

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51270 of 2025

[Arising out of Order-in-Appeal No. 05/ST/DLH/2025 dated 31.01.2025 passed by the Commissioner of CGST & Central Excise, Delhi]

M/s. Airports Authority of India

Rajiv Gandhi Bhawan, Safdarjung Airport,
Lodhi Road, New Delhi -110003

...Appellant

VERSUS

**Principal Commissioner of CGST –
Delhi East**

Room No. 134, 134, C.R. Building,
I.P. Estate, East Delhi - 110002

...Respondent

APPEARANCE:

Shri Prakash Kumar Sinha and Shri Ayush Kumar, Advocate for the Appellant
Shri Anuj Kumar Neeraj, Authorised Representative for the Respondent

CORAM:

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

DATE OF HEARING: 16.02.2026

DATE OF DECISION: **15.04.2026**

FINAL ORDER No. 50735/2026

DR. RACHNA GUPTA

Present order disposes of an appeal which is filed to assail the Order-in-Appeal No. 05/2025 dated 31.01.2025 vide which the order rejecting the refund claim filed by the appellant has been upheld.

2. The fact in brief relevant for the present adjudication are that the appellant is a registered service provider. A refund claim dated 29.08.2022 for an amount of Rs.30,31,839 was filed by the appellant. It was submitted that the appellant had an agreement with M/s. BPCL in the Year 1983 for a period of 30 years vide which 6500 SQMTSs land was allotted to Kolkata Aviation Fuelling Station.

However, vide audit on 05.02.2019 carried out by the officials of appellant as well as M/s. BPCL it was noticed that the actual area occupied by M/s. BPCL/the service recipient was 5169.472 SQMTSs in stead of 6500 SQMTSs as was mentioned in the agreement. Thus the service tax deposited by the appellant on the excess land area in respect of bills raised for the period 2013-14 to 2017-18 amounting to Rs.30,31,839/- was paid in excess. Accordingly, the said refund claim was filed. However, vide Show Cause Notice No.22/2022-23 dated 20.04.2023, the refund claim was proposed to be rejected for being time barred in terms of provisions of section 11B of Central Excise Act, 1944 as is made applicable in relation to service tax by virtue of Section 83 of the Finance Act, 1994. The said proposal was initially confirmed vide Order-in-Original No. 02/2024 dated 28.062024. The appeal against the said order has been dismissed vide the aforesaid Order-in-Appeal. Being aggrieved the appellant is before this tribunal.

3. I have heard Shri Prakash Kumar Sinha and Shri Ayush Kumar, learned Advocates for the appellant and Shri Anuj Kumar Neeraj, learned Authorized Representative for the department.

4. Learned counsel for the appellant has submitted that the service tax paid by the appellant was paid in excess under mistake. The excess amount was got deposited despite that the appellant was not liable to pay the same. Accordingly, the amount deposited cannot be called as amount of duty or tax. Section 11B of Central Excise Act has wrongly been invoked. It is submitted that all requisite documents were duly submitted along with the claim. The documents have not been considered by the adjudicating authorities below.

4.1 Learned counsel further submitted that the appellant erroneously considered the larger area for leasing than what was actually leased, resulting in higher lease rent and consequently a greater service tax amounting to Rs.30,31,839/-. The tax was therefore never legitimately payable by Airport Authority of India/ appellant. It was paid under mistake. The refund of said amount is wrongly denied.

4.2 It is also submitted that Rule 6(3) and Rule 6(4) of Service Tax Rules explicitly enable the appellant to either take credit for or adjust the overpaid service tax. The said entitlement is not subject to any limitation period. While relying upon following decisions, the order under challenge is prayed to be set aside:

(i) Union of India & Ors. Vs. ITC Ltd. reported as 1993 Supp (4) Supreme Court Cases 326.

(ii) Oriental Insurance Company Ltd. Vs. Commissioner of Central Excise and Service Tax, Larger Taxpayer Unit, New Delhi reported as 2020 SCC Online CESTAT 1534: (2020) 75 GSTR 44.

(iii) M/s. Heliocan Agro Chemicals Limited Vs. Union of India in Writ Petition No. 203278 of 2019 dated 21.03.2025.

