IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

CMA No. 1327 of 2021

M/s. The Madras Club
Rep. By its General Manager & Asst. Secretary,
Mr. M.J. Raja Pandiyan,
No.8, Adyar Club Gate Road,
Chennai 28.

..Appellant(s)

Vs

The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
No.690, E.V.R. Periyar Maligai,
Nandanam, Chennai 35.

..Respondent(s)

Prayer: This Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, to set aside the Impugned Final Order No.40782 of 2020 dated 08.09.2020 passed in Appeal No.ST/41796/2019-SM by the Hon’ble Customs Excise and Service Tax Appellate Tribunal Chennai and allows the refund together with applicable interest thereon with consequential relief.

For Appellant(s): Mr.R.Anishkumar

For Respondent(s): Mr.Sai Srujan Tayi
Standing Counsel

JUDGEMENT

(Judgment of the Court was delivered by C.KUMARAPPAN, J.)

The present Civil Miscellaneous Appeal has been filed against the Final Order No.40782 of 2020, dated 08.09.2020, in Appeal No.ST/41796/2019-SM, passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai (hereinafter referred to as "the CESTAT" for the sake of convenience).

2. The brief facts which are necessary for the disposal of the present Civil Miscellaneous Appeal are that the appellant is registered with the Service Tax Department for providing "Membership of Club or Association Service". While so, a demand was raised against the appellant for a sum of Rs.29,24,687/- towards the subscription amount received by the appellant from its members. The said demand was challenged before the First Appellate Authority, namely, the Commissioner (Appeals), and the First Appellate Authority, vide order dated 15.12.2009, set aside the said demand. The said order was subsequently upheld by the CESTAT. In pursuance thereof, the appellant claims a sum of Rs.15,51,086/-, which was paid by the appellant pursuant to the said demand. It is the case of the appellant that, once the demand was set aside, the appellant is entitled to have the refund of the said amount.

3. At the time of admission of this Court formulated the following substantial questions of law, vide order dated 17.04.2021:-

(i) Whether the order passed by the CESTAT is perverse?

(ii) Whether the CESTAT is right in ignoring Chartered Accountant's Certificate which confirms the claimed refund amount is lying in Books of account as Service Tax receivable from the Government?

(iii) Whether the CESTAT is right in including the appellant's refund claim attracts "Principle of UnjustEnrichment" for the amount partly collected towards deposit?

(iv) Whether the CESTAT is right in rejecting the appellant's refund claim for Rs.15,51,086/- which was paid pursuant to an unlawful demand without authority of law?

(v) Whether the CESTAT is right in permitting the respondent's department to retain the amount contrary to the Article 265 of Constitution of India?

(vi) After the Hon'ble Supreme Court Judgment in State of ***West Bengal and Others v. Calcutta Club Ltd. [2019-TIOL-449SC -ST.LB]*** *whether the CESTAT can treat Club and its Members are different entities to decide the issue of "Unjust enrichment" under section 11B of Central Excise Act,1944*

(vii) Whether the appellant is entitled for the interest form the date of deposit or to what extent? "

4. Heard the learned counsel appearing for both sides on the above questions of law and perused the materials available on record.

5. The learned counsel appearing for the appellant would submit that the CESTAT has erroneously dismissed the claim of the appellant on the premise that the appellant had passed on the tax amount to its members. He would submit that, according to the Auditor's Certificate, in the books of account, the said amount is shown as the amount refundable to the members, but such material aspect was not considered by the authority. It is also the contention of the learned counsel for the appellant that the Auditor's Certificate is a relevant document for determining the entitlement to refund, whereas the Appellate Authority has failed to consider the same. He would further place reliance upon the judgment of the Hon'ble Bombay High Court in ***Hindustan Petroleum Corporation Ltd. v. Commissioner of CGST & Central Excise, Navi Mumbai Commissionerate***, reported in **2019 (365) E.L.T. 319 (Bom.),** and the judgment of the CESTAT, Chennai, in ***Commissioner of Customs, Chennai-IV v. Adyar Gate Hotel***, reported in ***2018 (359) E.L.T. 228 (Tri.-Chennai),*** to contend that the Auditor's Certificate is a relevant document while considering the nature of the accounts. It is his further contention that, despite production of the Auditor's Certificate, the respondent authority has failed to consider the same, which is contrary to law.

