-440010. … ***Appellant***

*versus*

**Commissioner of Central Excise**
GST Bhavan, Telangkhedi Road, Civil Line
Nagpur-440001 ***…Respondent***

*APPEARANCE:*

Shri Mehul Jivani, Chartered Accountant for the appellant

Shri SBP Sinha, Superintendent (AR) for the respondent

**CORAM:**

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

## FINAL ORDER NO: 85232/2025

DATE OF HEARING: 05/02/2025
DATE OF DECISION: 05/02/2025

This appeal arises from rejection of claim for refund of service tax, towards provision of 'storage and warehousing service' to M/s Hindustan Unilever Ltd from 1st April 2017 to 30th June 2017, discharged in accordance with section 65B(51) of Finance Act, 1994. The agreement with recipient of service, dated 18th March 2018, stipulated licencing of 148625 sq ft and invoice for the disputed period reflected tax of ₹ 7,06,075 which, upon objections raised of the customer, had to be revised as, by then, the successor 'goods and service tax (GST)' had come into force. For issue of fresh invoice after 1st July 2017, the new tax was discharged on consideration due from customer for service rendered during the 'erstwhile tax' regime. The claim, for refund of tax paid at the first instance under Finance Act, 1994, was rejected by the original authority on the ground of collection having been in accordance with law and, therefore, not liable to be refunded under section 11B of Central Excise Act, 1944. Order[1] of Commissioner of CGST, Central Excise & Customs (Appeals), Nagpur upheld the rejection leading to the present appeal.

2. Learned Chartered Accountant appearing for the appellant submitted that it is not in dispute that tax had been paid twice on the same consideration. He contended that though the contractual undertaking with the customer required issue of invoice at regular intervals in advance of date of payment, being 'continuous service', tax was, in terms of rule 3 of Point of Taxation Rules, 2011, liable to be paid only upon completion of milestone set out in the contract, *viz.*, receipt of rent from customer. It was submitted that, in an identical dispute, the

[1] [Order-in-Appeal No. NGP/EXCUS/000/APPL/535/18-19 dated 28th February 2019]

decision of the Tribunal to uphold non-maintainability of refund had been reversed by the Hon'ble High Court of Karnataka in *TPI Advisory Services India Private Ltd v. Commissioner of Central Tax, Bangalore [2022 (6) TMI 978 – KARANTAKA HIGH COURT]* on the finding that

> *'8. It is not in dispute that the appellant has paid Rs.17,84,952/- as service tax and subsequently GST of Rs.21,41,944/-. The Commissioner of Central Tax (Appeals-II) has recorded in para 10 of his order that the appellant was not liable to pay the GST. Yet rejected the appeal. The CESTAT, in its order, has reproduced para 10 of the order passed by the Commissioner of Central Tax (Appeals-II) and concluded its judgment by recording thus:*
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> > *"7. Further, I find that the case laws relied upon by the appellant cited supra are not applicable in the facts and circumstances of the present case and are distinguishable. In view of my discussion above, I am of the considered view that there is no infirmity in the impugned order which is upheld by dismissing the appeal of the appellant."*
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> *xxxxxx*
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> *11. In view of the undisputed facts that the appellant has paid the service tax and also the GST; and the Commissioner of Central Excise has held that appellant was not liable to pay GST, rejection of applications for refund is untenable. Having paid the service tax in the year 2017 and having submitted its application, the appellant is awaiting the refund from March 2018 till date.*
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> *12. In view of the above, the following:*
>
> *ORDER*
>
> *(a) Appeal is allowed.*

> *(b) The substantial questions of law are answered in favour of the assessee and against the Revenue.*
>
> *(c) Respondents are directed to refund Rs.17,84,952/- with statutory interest payable under Section 11BB of the Central Excise Act, 1944 within three months from the date of receipt of a copy of this order.'*

3. It was further submitted that the adherence to contractual terms, as prescribed in Point of Taxation Rules, 2011, would fasten the liability only after 1st July 2017 and consequently service tax was not due as on date of transition to the new law. Reliance was placed on the decision of the Tribunal in *Thirumal Façade Solutions v. Commissioner of CGST & Central Excise, Chennai [2023 (2) TMI 1252 – CESTAT CHENNAI]*. It was also submitted that the invoice itself was a contract as set out therein.