(iv) Ishwar Metal Industries Vs. Commissioner of Central Excise and Central Goods & Service Tax reported as 2022 SCC OnLine CESTAT 2123.

(v) National Institute of Public Finance and Policy Vs. Commissioner of Service Tax reported as 2018 SCC OnLine Del 10812

(vi) Natraj and Venkat Associates Vs. Assistant Commissioner of Service Tax, Chennai II reported as (2010) 1 GSTR 462

(vii) Commissioner of Central Excise (Appeals), Bangalore Vs. KVR Construction reported as (2012) 50 VST 469.

(viii) Commissioner of Customs, Cochin Vs. Rajesh Chemicals reported as 2005 SCC OnLine CESTAT 474.

(ix) The sales Tax Officer, Banaras & Ors. Vs. Kanhaiya Lal Makund Lal Saraf & Ors. reported as 1958 SCC OnLine 28.

(x) Gulmohar Park Mall (P) Ltd. Vs. Commissioner of Central Excise and Service Tax reported as 2024 SCC OnLine CESTAT 677

5. While rebutting the submissions, learned Departmental Representative has submitted that the appellant had filed the refund claim of service tax paid for the period 2013-14 till 2017-18 vide the refund claim filed in the year 2022. This fact itself is sufficient to justify the invocation of time bar of Section 11B of Central Excise Act by the adjudicating authorities below. Otherwise also there was no document produced to show that the area of lease was less than for what the appellant had paid tax. The expenditure of area does not match even in the invoices raised by the appellant for Financial Year 2013-14 and 2017. Otherwise also, the said fact had come to the notice of the appellant vide audit dated 05.02.2019. Still the refund claim was filed after 3 years of the said audit report. The appellant was required to file the refund claim in reasonable time to support the entitlement that too with the cogent evidences. The rejection thereof is a fairly justified. With these submissions the appeal is prayed to be dismissed.

6. While rebutting these submissions learned counsel for the appellant has mentioned that the original adjudicating authority has acknowledged that as per agreement the area of lease was 6500 SQMTS. Hence, all the arguments of learned Departmental

representative about contradiction vis-à-vis the area are not sustainable. Learned counsel has also relied upon the letter given by M/s. BPCL, the service recipient confirming that the recipient had not paid the service tax of Rs.30,31,839/- nor has claimed the service credit for the said amount of a service tax. With these submissions the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

7. Having heard both the parties and perusing the entire records, it is observed and held as follows:

7.1 Vide the impugned refund claim the appellant has filed the following documents:

- (i) Copy of agreement between M/s. BPCL and Airports Authority of India.
- (ii) Copy of Bills/invoices raised by M/s. BPCL.
- (iii) Calculation sheet for culminating the refund.
- (iv) Copy of challans of service tax payment.
- (v) Copy of the letter of M/s. BPCL regarding non-availment of input tax credit.

7.2 The original adjudicating authority while keeping in view the agreement has acknowledged that the agreement between appellant and M/s. BPCL was to lease out 6500 SQMTSs of the land of Airport Authority of India to M/s. BPCL against receiving annual rent /lease amount.

7.3 It is further an admitted fact that the area of lease is 5169.472 SQMTSs instead of a 6500 SQMTSs as had come to the notice of the appellant vide audit dated 05.02.2019. There is no explanation by the appellant as to why the impugned refund claim about service tax paid for the excess land rent was not filed till 29.08.2022. Petitioners are legally required to act with diligence

and file cases or petitions within a reasonable time, generally considered a few months (often 90 days) if no statutory limit exists. Delays without valid explanation are deemed laches (negligence), which can lead to dismissal of the claim. Reasonable time is not a fixed period but is determined by the specific circumstances, the nature of the remedy, and the conduct of the parties involved, with the court ensuring equity for both sides.

7.4 The case relied upon by the appellant are observed to be not applicable in the present case because in the present case though the land leased out for rendering taxable service of renting of immovable property, was 6500 SQMTSs as mentioned in the agreement between appellant and M/s. BPCL executed in the Year 1983 but there is contradiction about the area of land during the period under question and the service tax paid thereupon. Invoices on record shows that in the Year 2013 the leased area is mentioned to be 6651.92 SQMTSs (515.92 + 1494), 5718.640 SQMTSs in the Year 2013-14 and 2017 respectively. No evidence has been produced by the appellant for undoing the said contradiction. Above all, no evidence is produced to show that the excess rent received by the appellant and service tax to that extent has ever been returned by the appellant to M/s. BPCL.