6. Per contra, the learned Standing Counsel appearing for the respondent strongly opposed the said contention and would submit that it is an admitted position that the appellant themselves had categorically admitted that they had collected the tax from their members. Having collected the tax from the members and thereafter seeking refund from the Department would amount to unjust enrichment. It is also the contention of the learned Standing Counsel that the Auditor's Report clearly discloses that the appellant had collected the tax amount and passed on the duty element to its members. Having admitted the same, the appellant is not entitled to seek refund of the said amount from the Department.

7. We have given our anxious consideration to the submissions made on either side.

8. It is well-settled principle of law that, any refund to be made under Section 11B of the Central Excise Act, 1944 would be subject to the doctrine of unjust enrichment. The Hon'ble Supreme Court has, time and again, categorically held that, when the tax component has already been recovered from their customers or passed on to other persons, then the taxpayer, is not entitled to seek restitution from the State. The right to restitution is neither automatic nor unconditional. In an oft-quoted judgment of the Hon'ble Supreme

Court in ***Mafatlal Industries Ltd. v. Union of India,*** reported in ***(1997) 5 SCC 536,*** it has been held as follows:-

"108. (iii) A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the plaintiff-petitioner alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State i.e. by the people. There is no immorality or impropriety involved in such a proposition.

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at *one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched."*

9. As per the above judgment, for a taxpayer to claim refund, he must establish the actual loss or prejudice suffered by him. In the case in hand, even according to the Auditor's Certificate, the appellant has recovered a sum of Rs.9,09,717/- from its members and only a sum of Rs.6,41,369/- remains pending collection from the members. As held by the Hon'ble Supreme Court in ***Mafatlal Industries Ltd.*** (cited supra), the doctrine of unjust enrichment is a just and salutary principle, and no person can claim a refund when he has already collected the tax amount from other persons. If that be so, the right of the taxpayer to seek refund would stand eclipsed to the extent of the amount already recovered from others.

10. The Hon'ble Supreme Court has further held that, though the tax have been mistakenly collected, retention of such mistakenly collected tax, in the above context, would not amount to immorality or impropriety, as ultimately the amount would be utilised for the benefit of the people of the State.

Therefore, the appellant cannot raise a plea of unjust enrichment against the State.

11. The learned counsel for the petitioner has relied upon various judgments to impress upon this Court that the Auditor's Report is a relevant document. We are not in disagreement with the above submissions. But the reliance upon the Auditor's Report depends upon its veracity and authenticity.

12. With the above backdrop, if we look into the Auditor's Certificate, though the entire amount is shown in the accounts as refundable, a sum of Rs.9,09,717/- has already been received from the appellant's members. Therefore, in respect of the portion of the amount in a sum of Rs.9,09,717/-, the appellant has already passed on the burden to its members. However, the remaining sum of Rs.6,41,369/- is yet to be received from the members. In other words, no burden has been passed on to the members to the extent of Rs.6,41,369/-. Therefore, the appellant is entitled to have refund only to the extent of Rs.6,41,369/-.

13. In view of the above legal position, Questions of Law Nos.1 to 5 are answered in terms of the observations made hereinabove in this judgment, and Questions of Law Nos.6 and 7 are answered in favour of the assessee. Accordingly, the impugned order dated 08.09.2020 is set aside, and the authorities are directed to refund a sum of Rs.6,41,369/- to the appellant, together with applicable interest in terms of Section 11BB of the Central Excise Act, 1944. The said amount shall be paid within a period of eight weeks from today.

14. In the result, this Civil Miscellaneous Appeal is partly allowed to the extent indicated above. There shall be no order as to costs.

(A.S.M.,J.) (C.K.,J.)
01-09-2026

Index: Yes
Speaking Order
Neutral Citation: Yes

KV

To

The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
No.690, E.V.R. Periyar Maligai,
Nandanam, Chennai 35.

DR.ANITA SUMANTH J.
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C.KUMARAPPAN J.

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