

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. III

SERVICE TAX APPEAL NO. 51789 OF 2022

[Arising out of the Order-in-Appeal No. 03/2022-23 dated 02/05/2022 passed by The Commissioner (Appeals – II), Central Tax/Excise, Delhi.]

M/s Reach Promoters Pvt. Ltd.,
410-411, 4th Floor, Ambadeep Building,
14, K.G. Marg,
New Delhi – 110 001.

.....Appellant

Versus

Commissioner (Appeals – II),
Central Tax/Excise, Delhi,
UG Floor, EIL Annexe Building, Bhikaji Cama Place,
New Delhi – 110 066.

....Respondent

APPEARANCE:

Shri Atul Gupta, Chartered Accountant, Shri Varun Gaba and Ms. Anmol Gupta, Advocates – for the appellant.
Shri Aejaz Ahmad, Authorized Representative for the Department

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50714/2026

DATE OF HEARING/DECISION : 08.04.2026

BINU TAMTA

The appellant is aggrieved by the impugned order No. 03/2022-23 dated 02.05.2022¹, rejecting the refund claim on the ground of limitation under section 11B (1) of the Central Excise Act, 1944.

2. The appellant was registered in erstwhile service tax law under the category of 'Construction Service other than residential complex including commercial/industrial buildings or civil structure, renting of immovable property and works contract

1. impugned order

service'. The appellant in the present matter received some advances in the year 2012 for the services agreed to be provided by the appellant to its customers. The appellant duly paid the applicable service tax on the advances received by it to the Government exchequer. However, subsequently, before giving the possession to the buyer/customers, the project of the appellant was cancelled in 2015 and the appellant initiated the process of refunding back the advances received by it from its customers/buyers.

3. After returning the amount to the customers, the appellant applied for the refund in Form – R on **29th June 2016** for the period **October 2011 to September 2012**, seeking refund of service tax paid to the Government exchequer on advances received towards services to be provided by the appellant in future but not provided later.

4. On remand by the Commissioner (Appeals), the adjudicating authority reaffirmed the earlier order rejecting the refund claim being time barred. The Commissioner (Appeals) has passed the order rejecting the refund claim. Hence, the present appeal has been filed.

5. The learned counsel for the appellant submits that the issue whether the refund claim can be rejected on the ground of limitation has been decided by the Tribunal in series of decisions. The learned authorized representative has very fairly accepted

that the issue stands covered by these decisions in favour of the appellant.

6. Without multiplying too many decisions on the issue, we may refer to the decision of the Division Bench of this Tribunal in the case of **Wave Megacity Centre Private Limited** versus **Commissioner (Appeals-I) Central Tax Goods and Service Tax and Central Excise, New Delhi**², 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 versus M/s. Doaba Cooperative Sugar Mills Ltd., Jalandhar**³ 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 cancellation of agreements for providing construction service between those customers and the appellant. Accordingly, the appeal was allowed with consequential relief.

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2. **Final Order No.51242-43/2025 dated 27.08.2025 in S.T. Appeals No. 54979-80/2025**
 3. **1988 (37) ELT 487 (SC)**

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.”

7. The principle is well settled that limitation is not applicable in case of such refund applications and therefore the impugned order is unsustainable. The appellant is entitled to the refund subject to the satisfaction of the provisions of section 11B (2) of Central Excise Act 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 appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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