

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4**

SERVICE TAX APPEAL NO. 52404 OF 2018

[Arising out of Order-in-Appeal No.28(RK)ST/JPR/2018-19 dated 10.05.2018 passed by the Commissioner (Appeals), Office of the Commissioner (Appeals) and ADG, DGGSTI, Jaipur]

M/s. Jal Mahal Resorts Pvt. Ltd.,

Appellant

102, Hazrat Ali Nagar, Amer Road,
Jaipur-302002 (Rajasthan)

Vs.

**Principal Commissioner, CGST & Central
Excise Commissionerate, Jaipur**

Respondent

New Central Building, Statue Circle, C-Scheme,
Jaipur

Appearance:

Present for the Appellant : Shri Sanjiv Agarwal, Chartered Accountant

Present for the Respondent: Ms. Jaya Kumari, Authorised Representative

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:12.03.2026

Date of Decision:07.04.2026

Final Order No.50686/2026

HEMAMBIKA R. PRIYA

This appeal has been filed by M/s. Jal Mahal Resorts Pvt. Ltd ¹ against the Order-in-Appeal No.28(RK)ST/JPR/2018-19 dated 10.05.2018 passed by the Commissioner (Appeals), Jaipur, wherein the refund of service tax amounting to Rs.95,01,092/- was rejected.

1. the Appellant

2. The brief facts are that the Appellant is a Private Limited Company having Service Tax registration No. AABCJ4774EST002 as service receiver in the category of 'Legal Consultancy Services' under Section 65(105)(zzzzm) and 'Other Taxable Services' under Section 65(105) of the Finance Act, 1994. Audit was conducted for the Financial Years starting from 2010-11 to 2014-15 (upto September, 2014). The Department observed that the appellant should not have discharged Service Tax liability on legal services under reverse charge mechanism and subsequently should not have availed Cenvat Credit. The Appellant was asked to reverse such Cenvat Credit availed. The appellant reversed the Cenvat Credit under intimation to the Department. Thereafter, the appellant filed a refund claim of Rs.7,23,239/- for the period 1st August, 2014 to 31st July, 2015 which was sanctioned and paid to the Appellant. This sanction was set aside on appeal by the Department. Thereafter on appeal, the Tribunal dismissed the appeal filed by the Appellant upholding the Commissioner (Appeal)'s order. The appellant then filed the present refund claim amounting to Rs.95,01,092/-. The Order-in-Original dated 21.02.2017 rejected the refund claim. Thereafter, vide the impugned Order-in-Appeal, the refund was rejected and the benefit of exemption of Notification No. 33/2012-ST dated 20.06.2012 was denied to the appellant. Aggrieved by the said order, the present appeal has been filed before this Tribunal.

3. Learned Chartered Accountant submitted that the appellant, as a recipient of Legal Consultancy Services, was eligible to claim exemption under Entry No. 6 of Notification No. 25/2012-ST dated 20.06.2012 w.e.f. 1.7.2012 in relation to services provided by an advocate or

partnership firm of advocates to a business entity with a turnover upto Rs. 10 lakhs in the previous financial year. He submitted that there were two essential conditions to avail this exemption viz., the recipient of services should be a business entity and its turnover in the previous financial year should be upto Rs. 10 lakhs. He also submitted that 'business entity' has been defined in section 65B(17), the 'turnover' has not been specifically defined as such. The appellant has met both these conditions and was, therefore, entitled for exemption.

3.1 Learned Chartered Accountant also submitted that Notification No. 33/2012-ST dated 20.06.2012 for the purpose of service tax defined aggregate/ turnover value as 'Aggregate value' means the sum total of value of taxable services charged in the first consecutive invoices issued or required to be issued, as the case may be, during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification. Learned Chartered Accountant further contended that as per Section 65B (55) of the Finance Act, 1994, "words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made there under, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise". In this context, learned Chartered Accountant submitted that the definition of 'turnover' applied by the Department borrowing the same from the Companies Act, 2013 is not at all legally maintainable in terms of Section 65B(55) of the Finance Act, 1994. He submitted that Companies Act, 2013 is not *pari materia* with the Finance Act, 1994 or Central Excise Act, 1994.

