CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 85197 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-517&518-16-17 dated 31.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai.]

Matrix Publicities and Media Private Limited .... Appellants
9th Floor, Commerz, International Business Park
Oberoi Garden City, Off. Western Express Highway
Goregaon (East),
Mumbai – 400 063.

VERSUS

Commissioner of CGST & Central Excise .... Respondent
Mumbai East Commissionerate
9th Floor, Lotus Info Centre, Station Road
Parel (East), Mumbai – 400 012.

AND

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APPEARANCE:

Shri Gopal Mundhra, Advocate for the Appellants

Shri C.S. Pavan, 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/86968-86969/2025

Date of Hearing: 11.07.2025

Date of Decision: 11.07.2025

PER: M.M. PARTHIBAN

These appeals have been filed by M/s Matrix Publicities and Media Private Limited, Mumbai (herein after, for short, referred to as 'the appellants') against the Order-in-Appeal No. MUM-SVTAX-002-APP-517 & 518-16-17 dated 31.10.2016 (referred to, as 'the impugned order') passed by the Commissioner (Appeals), Service Tax-II, Mumbai. The appellants are presently located under the territorial jurisdiction of the Commissioner of CGST & Central Excise, Mumbai East, Mumbai in terms of appointment of officers, imposing the powers and jurisdiction of the Central Goods and Service Tax (CGST)/Central Tax Commissioners issued under Section 3,5 of the CGST Act, 2017 vide Notification No. 02/2017-C.T. dated 19.06.2017 read with Trade Notice No. 01/2017-Central Tax dated 21.07.2017 of Mumbai Zone-I, as amended, read with Section 174(2)(f) of the CGST Act, 2017.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellants herein, *inter alia*, are engaged in providing 'Advertising Agency Services' to its customers located in India and to its overseas group companies, situated outside India. The appellants have executed Intercompany Work Order (IWO) with the said group companies situated outside India. In accordance with the terms of such arrangement, the appellants periodically accept work orders and as per such work order they rendered specific services to overseas group company entities. These services have been exported out of India, and therefore the appellants claim that such services qualify as "export" of service in terms of Rule 3 of the Export of Service Rules, 2005. It has also been stated by the appellants that some of these exports have been undertaken by them on payment of applicable service tax and in some cases, without payment of service tax. These details have been properly captured in their ST–3 returns filed before the jurisdictional Service Tax authorities/Department. The appellants have duly registered with the department under Service Tax authorities bearing Registration No. AADCM8510HST001. The appellants have filed two rebate/refund applications in the prescribed form 'R' (i) first one dated 29.07.2013 for refund of Rs.51,61,751/- and (ii) second one dated 30.09.2013 for refund of Rs.1,31,41,049/-, being the Service Tax and cess paid on export of services for the period July, 2012 to September, 2012 and October, 2012 to March, 2013, respectively, duly submitted along with supporting documents.

2.3 On preliminary scrutiny of such refund/rebate applications, the jurisdictional Deputy Commissioner had found certain deficiencies seeking the response of the appellants to show cause why the refund shall not be rejected on the aforesaid grounds mentioned in the Show Cause Notices dated 21.10.2013 and 30.12.2013 issued in this regard. Further, the department disputed the payment of service tax on the ground that the nature of services exported by the appellant is not ascertainable; and that there was no requirement for payment of service tax on exports.

2.4 In adjudication of the said refund/rebate claims vide Orders-in-Original No. ST-II/Div.IV/R-262/2013-14 dated 14.02.2014 and ST-II/ Div.IV/R-10/2014-15 dated 09.04.2014, the Original authority had rejected the refund claims preferred by the appellants. Being aggrieved, the appellants had preferred two appeals against the above orders of the original authority dated 14.02.2014 and 09.04.2014, before the learned Commissioner (Appeals), Service Tax-II, Mumbai, who vide impugned common order dated 31.10.2016, had rejected such appeals by upholding the orders of the original authority. Feeling aggrieved with the above Order-in-Appeal dated 31.10.2016, which is the impugned order herein, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants had submitted that they had entered into "Intercompany Work Order" with their overseas entity established in London. They had exported the output services to their overseas entity vide eight invoices for the period July, 2012 to September, 2012 and twelve invoices during the period October, 2012 to March, 2013. They had also received the foreign exchange inward remittances (FIRC) paid to them by the overseas entity, being the export proceeds, duly certified by the bank. Further, learned advocate also submitted the breakup details of services exported under Rule 4 & Rule 5 of the Export of Service Rules, 2005 along with the service tax discharged by reversal of CENVAT Credit as reflected in the ST 3 returns filed by them. Hence, he claimed that they had fulfilled all the requirements for preferring the rebate claim. However, their refund/rebate applications filed by them were rejected by both the authorities below.

