CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86329 of 2020

(Arising out of Order-in-Appeal No. SM/217/APPEALS-II/MC/2020 dated 10.09.2020 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s Phoenix Mills Ltd. **.... Appellant**
Phoenix Mills Compd, 462,
Senapati Bapat Marg, Lower Parel,
Mumbai – 400 013.

Versus

Commissioner of CGST & **.... Respondent**
Central Excise, Mumbai Central
4th Floor, GST Bhawan, 115, M K Road,
Churchgate, Mumbai – 400 020.

WITH

Service Tax Appeal No. 86340 of 2020

(Arising out of Order-in-Appeal No. SM/218/APPEALS-II/MC/2020 dated 10.09.2020 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s Pallazzio Hotel & Leisures Ltd. **.... Appellant**
Phoenix Mills Compd, Hotel St. Regis, 462,
Senapati Bapat Marg, Lower Parel,
Mumbai – 400 013.

Versus

Commissioner of CGST & **.... Respondent**
Central Excise, Mumbai Central
4th Floor, GST Bhawan, 115, M K Road,
Churchgate, Mumbai – 400 020.

AND

Service Tax Appeal No. 85114 of 2021

(Arising out of Order-in-Appeal No. SM/216/APPEALS-II/MC/2020 dated 10.09.2020 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s Starboard Hotels Pvt Ltd. **.... Appellant**
2nd Floor, R.R. Hosiery Bldg.,
Laxami Woolen Mill Estate,
Shakti Mill Lane, Off. E. Moses Road,
Mahalaxmi, Mumbai – 400 011.

Versus

Commissioner of CGST & **.... Respondent**
Central Excise, Mumbai Central
4th Floor, GST Bhawan, 115, M K Road,
Churchgate, Mumbai – 400 020.

AND

Service Tax Appeal No. 85119 of 2021

(Arising out of Order-in-Appeal No. SM/215/APPEALS-II/MC/2020 dated 10.09.2020 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s Classic Mall Development Company Ltd. **.... Appellant**
2nd Floor, R.R. Hosiery Bldg.,
Laxami Woolen Mill Estate,
Shakti Mill Lane, Off. E. Moses Road,
Mahalaxmi, Mumbai – 400 011.

Versus

Commissioner of CGST & **.... Respondent**
Central Excise, Mumbai Central
4th Floor, GST Bhawan, 115, M K Road,
Churchgate, Mumbai – 400 020.

AND

Service Tax Miscellaneous Application No. 86482 of 2025
(on behalf of respondent)

In

Service Tax Appeal No. 85791 of 2021

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-273/2020-21 dated 29.01.2021 passed by the Commissioner of Central Tax, (Appeals-I), Pune)

M/s Vamona Developers Private Limited **.... Appellant**
Survey No. 207, Behind Baker Gauges Nagar Road,
Viman Nagar, Pune – 411 014.

Versus

Commissioner of Central Tax, Pune-I **.... Respondent**
41-A, ICE house, Sasoon Road,
Opp. Wadia College,
Pune – 411 001.

AND

Service Tax Appeal No. 86585 of 2021

(Arising out of Order-in-Appeal No. DL/06/Appeals-Thane/BH/2021-22 dated 31.05.2021 passed by the Commissioner of GST & Central Excise Appeals Thane, Mumbai)

M/s Tata AIA Life Insurance Company Ltd. **.... Appellant**
9th Floor, Tower B, 'I THINK' Techno Campus,
Pokhran Road No. 2, Near Viviana Mall,
Thane – 400 607.

Versus

Commissioner of CGST & **.... Respondent**
Central Excise, Bhiwandi
12th Floor, Lotus Parel, Nearl,
Parel Station, Parel East,
Mumbai – 400 012.

APPEARANCE:

Shri S.S. Gupta, Chartered Accountant for the Appellants

Shri S.B.P. Sinha, Authorized Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86706-86711/2025

Date of Hearing: 10.09.2025

Date of Decision: 10.09.2025

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. The issue involved in all these appeals is identical and accordingly, with the consent of both sides, the said appeals are taken up for hearing together and a common order is being passed.

3. Briefly stated, the facts of the case are that during the disputed period, the appellants were engaged in provision of taxable services defined under the erstwhile Finance Act, 1994. For provision of such services, they were registered with the jurisdictional Service Tax authorities. Consequent upon introduction of Goods and Service Tax (GST) with effect from 01.07.2017, the appellants had a closing balance of Krishi Kalyan Cess (KKC) in their books of accounts, which remain unutilized as on 30.06.2017 on account of introduction of the GST. Thus, the KKC was sub-merged in GST. As a result, the appellants had filed the refund applications before the jurisdictional GST authorities, claiming refund of the unutilized credit of KKC available in their books of accounts as on 30.06.2017. The refund applications filed by the appellants were rejected by the original authority on the ground that the appellants are not eligible to transfer the accumulated CENVAT Credit of KKC in the GST regime and that the refund claim applications filed by the appellants are barred by the limitation of time under Section 11B of the Central Excise Act, 1944.

4. The issue of eligibility of refund of closing balance of KKC is no more *res integra* in view of the various decisions rendered by the judicial forum.

It has been held in the cases of *Bank of Baroda Vs. Asst. Commissioner, Division-II, CGST & Central Excise, Mumbai East* – 2024 (8) TMI 1407 – CESTAT MUMBAI; *Star India P Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai* – 2025 (2) TMI 591 – CESTAT MUMBAI; *Toyota Kirloskar Motor Private Limited Vs. Pr. Commissioner of Central Excise, Pune* – Final Order No. A/85036/2025 dated 17.01.2025 and *Technical Associates Limited Vs. Commissioner of Central Excise & CGST, Lucknow* – 2024 (7) TMI 543 - CESTAT ALLAHABAD, that refund of unutilized balance of KKC credit as on 30.06.2017 is available in terms of the provisions of Section 11B *ibid* read with provisions of Section 142(3) & 142(6)(a) of the CGST Act, 2017. I also find that the issue arising out of these appeals has also been considered by the Hon'ble Bombay High Court in the case of *Godrej & Boyce Mfg. Co. Ltd. Vs. Union of India and Ors. - 2021 (11) TMI 157 - Bombay High Court,* holding that transition of KKC and other cess is allowable, as the amendments proposed for in Explanation 1 & 2 of Section 142 of the CGST Act, 2017 have not been made operational.

5. In view of the settled position of law as referred to above, I do not find any merits in the impugned orders passed by the learned Commissioner (Appeals), in upholding rejection of the refund applications filed by the appellants. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

6. Miscellaneous application filed by Revenue stands disposed of.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

Sinha/Sj