

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 87205 of 2017**

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/58/2017-18 dated 24.05.2017 passed by the Commissioner (Appeals), Service Tax-I, Mumbai)

**M/s Lehman Brothers Advisers Pvt. Ltd.**

**.... Appellant**

203, The Empire Business Centre, Empire Complex,  
414, Senapati Bapat Marg, Lower Parel,  
Mumbai – 400 013

Versus

**Commissioner of Service Tax-I, Mumbai**

**.... Respondent**

5<sup>th</sup> Floor, New Central Excise Building.  
Maharshi Karve Road, Churchgate,  
Mumbai – 400 020

**WITH**

**Service Tax Appeal No. 87259 of 2017**

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/114/2017-18 dated 07.06.2017 passed by the Commissioner (Appeals), Service Tax-I, Mumbai)

**M/s Lehman Brothers Advisers Pvt. Ltd.**

**.... Appellant**

203, The Empire Business Centre, Empire Complex,  
414, Senapati Bapat Marg, Lower Parel,  
Mumbai – 400 013

Versus

**Commissioner of Service Tax-I, Mumbai**

**.... Respondent**

5<sup>th</sup> Floor, New Central Excise Building.  
Maharshi Karve Road, Churchgate,  
Mumbai – 400 020

Appearance:

Shri Bharat Raichandani, Advocate for the Appellants

Shri Shashank Kumar Yadav, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86173-86174/2025**

Date of Hearing: 25.07.2025

Date of Decision: 25.07.2025

**PER: S.K. MOHANTY**

Heard both sides and examined the case records.

2. The appellants herein, during the material period, were engaged in providing various taxable services, for which they were registered with the Service Tax Department. The appellants-company globally went into the liquidation/bankruptcy proceedings and accordingly, the business operation of the entities located in different countries were shut down. For the purpose of winding up of the appellants' company in India, certain taxable services under the category of 'Management and Business Consultancy Services' and 'Legal Consultancy Services' were procured by the appellants and the service tax liability was discharged under the Reverse Charge Mechanism (RCM), in terms of Section 66A of the Finance Act, 1994. However, on realizing the fact that they were not liable to pay service tax inasmuch as they were not involved in any business activities, the appellants have filed the refund applications under Section 11B of the Central Excise Act, 1944 made applicable to service tax matters under Section 83 of the Finance Act, 1994, claiming refund of excess service tax paid under the RCM. The refund applications filed by the appellants were however, rejected by the authorities below on the ground that they were a 'going concern' at the time of filing of refund application and since, their registration certificate issued by the Service Tax department was not surrendered or cancelled, they should be termed as 'going concern', engaged in the business of providing taxable services; thus, the amount paid as service tax by them cannot be refunded.

3. On perusal of the case records, it transpires that the holding company of appellant M/s Lehman Brothers Holding Inc. (LBHI), an incorporated entity in the United States of America (USA) had filed a petition under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York on 15.09.2008. Subsequently, the appellants' company in India had also filed the liquidation petition before the Learned National Company Law Appellate Tribunal (NCLAT) for winding-up of their business w.e.f. 24.10.2008. For accomplishing the said purpose, the appellants had imported 'Management and Business Consultancy Services' and 'Legal Consultancy Services' from abroad and as a recipient of such services in India, they had discharged the service tax liability under RCM as provided

under Section 66A *ibid*. However, the appellants had claimed that no service tax was payable by them in terms of Section 66A of the Act of 1994 read with Rule 3(1)(iii) of the Taxation Services (Provided From Outside India and Received in India) Rules, 2006 (Rules of 2006). Without considering the said submissions made by the appellants, the original authority had rejected the refund applications, holding that the 'registration certificates' issued by the jurisdictional Service Tax authorities were not surrendered and thus, it was evident that the appellants were transacting their business activities within the country.

4. On careful reading of the statutory provisions, more particularly, Rule 3(1)(iii) of the Rules of 2006, we find that the liability for payment of service tax under the RCM arises only when the services are received by the service recipient in India "for use in or in relation to business in India". Since the services were procured by the appellants for the purpose of winding-up of their business and it is an admitted fact that the appellants globally had shut down their activities, it cannot be said that they were still engaged in the business activities, for which they were liable to pay service tax in respect of the services procured by them under the RCM.

5. We find that the co-ordinate Bench of this Tribunal, in the case of the appellants themselves, for the subsequent period, reported in 2022 (63) GSTL 103 (Tri.-Mum.), has allowed the appeal, holding as under: -

*"6. I have Learned Counsel for the appellant and Learned Authorized Representative for the Revenue and perused the case recordings including the written submissions filed by the respective sides. The first and foremost question is whether the appellant is a 'business entity'? The term 'business entity' is defined under Section 65B(17) to mean "any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession." Here ordinarily means normally or in normal course. Therefore, it can be said that 'business entity' is a person who ordinarily carries out activity for profit. However, if any person is not carrying out any activity for profit, then the person cannot be considered as 'business entity'. Therefore, for applicability of this definition the appellant has to normally or in normal course, indulged in any activity which is profit motivated.*

*7. Merely because the appellant is still registered under the Companies Act and has not get the said registration cancelled does not mean that they are carrying out business activity. It is nowhere the case of the Revenue that the appellant is indulged into any activity relating to its business after the year 2008. The Learned Commissioner has specifically recorded in the impugned order that there is no dispute that the appellant have stopped their business activity and are in the process of winding up. But Still an apprehension has been recorded by the Learned Commissioner that*

*the appellant 'can' carry out activity related to their business as they have not surrendered their registration under the Companies Act, 1956 and therefore they fall under the preview of definition of 'business entity'. In my view the said apprehension of the Learned Commissioner is totally unfounded as neither any document has been placed on record to show that the appellant indulged in any business activity during last so many years nor it is mentioned in the show cause notice or in any of the case records that the appellant had earned any profit from their business activity during these years. The appellant cannot be saddled with any tax liability only on the basis of apprehension. It is the case of the appellant, which has not been denied anywhere by Revenue, that they have discharged their employees also at the time of closure of business. Profit or motive for profit is a pre-condition for application of Section 65B(17) *ibid*, which I am unable to gather from the facts of this case. So far as the submission of Learned Authorised Representative that after so many years of winding up or/closure of business the appellant are availing legal consultancy services which raises suspicion, is concerned the same is also without any basis as no evidence has been placed on record by the department to substantiate it nor it is the case of the department anywhere in the show cause notice or before the authorities below. The decisions cited by Learned Counsel also supports the case of the appellant.*

**8.** *In view of the discussions made herein above, I am of the considered view that the impugned order is liable to be set aside. Accordingly, the appeal is allowed with consequential relief, if any."*

6. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as the refund applications filed by the appellants were rejected. Therefore, the impugned orders are set aside and appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

**(S.K. MOHANTY)**  
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**  
**MEMBER (TECHNICAL)**