7.5 The another apparent and admitted fact is that the refund claim itself has been filed under Section 11B of Central Excise Act. In the present case, as already observed above, despite appellant got the knowledge about access tax paid in the year 2019 the refund claim filed in the year 2022 amounts to the negligence and laches on part of the appellant. Even in tax matters Hon'ble Supreme Court in the case of **M/s. Salonah Tea Co. Ltd. Vs. Superintendent of Taxes, Nowgong reported as (1988) 1 SCC**

401 has held the normally in a case where tax or money has been realized without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution the court has power to direct the refund unless there has been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to the respondent or any their party. It is true that in some case the period of three years is normally taken as a period beyond which the court should not grant relief but that is not an inflexible rule.”

In **Shri Vallabh Glass Works Ltd. Vs. Union of India reported as (1984) 3 SCC 362** has held that while examining the question as to what is the point of time from which the limitation should be deemed to commence, observed that relief in respect of payments made beyond the period of three years may not be granted from the date of filing of the petition, taking into consideration the date when the mistake came to be known to the party concerned. Just as an assessee cannot be permitted to evade payment of rightful tax, no doubt the authority which recovers tax without any authority of law cannot be permitted to retain the amount, merely because the tax payer was not aware at that time that the recovery being made was without any authority of law. In such case, there is an obligation on the part of the authority to refund the excess tax recovered to the party but subject of course to the statutory provisions dealing with the refund.

7.6 Further, it is observed that issue sanctioning of refund has been put at rest by Hon'ble Supreme Court in the case of **ITC Ltd. Vs. Commissioner of Central Excise, Calcutta reported as**

2019 (368) ELT 213 (SC) wherein it is held that claim of refund cannot be entertained unless the order of assessment of self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings. Hon'ble Delhi High Court also in the case of **B.T. (India) Pvt. Ltd. Vs. Union of India vide order dated 06.11.2023 in Writ Petition Civil No. 13968 of 2021** had held the same.

7.7 The Supreme Court in the case of **Karnataka Power Corpon. Ltd. Vs. K. Thangappan reported in (2006) 4 SCC 322** has held as under :

*"Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in **Durga Prashad v. Chief Controller of Imports and Exports**. Of course, the discretion has to be exercised judicially and reasonably."*

What was stated in this regard by **Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd** (PC at p. 239) was approved by this Court in **Moon Mills Ltd. v. M.R. Meher and Maharashtra SRTC v. Shri Balwant Regular Motor Service**. Sir Barnes had stated:

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not

waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

The Supreme Court in the case of **Shiv Dass Vs. Union of India reported in (2007) 9 SCC 274** has held as under:

6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.

In the case of **Nadia Distt. Primary School Council Vs. Sristidhar Biswar reported in (2007) 12 SCC 779** also Hon'ble Apex Court has held as under :

"Delay is very significant in matters of granting relief and courts cannot come to the rescue of the persons who are not vigilant of their rights. Therefore, the view taken by the High Court condoning the delay of nine years cannot be countenanced."

7.8 We draw our support from the decision in the case of **Doaba Co-Operative Sugar Mills reported as (1988) 37 ELT 478 (SC)**, the Hon'ble Supreme Court observed:

"6... But is making claims for refund before the Departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. It the proceedings are taken under the Act by the Department, the provisions of limitation prescribed in the Act will prevail.."

7.9 In National Institute of Public Finance and Policy, the refund claim was rejected by the Principal Bench of the Tribunal, after placing reliance upon the decision of the Hon'ble Supreme Court in **Doaba Co-operative Sugar Mills (supra)**.

8. In totality of the entire above discussion, the appellant is denied to be entitled to claim the refund of service tax. Irrespective it is claimed to have been paid under mistake of law. With these observations, I uphold the order rejecting the refund claim. Consequent thereto, appeal is hereby dismissed.

[Order pronounced in the open Court on **15.04.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)