3.2 Learned Advocate further submitted that the services provided by the appellants to the overseas entities constitute 'export of service' as per Rule 6A of the Service Tax Rules, 1994 read with Rule 3 of Place of Provision of Service Rules, 2012 (POPS) and therefore such services exported out of India are not liable to service tax, and accordingly they refund claims can be entertained under Section 11B of the Central Excise Act, 1944 as made applicable to service tax matters vide Section 83 of the Finance Act, 1994. Further in respect of eight refund claims filed by the appellants for the earlier period of April, 2013 to March, 2015, the Tribunal in their own case *Matrix Publicities & Media Pvt. Ltd Vs. Commissioner of Service Tax-VI, Mumbai* – 2024 (10) TMI 1180 – CESTAT Mumbai, after considering the details of the case, vide Final Order 86203-86210 of 2024 had remanded the case to the original adjudicating authority for fresh adjudication of the case. With the above submissions and those made in the grounds of appeal, learned Advocate prayed for allowing the appeal, with consequential relief.

3.3 Learned Authorized Representative (AR) appearing for Revenue, reiterated the findings made by the Commissioner (Appeals) in the impugned order and submitted that in view of the specific provisions for refund of CENVAT credit provided under Rule 5 of the CCR, the appeal for refund/rebate of CENVAT credit of Service Tax & Cess under Section 11B ibid is not permissible. Accordingly, he submitted that the impugned order is sustainable in law and prayed for rejection of the appeal filed by the appellants.

3.4 Heard both sides and perused the case records. The additional submission made in the form written paper book in this case was also perused carefully.

4. The short issue for determination before the Tribunal is whether refund/rebate of Service Tax & Education Cess paid by the appellants in respect of their export of taxable services for the period July, 2012 and March, 2013, is refundable in terms of Notification No.11/2005-S.T.

dated 19.04.2005 read with Section 11B of the Central Excise Act, 1944 or otherwise?

5.1 In order to appreciate the issues under dispute, the specific provisions contained in Notification No.11/2005-S.T. dated 19.04.2005, relevant to the dispute are extracted and herein given below for ease of reference:

> *"In exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), insofar as it relates to* ***export of taxable services*** *to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be* ***granted rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules****, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter, -*
>
> ***2. Conditions and limitations :-***
> *(a) that the taxable service has been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;*
> *(b) that the service tax and cess, rebate of which has been claimed, have been paid on the taxable service exported;*
> *(c) the amount of rebate of service tax and cess admissible is not less than five hundred rupees; and*
> *(d) that in case, -*
> *(i) the service tax and cess, rebate of which has been claimed, have not been paid; or*
> *(ii) the taxable service, rebate on which has been claimed, has not been exported,*
> *the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994) as if no service tax and cess have been paid on such taxable service.*
>
> ***3. Procedure :-***
> *(a) Presentation of claim for rebate :-*
> *(i) claim of rebate of service tax and cess paid on all taxable services exported shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be;*
> *(ii) such application shall be accompanied by,–*
> *a. documentary evidence of receipt of payment against taxable service exported and for which rebate is claimed, payment of service tax and cess on such taxable service exported;*
> *b. a declaration that such taxable service, rebate of service tax and cess paid on such service is claimed, has been exported, in terms of rule 3 of the said rules, along with the documents evidencing the export of such taxable service;*
> *(b) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.*
>
> *Explanation, - "service tax and cess" for the purposes of this notification means, -*
> *(a) service tax leviable under section 66 of the Finance Act, 1994; and*

> *(b) education cess on taxable services levied under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004)…"*

