

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No. 40173 of 2022**

(Arising out of Order-in-Appeal No. 07/2022 (CTA-II) dated 24.01.2022 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2<sup>nd</sup> Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

**M/s. TamilNadu Trade Promotion Organization** : **Appellant**  
Mount Poonamallee Road,  
Nandambakkam, Chennai – 600 089

**VERSUS**

**The Commissioner of G.S.T. and Central Excise** : **Respondent**  
Chennai South Commissionerate  
5<sup>th</sup> Floor, M.H.U. Complex, No. 692, Anna Salai, Nandanam,  
Chennai – 600 035

**APPEARANCE:**

Shri J. Shankar Raman, Advocate for the Appellant

Smt. Sridevi Taritla, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 40319 / 2022**

DATE OF HEARING: 05.09.2022

DATE OF DECISION: **08.09.2022**

**Order :**

The only issue to be decided in this appeal is:  
whether the appellant is entitled to refund under Section 11B of the Central Excise Act, 1944 of the amount claimed to have been paid as pre-deposit?

2. The appellant filed an application for refund of the Service Tax paid on the advances received during pre G.S.T. regime and it was the case of the appellant that upon introduction of G.S.T., they had discharged their entire G.S.T. liability including such advances for which even Service Tax was remitted under the old regime and

hence, refund of Service Tax paid under the old regime was claimed.

3. A Show Cause Notice dated 20.11.2020 was issued to the appellant proposing to reject the refund claim on the grounds that the appellant had not fulfilled the conditions laid down under Section 11B of the Central Excise Act, 1944 and that the appellant had not furnished any evidence to substantiate that the incidence of duty was not passed on to the recipients of service (paragraph 6 of the Show Cause Notice). The appellant filed a detailed reply to the Show Cause Notice substantiating its claim for refund, but however, vide Order-in-Original No. 01/2021 (RF-Legacy) dated 29.03.2021, the Adjudicating Authority rejected the claim. Aggrieved by the rejection, the appellant preferred an appeal before the Commissioner of G.S.T. and Central Excise (Appeals-II), Chennai, who vide impugned Order-in-Appeal No. 07/2022 (CTA-II) dated 24.01.2022 also having rejected the appeal, the present appeal has been filed before this forum.

4. Heard Shri J. Shankar Raman, Learned Advocate for the appellant and Smt. Sridevi Taritla, Learned Additional Commissioner for the Revenue.

5. I have considered the rival contentions and have gone through the documents placed on record as well as the decisions relied upon during the course of arguments.

6. The peculiar facts of the present case are that the appellant has paid the tax twice and that the Revenue has not disputed the same. In view of the above, it has to be presumed that there has, in fact, been double payment of tax: firstly, under the Service Tax regime and secondly, again under the G.S.T. regime.

7. Higher courts have held that no tax shall be collected without the authority of law and, as a necessary corollary, the amount collected as tax without the authority of law shall be refunded. The liability to tax is determined after adjudication proceedings and the same is not an empty

formality. So also, when a *bona fide* taxpayer remits tax, it is incumbent upon the Revenue to retain the tax as per law and if such remittance is found to be excessive, then that 'excess' being collected without the authority of law, shall have to be refunded. From the orders of both the lower authorities, I do not find any whisper about the authority to retain the tax paid on advance, since after the introduction of G.S.T., tax under the new regime was paid in full, which fact also stands undisputed.

8. Strangely, the Adjudicating Authority having referred to the certificate issued by the Chartered Accountant, has not at all discussed anything about it and has proceeded to hold that the appellant had passed on the duty element to the ultimate service recipients and hence, there was unjust enrichment, which, according to me, is not in accordance with the requirement of law. The Adjudicating Authority has extracted a table to assume that the appellant had collected Service Tax from the service recipients, which is exactly contrary to the stand of the appellant, which is duly supported by evidence in the form of a certificate issued by a Chartered Accountant. When such an evidence is placed on record, it is incumbent on the Adjudicating Authority to examine and discuss as to why he is not accepting the same; but without any such exercise, the Adjudicating Authority has ignored the evidence submitted by the appellant. There is also no whisper even in the impugned Order-in-Appeal.

9. It is relevant at this juncture to refer to the decision of the Hon'ble jurisdictional High Court of Judicature at Madras in the case of *M/s. 3E Infotech v. CESTAT, Chennai* as reported in *2018 (18) G.S.T.L. 410 (Mad.)*, wherein the Hon'ble court has ruled as under:

*"12. Further, the claim of the respondent in refusing to return the amount would go against the mandate of Article 265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law.*

13. *On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court, and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs. 4,39,683/- cannot be barred by limitation, and ought to be refunded.*

14. *There is no doubt in our minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper, and against the tenets of Article 265 of the Constitution of India. On the facts and circumstances of this case, we deem it appropriate to pass the following directions :-*

*(a) The Application under Section 11B cannot be rejected on the ground that is barred by limitation, provided for under Section.*

*(b) The claim for return of money must be considered by the authorities."*

10. The fact that the appellant claimed refund itself shows that the remittance which was subsequently claimed as refund was not paid in accordance with law and hence, the same would partake the character of an amount being paid under protest or the same being paid by mistake, which aspect has been considered in the above ruling of the Hon'ble jurisdictional High Court. Hence, I am of the view that the rejection orders of the lower authorities are not in accordance with law, which cannot therefore be sustained. For the above reason, the impugned order is set aside.

11. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **08.09.2022**)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)