

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III**

SERVICE TAX APPEAL NO. 51091 OF 2022

[Arising out of Order-in-Appeal No.19/2021-22 dated 30.11.2021 passed by the Commissioner (Appeals-II) Goods and Service Tax, Delhi]

**M/s. INDIABULLS DISTRIBUTION
SERVICES LIMITED**

....APPELLANT

Represented by its Senior Manager,
Ms. Vijay Luxmi,
M-62 & M-63, First Floor,
Connaught Place, New Delhi-110 001

VERSUS

**COMMISSIONER, DIVISION- CONNAUGHT
PLACE, CENTRAL TAX, CENTRAL EXCISE
& SERVICE TAX**

...RESPONDENT

Delhi South, 2nd Floor, 14-15,
Farm Bhavan, Nehru Place-110 019

AND

SERVICE TAX APPEAL NO. 51092 OF 2022

[Arising out of Order-in-Appeal No.18/2021-22 dated 30.11.2021 passed by the Commissioner (Appeal-II) Goods and Service Tax, Delhi]

**M/s. INDIABULLS DISTRIBUTION
SERVICES LIMITED**

....APPELLANT

Represented by its Senior Manager,
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VERSUS

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PLACE, CENTRAL TAX, CENTRAL EXCISE
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Delhi South, 2nd Floor, 14-15,
Farm Bhavan, Nehru Place-110 019

APPEARANCE:

Shri Sudhir Malhotra, Advocate for the appellant
Shri Rajeev Kapoor, Authorised Representative for the respondent

CORAM:

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

FINAL ORDER NOs.50389-50390/2026**Date of Hearing: 25.02.2026**
Date of Decision: 20.03.2026**BINU TAMTA:**

1. M/s. IndiaBulls Distribution Service Limited¹ is providing Real Estate Brokerage Service to various developers and are engaged in the business of distribution and marketing of third-party products in Real Estate sector and for the said service, they receive brokerage by way of marketing fee from the developer when a customer referred by the appellant books a unit with the developer. The appellant filed refund claim of Rs.6,70,99,213/- on the ground that some of their services rendered to their customers was rejected and not rendered the said services either partly or wholly. The refund claim was rejected by the Adjudicating Authority holding the claim to be barred being filed beyond one year from the date of payment of tax as per clause (f) of Explanation-B to Section 11B of the Central Excise Act, 1944². The appeal filed by the appellant has been rejected on the same ground of limitation by the impugned order³. Hence these appeals.

2. Heard both the sides and perused the case records.

3. Firstly, the learned Counsel for the appellant has challenged the rejection of the refund application on the ground of limitation as the same is not applicable in such cases. Secondly, the learned Counsel referred to the provisions of Rule 6(3) of Service Tax Rules, 1994,

¹ Appellant

² Act, 1944

³ Order-in-Appeal Nos.19/2021-22 in Appeal No.ST/51091/22 and Order-in-Appeal No18/2021-22 dated 30.11.2021 in Appeal No.ST/51092 of 2022

which provides for taking of credit of tax paid in respect of which payment received has been returned/credit notes issued for value of service not provided to person to whom invoice has been issued and for such a claim there is no time limit prescribed. Further submitted that the appellant could not take credit of service tax against credit note issued during the period 29.09.2017 to 17.08.2018 and 18.09.2018 to 29.06.2020 as per the provisions of Rule 6(3) as the Finance Act, 1994 was repealed and GST regime came into operation w.e.f. 1.07.2017. Both the above submissions of the learned Counsel has been dealt by the Division Bench of this Tribunal in the case of **Wave Megacity Centre Private Limited Vs. Commissioner (Appeals-I) Central Tax Goods and Service Tax and Central Excise, New Delhi**⁴, wherein it was observed:-

"10. The issue of refund in similar circumstances and the contentions raised by the learned Counsel have been considered in series of decisions by different learned Single Members, as referred above. The consistent view taken in all these decisions is that refund claim of service tax paid under the existing law (Central Excise Act, 1944) in respect of services not provided shall be disposed of under the existing law and has to be paid in cash, however such refund is subject to the provisions of sub-Section (2) of section 11B of CEA, which means that it is only in case of unjust enrichment that the refund amount can be denied. The refund application cannot be rejected on the ground of time bar under Section 11 B. The learned Single Member has taken support from the decision of the Apex Court in the case of **Collector of Central Excise, Chandigarh Vs. M/s. Doaba Cooperative Sugar Mills Ltd., Jalandhar**⁵ and concluded that there is no reason to invoke section 11B and the amount needs to be refunded, notwithstanding anything, contrary in the erstwhile law. The observations have also been made that the relevant date would not be the date of payment of service tax by the appellant but the date of issuance of credit notes to its customers subsequent to

⁴ Final Order No.51242-43/2025 dated 27.08.2025 in S.T. Appeals No.54979-80/2025

⁵ 1988 (37) ELT 487 (SC)

cancellation of agreements for providing construction service between those customers and the appellant. Accordingly, the appeal was allowed with consequential relief.

11. We may also refer to the decision of the learned Single Member in the case of **Credence Property Developers Pvt.Ltd.** where the issue of refund of service tax amount which the builder has returned or refunded to the buyer along with the advance amount paid upon cancellation of the two flats booked by the said buyer was in consideration and the relevant para deciding the issue is quoted hereunder: -

"5. The first principle of service tax is that tax is to be paid on those services only which are taxable under the said statute. But for that purpose there has to have some 'service'. Unless service is there no service tax can be imposed. For the applicability of the provisions as referred to in the deficiency memo or in the Adjudication order or appellate order, the pre-condition is 'service'. If any service has been provided which is taxable as specified in the Finance Act, 1994 as amended from time to time then certainly the assessee is liable to pay, but when no such service has been provided then the assessee cannot be saddled with any such tax and in that case the amount deposited by the assessee with the exchequer will be considered as merely a 'deposit' and keeping of the said amount by the department is violative of Article 265 of the Constitution of India which specifically provides that "No tax shall be levied or collected except by authority of law." Since Service Tax, in issue, received by the concerned authority is not backed by any authority of law, the department has no authority to retain the same Buyer booked the flat with the appellant and paid some consideration. The appellant as a law abiding citizen entered the same in their books of accounts and paid the applicable service tax on it after collecting it from the buyer. But when the buyer cancelled the said booking on which service tax has been paid and the appellant returned the booking amount along with service tax collected then where is the question of providing any service by the appellant to that customer. **The cancellation**

of booking coupled with the fact of refunding the booking amount along with service tax paid would mean as if no booking was made and if that is so, then there was no service at all. If there is no service then question of paying any tax on it does not arise and the department can't keep it with them. No law authorises the department to keep it as tax. The net effect is that now the amount, which earlier has been deposited as tax, is merely a deposit with the department and the department has to return it to the concerned person ie. the assessee. In the fact of this case it can be safely concluded that no service has been provided by the Appellant as the service contract got terminated and the consideration for service has been returned.

6. As per Rule 66E(b), Service Tax Rules, 1994 in construction service, service tax is required to be paid on amount received from buyers towards booking of flat before the issuance of completion certificate by the competent authority and the booking can be cancelled by the buyer any time before taking possession of the flat. Once the buyer cancelled the booking and the consideration for service was returned, the service contract got terminated and once it is established the no service is provided, then refund of tax for such service become admissible. The authorities below are not correct in their view that mere cancellation of booking of flats does not mean that there was no service. If the booking is cancelled and the money is returned to that buyer then where is the question of any service? Once it has been held that there is no service then by any stretch 'Point of Taxation Rules, 2011' can't be roped in as for the applicability of the said Rules firstly providing of any 'service' by the Appellant has to be established. Therefore, the authorities below were not justified in invoking the Provisions of Point of Taxation Rules, 2011 for denying the refund."

12. We fairly accept the views taken by the learned Single Member Bench in respect to the same controversy and being in conformity with the provisions of Section 142 of CGST Act. As noted by the learned Single Member in **Credence Property Developers**, that when there is no

incidence of service there cannot be any leviability of service tax. Once the booking has been cancelled and the amount has been refunded, there is no scope for rendering any service on which the Department can hold the amount towards service tax. The appellant had issued credit notes in respect of service which is not rendered to the customers on account of cancellation of the agreement and hence there was no scope of rendering any services on which the service tax could be levied.

13. The learned Counsel for the appellant has relied on the provisions of Rule 6 of Service Tax Rules, 1994, which entitles the assessee to take the credit of such excess service tax paid by him. Rule 6 during the period 01.04.2011 to 30.06.2017 is quoted below:-

“(3) Where an assessee has issued an invoice, or received any payment, against a service to be provided, which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee.-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.”

There is no doubt that the appellant was entitled to the credit as the present case falls within the ambit of Rule 6 since the appellant had received the amount against the service to be provided, however, for the reason stated above, the same could not be provided by him, and the amount of invoice was to be returned back to the customers, the appellant therefore could have taken the credit of such excess service tax paid by him subject to the conditions specified in the rules. For the said reason also, the refund needs to be allowed.”

4. In the light of the principle followed in the above decision that limitation is not applicable in case of refund application, which is squarely applicable in the facts of the present case, the impugned orders need to be set aside and the appellant is entitled to the refund

subject to the satisfaction of the provisions of Section 11B(2) of CEA read with section 142(5) of CGST Act, 2017. We, accordingly remand the matter to the Adjudicating Authority to decide on the applicability of the principle of unjust enrichment, granting an opportunity to the appellant to place on record the requisite documents in that regard. Accordingly, the appeals are allowed by way of remand.

[Order pronounced on 20th March 2026]

(Binu Tamta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

Ckp.