5.2 On perusal of the records placed in the appeal, we find that the jurisdictional Deputy Commissioner had rejected the rebate claim filed by the appellants on the following basis. The relevant findings and conclusions arrived in passing such an order are extracted and given below:

> *"8. The claimant filed the refund application claiming refund of Service Tax paid by them for the so called advertising services exported by them on payment of Service Tax during the period July 2012 to September 2012. Whereas during the relevant period, there was no provision in the Service Tax Rules / Finance Act for payment of any Service Tax for export of services and hence not required to pay any Service Tax. The claimant has not only paid the Service Tax but also recovered the same from the clients which can be seen from the export invoices as well as the FIRC's submitted by them. This facts has also been accepted by them during the Personal Hearing.*
>
> *9. As such, if any refund is granted to the claimant, it will be a case of unjust enrichment. The claimant will be doubly benefited as they had already recovered the Service Tax from the clients and also will be getting the same again as refund, if the claim is allowed. Hence, even if it is assumed that Section 11B has no application as claimed by the claimant in their submission, on general principle also it appears that the claimant has no right to claim such amount as it would result in unjust enrichment.*
>
> *10. As such I am not going into the details of the issue, as to whether the service said to have been exported by the claimant can be treated as export of service as per the provision of Rule 6A of Service Tax Rules, 1944, or not.*
>
> *11. Further, doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several cases. Therefore, irrespective of applicability of Section 11B of the Act, the doctrine can be invoked to deny the benefit to which a person is not otherwise entitled. Section 11B of the Act or similar provisions merely gives legislative recognition to this doctrine. That however, does not mean that, in absence of statutory provision, a person can claim or retain undue benefit. Before claiming a rebate or refund, it is necessary for the claimant to show that they have paid the amount for which the claim has been filed and they have not passed on the burden to others and if such refund is not granted he would suffer financially.*
>
> *12. In view of the above it is very clear that the claimant has recovered the Service Tax amount from others and as the Service Tax is passed on to others as such the claim is required to be rejected or otherwise it will result in unjust enrichment.*
>
> *13. Further, on perusal of export Invoices it is seen that the description are mentioned as FDL Fee May 12, MSC GA CMP-May 12, MSC GA CMP-June FDLJuly 12-June 12-Additional, GIO India Production Hub Q2 2012 Retainer-May'12, GIO India Production HubQ2 2012-Retainer (Jun 12), Q2-SPA Retainer 2012-India LIO Analyst-May 12,*

Retainer Fee-FY12, Q1 SU Retainer 2012-Wunderman India, Support for 2011 India SU Rebate, etc., this description of the invoice does not give any idea as to the nature of export service and hence, it appear that they have not fulfilled condition of Rule 6A of Service Tax Rule 1944.

14. Also the statutory provisions relating to export of Service has undergone lot of changes from 01.07.2012 and export service is not a Taxable Service after 01.07.2012, hence, no Service Tax is payable on it. Accordingly Notification providing exemption to the export of service has also been rescinded w.e.f. 01.07.2012.

15. On the strength of the submitted documents, and observations and above discussions, I have no option but to make the points raised in the SCN as valid grounds and go for rejection of the refund claim."

5.3 In the appeal preferred by the appellants against the above Orders-in-Original dated 14.02.2014 and 09.04.2014, the learned Commissioner (Appeals), vide impugned order dated 31.10.2016, had rejected such appeal by upholding the orders of the original authority as follows:

"12. Since the appellant had claimed refund of the service tax paid on export of services claiming to have paid the service tax in excess, and the service tax having been recovered from the service recipients, the principle of doctrine of unjust enrichment will be attracted. However, before deciding the issue of unjust enrichment, it would be prudent to decide the admissibility of the refund and whether the services provided by the appellant as claimed by them qualify to be export of service.

xxx xxx xxx xxx

14. It is observed from the service recipients' copy of declaration issued by Wunderman Division, EMEA, London, Wunderman Regional, Singapore, that they have received various services directly in relation to advertising viz.

"a. Activities directly in relation to advertising:

Stand alone dissemination of client approved content to potential customers through e-mail

Reporting and analytics on the various data elements received from clients (their customer databases) to optimize the message dissemination and improving the response rates to connected promotional e-mails or other communication.

