

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20619 of 2018

(Arising out of Order-in-Appeal No. MYS-EXCUS-APP-208-17-18
dated 02.02.2018 passed by the Commissioner of Central Tax
(Appeals), Mysuru.)

**Skilltech Engineers and
Contractors Pvt. Ltd.**

No. 2904 (Ch-67), 2nd Floor,
Sarawathi Puram,
Mysore Karnataka – 570 009.

Appellant(s)

VERSUS

**Commissioner of Central
Excise and Service Tax,**

S1 & S2, Vinaya Marga,
Siddhartha Nagar,
Mysore – 570 011.

Respondent(s)

APPEARANCE:

Mr. S.K. Venugopala Rao, Chartered Accountant (CA) for the Appellant

Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent

CORAM:

**HON'BLE MR P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 21237 /2026

DATE OF HEARING: 27.05.2026

DATE OF DECISION: 23.10.2026

PER : P.A. AUGUSTIAN

The issue in the present appeal is regarding refund of wrongly paid service tax.

2. Appellant is providing service of 'Erection, Commissioning, Installation Services' on distribution of electricity power to various Governments undertaking. The appellant filed a refund claim for Rs.20,80,816/- paid towards the above services rendered to Government authorities claiming exemption under

Notification No. 25/2012-ST [Sl.No. 12(a)] dated 20.06.2012. However, the same was rejected by the original authority on the ground that earlier the Commissioner (Appeals) in the case of M/s. Manjunatheshwara Electricals had denied the benefit of the above notification. The original authority also rejected the refund claim on the ground that the appellant had charged and collected service tax from the service recipients hence the appellant was not eligible for the refund claim on account of unjust enrichment under Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. On appeal the Commissioner (Appeals) in the impugned order held in favour of the appellant to the extent that they were eligible for the benefit of the notification. However, upheld the reasoning of the original authority on unjust enrichment and hence rejected the refund claim. Aggrieved by this order the appellant is in appeal before us.

3. When the appeal came up for hearing, Learned Consultant for the Appellant submits that the Hon'ble Commissioner (A) grossly erred in rejecting the Appeal stating that it is hit by limitation just by making a comment that the OIO has not specified in that the period for which the service tax was paid and further he presumed that there is a case for unjust enrichment based on the comments of the adjudicating Authority that the Appellant has already collected the service tax from the customers without verifying whether there was any unjust enrichment actually or not. In this regard, Learned Consultant submits that the refund claim of Rs. 20,80,816/- is related to the period April 2014 to Aug 2014 and the Appellants have filed the refund application on 23.06.2016 which is well within the prescribed time. As regarding the allegation that the appellant collected service tax, though as per the condition of contract, price is inclusive of all taxes as applicable, it cannot be said that by mistaken position of law if somebody makes the payment it can be construed that the said levy of tax is collected from the

customer. The Customer has agreed for the total price in this case for complete execution of the contract as inclusive of all taxes as applicable as per law and in such a situation it cannot be presumed that the provider of the service has collected the service tax from the customer wherein the agreed price was inclusive of all actual taxes payable as per law. He further submits that it is up to the lower Authorities to verify whether there is an unjust enrichment or limitation of time and the Commissioner (A) cannot sit on the judgment of point which was not at all there in the Original Appeal. Accordingly, the OIA is bad in law and cannot withstand scrutiny of law.

4. Learned Consultant further submits that initially when the proceedings were pending before the Commissioner (Appeals) Mysore, Appellants as an abundant caution have paid the disputed tax and interest amounting to Rs.20,85,815/- through a separate challan. Under these circumstances it is not a case of Unjust enrichment and the appellants have not collected these taxes separately in invoices raised on their customer M/s.Chamundeshwari Electricity Supply Corporation (CHESCOM). In this regard, Learned Consultant drew our attention to some of the invoices issued by appellant and submits that there is no evidence regarding charging of service tax on the taxable service, since such services are exempted from payment of service tax. Thus, Original Authority wrongly concluded that Appellants have collected the taxes over and above the contract price and have rejected refund in terms of Section 11B of the Central Excise Act stating that there is an element of unjust enrichment. Learned Consultant also draws our attention to the contract awarded by M/s. CESCO and the copies of the bill issued by M/s. CESCO and submits that as evident from the above document, Appellant has not collected service tax as held by first Appellate authority. Further there is no such allegation in the show cause notice also. Considering the same, the impugned

order is unsustainable and Appellant is eligible for refund of the due amount as claimed by them.

5. The Learned Authorized Representative (AR) reiterated the findings in the impugned order and submits that once the refund claim is submitted, such refund claim has to undergo the scrutiny of Section 11B of Excise Act and considering the above, the Adjudication authority rightly rejected the claim.

6. Heard both sides. The appellant's claim that unjust enrichment was not part of the show-cause notice hence refund cannot be rejected on that ground by the authorities concerned is mis-placed since it is a settled issue as is held by the Hon'ble Supreme Court that all refund claims have to be necessarily processed to examine the element of unjust enrichment. Therefore, the only issue before us is whether the authorities were correct in rejecting the refund claim on the ground of unjust enrichment.

7. We find that the original authority with regard to unjust enrichment held as follows:

16. Further, on perusal of the invoices raised by the assessee, I observe that they have charged and collected service tax from the service recipients M/s CHESCOM as well as M/s KPTCL. As they have already collected the service tax amounts from their clients, the question of allowing the refund of correctly paid service tax does not arise. Even otherwise for the sake of argument, assuming but not accepting that the refund has to be given, the same would be hit by the concept of bar of unjust enrichment.

8. This was upheld by the Commissioner (Appeals) observing as follows:

The third requirement under section 11B of the act is that the incidence of service tax / duty must not have been passed to any person. As per the para 16 of the impugned OIO the adjudicating authority has mentioned that the appellant has already collected the service tax amounts from their clients based on the

verification of the invoices raised by the appellant. On this verification the lower authority states that the claim would be hit by bar of unjust enrichment. The appellant has not brought any facts / documents to prove contrary to this stand of the lower authority and it is clear that the appellant has collected and received the service tax amount from the client i.e. M/s KPTCL. Hence the claim is hit by unjust enrichment and the amount paid by the appellant has to be credited to consumer welfare fund as per provisions of section 11B of the CEA.

9. As per the evidence on record, when demand was made for the previous period, as an abundant precaution and to avoid interest and penalty, appellant had paid the amount and once the first Appellate authority held that the Appellant is not liable to pay service tax as per the exemption notification, no presumption can be drawn that the Appellant had collected the service tax while collecting the gross amount from the service recipient. The appellant has placed before us 'Detailed Work Award' issued to them by their clients and the other documents named 'Regularisation of unauthorised IP sets' to claim that tax has not been collected from their clients. From these records there is no evidence regarding service tax being collected by the Appellant. Since, these documents were not placed before the original authority and since we are unable to identify that these relate to the same transactions for which refund is claimed, the question of unjust enrichment needs further verification. Therefore, to verify the facts, the appellant is directed to produce all necessary documents along with CA certificate regarding unjust enrichment for the relevant period and on submission of these documents the original authority to pass appropriate orders on the question of unjust enrichment.

10. Accordingly impugned order is set aside and appeal is allowed by way of remand to the original authority to verify the issue regarding unjust enrichment only in accordance with law.

(Order pronounced in Open Court on 23.10.2026)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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