4. Learned Authorised Representative submitted that, admittedly, the service had been rendered and that the dispute pertains to consideration due before 1st July 2017 when Finance Act, 1994 operated to levy tax on services. He submitted that the contract requiring the payment to be made by M/s Hindustan Unilever Ltd at regular intervals had been entered into on 18th March 2017 and the claim of the appellant that each invoice was a contract of itself was not tenable as it was the milestone set out in the contract which are sought to be pressed in their arguments. He relied upon the decision of the Tribunal, in *Maharashtra Ex-Servicemen Corporation Ltd v.*

*Commissioner of Central Tax, Pune - I,* in order[2] disposing off appeal[3] against order[4] of Commissioner of Central Tax (Appeals-I), Pune.

5. The limited issue to be resolved in this dispute is entitlement of the appellant to claim refund of service tax for the period that was liable to be discharged for rendering of 'taxable service' prior to 1st July 2017 when the Goods and Service Tax Act, 2017 was made effective. It is common ground that tax has been paid twice and it is settled law, as enunciated in the decision of the Hon'ble High Court of Karnataka in *re TPI Advisory Services India Private Ltd*, that 'double taxation' was to be avoided at all costs. A perusal of the said order makes it abundantly clear that reliance has been place on the adjurement by the Hon'ble Supreme Court in *Shiv Shanker Dal Mill v. State of Haryana and others [AIR 1980 SC 1037]* and on the decision of the Hon'ble Supreme Court in *Madras Port Trust v. Hymanshu International [(1979) 4 ELT (J396) (SC)]* both of which had stemmed from circumstances in which public authorities had not discharged their constitutional, and statutory, obligations responsibly. In setting out the contour of the dispute in *re TPI Advisory Services India Private Ltd*, the appellate authority had noted that the second payment was without authority of law which was the pivot of the reversal by the Hon'ble High Court. The implication is that an authority vested

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[2] [final order no. A/85397/2022 dated 21st April 2022]
[3] [service tax appeal no. 85643 of 2019]
[4] [order-in-appeal no. PUN-EXCUS-001-APP-404/18-19 dated 2nd November 2018]

with refund powers under appropriate law could have decided to refund tax collected without authority of law.

6. The decision of the Tribunal, in *re Thirumal Façade Solutions*, pertain to advance paid during the course of civil construction under 'works contract' which stands on entirely different footing insofar as the taxability at various stages is concerned. That the appellant is provider of 'continuous service' is not in dispute and neither is the fact that tax has been paid twice on the same consideration. The transitional provisions in the successor statute did not deal with credit not taken but only with accumulated, untransitioned credit and, with Point of Taxation Rules, 2011 not allowing any scope for overlap of two taxes, absence of parallel incorporation in the predecessor law to save consequence of credit not taken, precludes exercise of authority under section 11B of Central Excise Act, 1944.

7. One of the two deposits has to be refunded in accordance with the judicial determination of bar on 'double taxation' and under the relevant statutory empowerment. This Tribunal is not vested with powers under successor tax statute to allow credit which is a precursor to grant of refund under transitional provision of the new law while lower authorities are statutorily empowered to exercise jurisdiction under both the laws. In terms of Point of Taxation Rules, 2011 'deeming' of stage at which liability is to be discharged is enunciated

in providing for taxability, at contractually prescribed 'rests' as service deemed to have been rendered upon regular receipt of consideration. It does not, and cannot, be read *de hors* the 'taxable event' in section 66B of Finance Act, 1994 whereby the tax liability is contingent upon recipient and the provider existing with consideration be made over. That a dispute between the appellant herein and their customer caused the payment of tax twice is not of concern to taxation provisions, and, as tax liability did arise under Finance Act, 1994, it cannot be denied that leviability on consideration received, and payment of tax, by the appellant herein was in accordance with law. Such tax is not claimable as refund. If at all any tax was to be refunded it is only that collected without authority of law which is not before the Tribunal for determination in this dispute. This has been appropriately set out in the decision of the Tribunal, in *re Maharashtra Ex-Servicemen Corporation Ltd*, thus

> *'5. While it is appreciated that tax has been paid twice on the very same transaction, the discharge of liability in accordance with the Finance Act, 1994 which was the prevailing statue precludes entitlement for refund. The ground of equity pleaded on behalf of the appellant does not advance their case for refund of tax paid in accordance with a constitutionally valid levy. Accordingly, we find no reason to interfere with the impugned order and the appeal is dismissed.'*

8. Consequently, the tax paid after the levying law ceased, does

not void the taxability of consideration during the impugned period under Finance Act, 1994. The proper implementation of the provisions of the successor tax law is beyond the competence of the Tribunal especially as the tax paid under predecessor law has not been shown to be contrary to law.

9. Accordingly, this appeal lacks merits and is dismissed.

*(Dictated and Pronounced in Open Court)*

**(C J MATHEW)**
***Member (Technical)***

**/as*