Assisting clients in finalizing the contents of its websites/web pages and the manner of display thereof.

b. Other incidental activities (with an overall advertising perspective only)

Conceptualization of web based applications and maintenance of same.

Management of web-properties, which includes providing the client with strategic information about its websites/web pages such details of overall number of visitors, number of times a specific content is accessed/browsed, etc ad inter-alia analyzing such information.

Assisting clients in re-publishing of revised web content."

> *15. I further find that the appellant has failed to submit any other evidences including crucial document like agreement between two legal entities viz., the appellant and their service recipient. The appellant has also not produced any evidences about the kind of advertisements, if any, made by the appellant while providing the said services so as to connect the nature of services claimed to have been provided by them. Therefore, I am constrained to arrive at the conclusion that the services provided by the appellant fails to fall under the category of "Advertising Agency Service"*
>
> *16. Thus, having held that the output services provided by the appellant do not qualify as export of service under rule 6A of STR, it can be concluded that all services provided within the territory of India shall be liable to service tax in terms of section 66 of FA, unless otherwise exempted. Consequently. the appellant has correctly paid the due service tax on the said services for the relevant period in terms of explicit provisions contained in Section 66 of the Finance Act, In view of the above findings, the service tax amount paid by the appellant are held to be legitimately paid and therefore, the question of refund of any tax paid by claiming any export of services in terms of Section 11B of CEA read with section 83 of FA does not arise.*
>
> *17. In view of foregoing discussions, since no refund is found legally admissible to the appellant and sanctionable to the appellant on merit, I refrain from discussing the issue regarding applicability of doctrine of unjust enrichment which arise only after the refund is found to be admissible for sanction in favour of the appellant."*

6. From the facts of the case, it is seen that the appellants had duly followed the procedure and conditions prescribed in complying with the obligations under Notification No.11/2005-Service Tax dated 19.04.2005 and had also complied with for furnishing the details in the ST-3 returns, which was filed for the disputed period with the department. In terms of legal provisions prescribing the procedure for filing necessary rebate claim in the Notification dated 19.04.2005, the appellants had applied for refund/rebate before the departmental authorities.

7. The main ground on which the refund/rebate claim of the appellants was held by the learned Commissioner (Appeals) as not entertainable in the impugned order is, that the appellants have failed to submit evidence like agreements between the parties viz., the appellants and the overseas entities who had received the services; evidences on the nature of services rendered regarding advertisements.

8. In this regard, we find that in the case of the self-same appellants for eight refund claims of different periods covering April, 2013 to March,

2015, the matter was remanded for fresh adjudication by the Original authority, by the Co-ordinate Bench of this Tribunal, as the authroties below have not examined the factual aspects of the case, refunds sanctioned in their own case for the earlier period, decisions taken by the Hon'ble Supreme Court, before coming to conclusion for rejection of refund/rebate claims. The relevant paragraphs of the said order is quoted below:

"5. We have heard learned counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records alongwith the written submissions and additional written submissions placed on record on behalf of the appellant. It is not in dispute that in these appeals, except Inter company work order (IWOs)/Export invoices, no agreement or contract has been entered into between the parties. The entire case of the appellant is based on these documents only. As per practice, according to Appellant, the clients approach the overseas group of companies of the appellant who in turn sub contract the same to the appellant in India by way of IWOs/Invoices. It has been submitted by learned Counsel that for the earlier years i.e. April, 2011 upto June, 2012 the department kept on sanctioning refunds to the appellant on the same set of documents by considering the service as 'Advertising Agency service' without raising any doubt. To buttress the arguments learned counsel placed on record, by way of Additional written submissions, the orders of the Adjudicating Authority dated 31.5.2013 & 25.10.2013 respectively for different periods from April, 2011 upto June, 2012. She also submits that the same were placed before the lower authorities also, but none of the authorities have considered the same. The details of the refunds sanctioned for the earlier period are as under:-