3.2 Learned Chartered Accountant further stated that the turnover of the Appellant for the purpose of Service Tax did not exceed Rs. 10 lakhs during Financial Years 2011-12, 2012-13, and 2013-14 and thereby was not liable to deposit / discharge Service Tax liability on legal services under reverse charge mechanism. He stated that the appellant had already deposited the service tax and Cenvat Credit taken by the Appellant had been reversed before filing of the refund. The Appellant was, therefore, eligible for the benefit of the refund of the tax paid.

3.3 Learned Chartered Accountant further stated that the legal services were covered under Notification No. 30/2012 dated 20.06.2012 for discharge of tax liability under reverse charge mechanism. He also submitted that the appellant had discharged the tax liability on legal services under reverse charge mechanism. On being pointed out in the audit report, the Cenvat credit taken on the amount of Service Tax paid on legal service was reversed. As a consequence, the appellant applied for the refund of tax paid under RCM based on the outcome of audit objection. He contended that GST was applicable w.e.f. 1.7.2017 and the Appellant cannot claim Cenvat Credit now, of the tax wrongly paid, as the Appellant had already transitioned to the GST regime and had carried forward the input tax credit by filing Form GST TRAN-1. Thus, in the instant case, the availment of Cenvat Credit cannot be done and as such the only legal remedy is to allow the refund granted to the appellant. Learned Chartered Accountant further stated that Section 11(B) of the Central Excise Act, 1944, prescribed conditions for claiming of refund including limitation period which is applicable in the cases where tax or duty is involved. Since, in the present case no duty or tax

was involved, as the said amount was erroneously deposited by the appellant, it does not amount to any tax or duty and as such the period of limitation shall not be applicable. The appellant relied on the following decisions:

- a) **M/s. 3E Infotech v. CESTAT²**
- b) **S. Sakthikumar v. CCE, Madurai³**
- c) **Andrew Telecom (I) Pvt. Ltd. vs. Commissioner of C & CE, Goa⁴**

3.4 Learned Chartered Accountant further relied on the decision of **CIT-VII, New Delhi v. Punjab Stainless Steel Industries⁵**, wherein it was held that the turnover' shall only include the activities in which the Respondent is dealing in. Similarly, in **SGS Construction & Developers Put. Ltd. v. Commissioner of Service Tax, New Delhi⁶**, the Tribunal placing reliance on the judgment of Apex Court in CIT-VII, New Delhi v. Punjab Stainless Steel Industries (supra) held that the "Turnover" not having been defined in Notification No. 25/2012-ST or in Finance Act, 1994, hence in order to interpret the meaning, common parlance meaning as understood by those dealing in accounts and taxation would have to be taken.

2. (2018) 18 GSTL 410; (2018) 7 TMI 276 (Madras)

3. (2022) 61GSTL 364; (2021) 12 TMI 622; 2022) 138 taxmann.com 279 (CESTAT, Chennai)

4. (2014) 34 STR 562; (2014) 4 TMI 507; 2014) 44 taxmann.com 477 (Bombay)

5. (2014) 307 ELT 214 (SC),

6. (2020) 37 GSTL 201; (2019) 1 TMI 1820 (CESTAT, New Delhi)

3.5 Learned Chartered Accountant also stated that limitation would not be applicable and in this regard, placed reliance on **3E Infotech** (supra), wherein it was held as follows -

"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."

3.6 Learned counsel submitted that the Chartered Accountant's Certificate was a valid evidence to confirm non passing of incidence of duty to the buyer. In this regard he relied on the following decisions:

- (a) **Madhucon Bina Puri v. Commissioner of Custom (Preventive), Mumbai⁷.**
- (b) **Business Overseas Corporation v. C.C. (Import & General), New Delhi⁸.**
- (c) **Tirumala Bearings (P) Ltd. v. C.C.E. & CUS. (Appeals), Visakhapatnam⁹.**
- (d) **Bajaj Allianz General Insurance Co. Ltd. v Commissioner of Central Excise, Pune-III¹⁰.**

**7. (2015) 320 ELT 458; (2015) 12 TMI 787 (Cestat, Mumbai),
8. (2015) 317 ELT 637; (2014) 11 TMI528 (Cestat, New Delhi),
9. 2016) 335 ELT 145; 2015) 12 TMI 655 (Cestat, Bangalore),
10. (2014) TIOL 1540; (2015) 375 STR 316; (2014) 8 TMI 787 (Cestat, Mumbai**

4. At the outset, learned authorised representative reiterated the findings in the Order-in-Original and the impugned Order-in-Appeal. Learned authorised representative submitted that the issue was covered by appellant's own case. She contended that the refund claim amounting to Rs.7,23,239/- in respect of service tax paid on legal services under reverse charge mechanism during the period 1st August, 2014 to 31st March, 2015, was rejected by the Commissioner (Appeals) holding that the refund had wrongly been sanctioned. She submitted that the appeal against the said order of Commissioner (Appeal) was rejected by the Tribunal in appellant's case vide Final Order No. A/53397/2018-SM(BR) dated 14-12-2018, Tri.-Delhi, wherein the Hon'ble Tribunal has held that:

"...the intention of legislature vide the impugned Notification is to exempt only the under-sized business entities i.e. whose turnover as appearing in their profit and loss account as a whole is less than Rs. 10 lakhs. Therefore, I hold that Commissioner (Appeals) has rightly rejected the claim. I find no infirmity in the Order under challenge. Appeal is therefore rejected."

4.1 Learned authorised representative also submitted that the appellant had filed the instant refund claim on 23.11.2016 in respect of service tax paid during the period from 1st July, 2012 to 31st July, 2014, paid vide GAR-7 from 04.08.2012 to 04.08.2014. Consequently, it was evident that the appellant has filed the instant refund claim after a period of more than one year from the relevant date, i.e. date of payment of service tax. She relied on the decision of the Apex court in

Mafatlal Industries Ltd & others v. Union of India¹¹, wherein the Court held that unless the refund claim has been made within the time prescribed under Section 11B of the Act, the benefit cannot be extended to the appellant as per provisions of section 68(2) read with rule 2(d) of Service Tax Rules. In the instant case, the appellant were a recipient of legal services and hence were liable to pay service tax on reverse charge basis. The appellants have failed the bar of unjust enrichment as they have not submitted any copies of ST-3 returns to show that they had reversed the CENVAT credit.

5. We have heard the learned Chartered Accountant for the appellant and the learned authorized representative for the Department and have perused the records.

6. The issue for our consideration is whether the service tax deposited on legal consultancy services under Reverse Charge Mechanism is liable for refund. Before we consider the submissions of the appellant, we need to understand the conditions prescribed by Notification No.25/2012-ST dated 20.06.2012, which is reproduced below:

"6. Services provided by-

(a) an arbitral tribunal to -

(i) any person other than a business entity; or

(ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-

(i) an advocate or partnership firm of advocates providing legal services;

(ii) any person other than a business entity; or

11. 1997(89) ELT 247(S.C),

(iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

(c) a person represented on an arbitral tribunal to an arbitral tribunal;”

6.1 From the above, it is apparent that the Notification grants exemption to services provided by an individual advocate or a law firm to a Business entity with a turnover upto Rs.10 lakhs in the preceding financial year. We note that the appellant has claimed exemption under the said notification. In order to satisfy this condition of the said notification, it is imperative to establish that the appellant is a business entity whose aggregate turnover in preceding financial year was upto Rs.10 lakhs. Learned counsel has impressed that the department has erred in holding that the turnover of the appellant exceeded Rs.10 lakhs, whereas the appellant was eligible for the refund. In this context, we take note of this Tribunal decision Final Order no.53397/2018 dated 14.12.2018 in appellant’s own case of similar refund of Rs.7,23,239/- for the Financial Year 2013-14. The relevant paras are reproduced hereinafter:

“5. After hearing both the parties and observing the entire findings as well as the Orders of Adjudicating Authorities below, I am of the opinion as follows: Appellant herein is a Private Limited Company. It initially got a project to develop a land adject to Mansagar Lake in Jaipur and a licence to restore and reuse of Jal Mahal monument both being the places of tourist attraction. However, the projects got stayed due to various litigations. Meanwhile the appellant continued carrying the activity of site restoration and development including the plantation activities. The plants developed were also sold to the citizens of Jaipur. In addition, the appellant was having earnings from machine hire which though was for the purpose of project but due to aforesaid injunction Orders, it was used for other income generating

purposes and the main income of the appellant is in the form of income from bank FDs and NSCs.

With this background, the appellant had applied for refund on service tax paid under reverse charge mechanism on the legal services opining that same was not payable in view of Notification No. 25, dated 20-1-2012. For adjudication of this issue, it is foremost, required to look into the impugned notification which reads as follows :

xxxx xxxx xxxx

Thus, for becoming entitled to the refund as the one in question, the appellant had to specify two conditions:

1. That it is a business entity.
2. The turnover thereof is less than Rs. 10 lakhs in the preceding financial year.

The financial year in the question is the year 2013-14. Business entity has been defined in the Finance Act, 1994 under Section 65(19)(b) thereof to include an association of persons, body of individuals, company or firm except an individual. The appellant admittedly is a Private Limited Company hence qualifies the definition and thereby the first condition of the notification.

6. Coming to the fulfilment of second condition, it is observed that term "turnover" has not been defined in either Finance Act, 1994 or in Central Excise Act, 1944. Though Commissioner (Appeals) has relied upon the definition of turnover as given in Section 2(91) of the Companies Act, 2013 and that the said Act is not pari materia to any of the above-mentioned Acts. The contentions of the appellant to that extent is acceptable that different statutes seek to achieve different objectives, due interpretation of expressions used in one statute with reference to other use in another statutes cannot be applied for, as has been settled by Supreme Court in the case State of Punjab v. Okara Grave Buyers - AIR 1964 S.C. 669. But it is equally the settled law that the terms which have not been defined in a statute, the common and the general meaning thereof shall be attributed.

7. Coming to the dictionary meaning of turnover, various dictionaries define the same as follows:-

- (a) Oxford Dictionary - the amount of money taken by a business in a particular period.

(b) Cambridge English Dictionary - the amount of business that a Company does in a period of time.

Thus, the sales turnover is the Company's total revenue both the invoice, cash payments and other revenues which represent the value of goods and services provided to the customers during a specified time period. Once this is the situation irrespective of business entity is involved into several other transactions of goods as well as services, it is the total annual sales volume net of all discounts and sales/service taxes which, can be called as 'turnover. The general meaning of turnover is not restricting it to mean turnover of the taxable service. In the given circumstances, the opinion formed by original adjudicating authority while discarding the income from the nursery plant sale and the interest from bank FDs and NSCs holding the same as non-taxable income is opined to be a wrong interpretation. As discussed above, neither the definition of business entity nor that of turnover creates a distinction between taxable and the non-taxable income. Resultantly, the net aggregate thereof has to be taken while calculating the turnover of the business entity. The Commissioner (Appeals) is opined to be correct while holding that "the notification does not uses the word business turnover instead has used the word business entity with turnover". Hence from the plain reading of notification and understanding of word turnover it is clear that entire proceeds of business entity has to be considered. In my opinion, the findings of Commissioner (Appeals) have a legal as well as genuine basis. Also to my opinion the intention of Legislature vide the impugned notification is to exempt only the under-sized business entities i.e. whose turnover as appearing in their profit and loss account as a whole is less than Rs. 10 lakhs. Therefore, I hold that Commissioner (Appeals) has rightly rejected the claim. I find no infirmity in the Order under challenge. Appeal is therefore rejected."

6.2. We also take note of the decision of the Apex Court in **Mafatlal Industries Ltd & Ors.** (supra), held as follows:

"unless the refund claim has been made within the time prescribed under Section 11B of the Act, the benefit cannot be extended to the appellant as per provisions of section 68(2) read with rule 2(d) of Service Tax Rules. In the instant case, the appellant were a recipient of legal services and hence were liable

to pay service tax on reverse charge basis. The appellants have failed the bar of unjust enrichment as they have not submitted any copies of ST-3 returns to show that they had reversed the CENVAT credit.”

6.3 In view of the above decision of the Tribunal, it is settled that the term turnover is not restricted to mean turnover of only taxable services. From the facts available, it is noted that during the preceding financial years, the turnover, inclusive of nursery sales was Rs.11,51,478/- for 2012-13 and Rs.10,45,004/- for 2013-14. Thus, having crossed the threshold of Rs.10 lakhs, the appellant is not eligible for the threshold exemption as per Notification No.33/2022 dated 20.06.2012. Consequently, the appellant does not qualify for the benefit of exemption provided under Notification No.25/2012 dated 26.06.2012. Therefore, the refund has been rightly rejected vide the impugned order.

Once it is established that the appellant is not eligible for refund on merits, there is no need to examine the other submissions.

7. Consequently, we find no infirmity in the impugned order, and uphold the same. The appeal is dismissed.

(Order pronounced on **07.04.2026**)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)