Sr. No.	*Period Covered*	*Order*
1	*April, 2011 to September, 2011*	*Order-in-original No. ST-II/Div.IV/54 R/2013-14 dated 31.05.2013*
2	*October, 2011 to March, 2012*	*Order-in-original No. ST-II/Div.IV/53 R/2013-14 dated 31.05.2013*
3	*April, 2012 to June, 2012*	*Order-in-original No. ST-II/Div.IV/122 R/2013-14 dated 25.10.2013*

6. After looking at the earlier orders of granting refund, we deem it proper to firstly take up the issue about the inconsistency in the orders of Adjudicating Authority that too for the very same assessee. In our view, the issues have been dealt with by the lower authorities in a most casual way. Time and again it has been repeated through various judicial precedents that the revenue cannot be permitted to adopt an inconsistent stand in a subsequent assessment where the facts are identical unless there is change in law. None of the authorities below have considered *it proper to even address the submission on behalf of the appellant regarding the earlier orders of the Adjudicating Authority granting refund for the same service. That becomes relevant when no appeals have been preferred by the revenue against the said order. The Authorities below are free to reject the said submission, but at least some finding is required to be given. The revenue cannot be permitted to adopt an inconsistent stand in subsequent proceedings when the facts are identical unless they show that the law has changed but nothing of that sort has been attempted.*

7. We place our reliance on the judgment of the Hon'ble Supreme Court in the matter of BSNL v. Union of India; reported in 2006 (3) SCC 1, wherein the Hon'ble Supreme Court while relying upon case of Radhasoami Satsang v. CIT 1992 (1) SCC 659, has laid down as under:-

> *"15. The question in Radhasoami Satsang v. CIT [(1992) 1 SCC 659] (also cited by the State of UP.) was whether the Tribunal was bound by an earlier decision in respect of an earlier assessment year that the income derived by the Radhasoami Satsang, a religious institution, was entitled to exemption under sections 11 and 12 of the Income tax Act, 1961. The Court said: (SCC p. 666, paras 16 17)*
>
> > *"We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year, [unless there was] any material change justifying the Revenue to take a different view of the matter."*

8. We are also well aware about the legal position that the principles of res judicata may not be strictly applicable in such cases but we can't close our eyes to the fact that nature and ambit of services which were rendered by the appellant during earlier periods and during the period before us, remained unchanged. The authorities below have failed to base their decision of rejecting the refund claim on any change in law or circumstance, rather they ignored the said submission on behalf of the appellant. We are also aware of the fact that w.e.f. 1.7.2012 substantial changes by way of amendment have been affected in the Finance Act as well as in the Service Tax Rules and also various new Rules such as Place of Provision of Service Rules, 2012 etc. were brought into effect. We don't want to examine all these things at this stage of 2nd Appeal as we cannot adorn or function as the Adjudicating Authority to examine the said aspect at this stage. The proper course would be to let the lower authority examine all these aspects and therefore, in the interest of justice and without going into other aspects of the matter, we find it proper to remand the matter back to the Adjudicating Authority for denovo adjudication after taking into consideration their earlier orders of granting refunds to the appellant and also after taking into consideration all the submissions of the appellant and the laws applicable at the relevant time. The said authority must provide a proper opportunity of hearing to the appellant.

> *Needless to mention that the Adjudicating Authority is at liberty to adjudicate the issue independently without being influenced by any observation made herein.*
>
> *9. In view of the discussions made hereinabove, the impugned order is set aside and the Appeals filed by the appellant are allowed by way of remand to the Adjudicating Authority."*

9. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals) to the extent it has rejected the rebate/refund of service tax paid output services. Further, we also find that in the case of self-same appellants vide Final Order No.86203-86210 of 2014 dated 15.10.2024 since the other appeals having been remanded back to the original authority, we cannot take a different stand for disposal of the cases herein in a different manner. Therefore, by setting aside the impugned order dated 31.10.2016, the appeals are allowed by way of remand to the original authority for fresh *de novo* adjudication of the cases. Needless to say, that reasonable opportunity for personal hearing should be given to the appellants and additional written submissions, if any, filed by them should also be taken into consideration for fresh adjudication of the cases.

10. In the result, the impugned order dated 31.10.2016 is set aside and the appeals filed by the appellants are allowed by way of remand to the original Adjudicating Authority.

(Operative portion of the order pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM