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CMA Nos. 1453 and 1455 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-01-2026

CORAM

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MR.JUSTICE P. DHANABAL**

**C.M.A. Nos.1453 of 2021 and 1455 of 2021
and
CMP Nos.7599 of 2021 and 7605 of 2021**

M/s.Integra Software Services Pvt Ltd.,
100 ft Road (ECR), Pakkumudiyanpet,
Puducherry - 605 008. Pondicherry.

Appellant(s)

Vs

THE COMMISSIONER OF GST and
Central Excise,
(Pondicherry) No.1, Goubert Avenue,
Beach Road, Puducherry - 605 001.

Respondent(s)

CMA No. 1453 of 2021

PRAYER: The Civil Miscellaneous Appeal has been filed under Section 35G of the Central Excise Act, 1994 praying to set aside the Impugned Final Order No.40789 / 2019 dated 13.05.2019 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Service Tax Appeal No.42538/2018 and pass such further or other order as this Honourable Court may deem fit and proper and thus render Justice.

**CMA No. 1455 of 2021**

PRAYER: The Civil Miscellaneous Appeal has been filed under Section 35G of the Central Excise Act, 1994 praying to set aside the Impugned Final Order No.40790 / 2019 dated 13.05.2019 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Service Tax Appeal No.42539/2018 and pass such further or other order as this Honourable Court may deem fit and proper and thus render Justice.

For Appellant(s) **DR.M.SATHYA KUMAR**
[both appeals]:
For Respondent(s) **M/S. RAJNISH PATHIYIL –**
[both appeals]: **Senior Standing Counsel**

COMMON ORDER
(Order of the Court was made by P.Dhanabal J.)

These Civil Miscellaneous Appeals have been preferred as against the final orders No.40789 / 2019 and 40790 / 2019 dated 13.05.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Service Tax Appeal Nos.42538/2018 and 42539 /2018 respectively.

2. The short facts necessary to dispose of these appeals are as follows:-

The appellant is rendering software enable services in relation to pre-publication and exporting such services out of India. Based on export of



services, the appellant filed refund claims under Rule 5 of CCR 2004 and upon scrutiny of the claim, the ACCE Puducherry II Division rejected the claim of Rs.4,27,776/- for the period from April to June 2014 and Rs.6,33,962/- for the period from October to December 2014 vide order OIO No.201 of 2015 dated 02.02.2015 pertaining to service tax paid by the Director of the company in her individual capacity by holding that the appellant was not liable to pay under RCM and hence credit taken was wrong and therefore, they are not eligible for refund. As against the said rejection order, the appellant preferred appeals before Commissioner (Appeals) and the same were also rejected through an order dated 29.07.2016. As against the said orders, further appeals were preferred before the CESTAT, Chennai and the same was also dismissed vide final order No.40623 and 40624 of 2017 dated 13.04.2017, however directing the appellant to seek refund under other facilitating provisions of law. Based on CESTAT final order dated 13.04.2017, the appellant took re-credit of the said amount and filed refund claims for Rs.6,33,962/- and Rs.4,27,776/- under Section 11(B) of Central Excise Act, 1944. After due process of law, the lower Adjudicating Authority vide O-in-O No.63 of 2017 and 64 of 2017 dated 31.10.2017 sanctioned refund of the above said amounts. Aggrieved by the said orders, the department filed appeals against the said sanction of refund in Appeal Nos.170 and 171 of 2018 and the said appeals were allowed vide order dated 07.09.2018 by setting aside the order passed in O-in-O Nos.63 and 64 of



2017 dated 31.10.2017. Aggrieved by the said order, the appellant filed appeals before the Tribunal. The Tribunal vide Final Order Nos.40789 and 40790 of 2019 dated 13.05.2019 dismissed the said appeals by holding that the claim was not entertainable under Section 11B of Central Excise Act. Challenging the said orders, the present appeals have been preferred.

3. While admitting these appeals, this Court formulated the following *substantial questions of law*:

3.1. Whether the authorities were right in denying refund claim of a tax amount that was paid due to a mistake of law.

3.2. Whether the authorities were right in denying refund claim of a tax amount that was paid due to a mistake of law by ignoring the various precedents set by the Hon'ble Supreme Court and High Courts.

3.3. Whether the authorities not following judicial precedents would amount to judicial indiscipline.

4. The learned counsel appearing for the appellant would submit that the order of the Tribunal is erroneous and the Tribunal failed to consider the evidences on record before adjudicating the matter. The Tribunal in the appellant's very own case addressing the very same issue for a different time



period, had observed that the eligibility of Cenvat credit is purely based on usage, therefore the Original Authority in the order had clearly stated and held that when it is the Appellant who is the user of the service and when the said usage is in the course of business, the impugned services will qualify as input service and the tax paid on such service will be eligible for credit. In the final order No.41582 of 2017 dated 10.08.2017 held that the appellant was indeed eligible for input credit on the service tax paid by them under RCM basis on rent paid to Director by observing that *in as much as admittedly such service was used by the appellant in relation to their business activity and satisfied the essential requirement of use for rendering output service.* While so, the rejection of credit under Rule 5 itself was wrong and the same is eligible to be refunded under Section 11B in terms of Rule 5 of the Cenvat Credit Rules 2004 reviving the original claim. Further the very same Authority took a contrary view that merely upholding the Order in Appeal on the grounds that the claim filed by the appellant under Section 11B of CEA 1944 was hit by time bar, stating that the claim under Section 11B was not filed within one year from the date of payment of disputed service tax. This stand is not maintainable since the refund sanctioning authority had considered the aspect of limitation in detail. The appellant took re-credit of the said amount only after the CESTAT order and then filed the impugned claim under Section 11B of CEA 1944. Since Revenue had withheld the amount till the CESTAT final order, limitation would



apply only from the date of receipt of such CESTAT final order in terms of Section 11B(5)(B) (ec).

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4.1. Further the learned counsel appearing for the appellant would submit that when the tax paid under mistake of law, is bound to be refunded and cannot be barred by limitation. It is well settled law that when the payment of tax was purely by mistake of law, the refund of the same can in no circumstances be denied or disallowed and the Courts are obligated to follow the hierarchy of the judicial system and the lower Courts and Tribunals are bound by the higher Courts of judicature. But the impugned order passed by the Tribunal by ignoring the precedents laid down by higher Forums, amount to violation of the core principle of Judicial Discipline. Therefore, the impugned order denying refund claim by merely stating it to be time barred is totally inconsistent with the previous decision of the same Tribunal on an identical issue and hence the impugned orders are liable to be set aside by allowing these appeals.

5. The learned Senior Standing Counsel appearing for the respondent would submit that the appellants themselves have admitted that they have paid service tax liability in respect of renting of immovable property by mistake. Therefore, they cannot claim the refund thereof under Rule 5 of CCR under other facilitating provisions in the law. The renting of immovable property



service related to the property owned by the Director of the Company and it is the case of the appellants that the Company had leased or provided accommodation to the said Director as per the terms of employment. Therefore, the service tax paid by the appellant cannot become an eligible input service and therefore, the authorities have passed reasoned orders. The Director of the appellant Company had rented the place to the appellant company and she was the service provider in respect of the Renting of Immovable property service. However, she had not paid the service tax in respect of such service rendered by her. On the other hand, the appellant had paid the service tax on the said service on her behalf. As per the Notification No.45/2012-ST dated 07.08.2012 and as per Sl. No.5A, in respect of the services provided or agreed to be provided by a Director of a company to the said company, the service receiver is liable to pay 100% tax and the Director is exempted to pay service tax. The said notification applies only to the services rendered by a Director under the Director's service and not a service rendered in his capacity as a provider of Renting of Immovable Property service. Therefore, once it is clear that the service tax was not paid by the service provider in this case, legally the appellant would not be eligible for availment of service tax on this service. Therefore, the authorities have passed reasoned orders and the present appeals are liable to be dismissed.

6. This Court heard both sides and perused the entire materials available on record.



7. In this case, it is admitted fact that the appellant filed refund claims under Rule 5 of CCR 2004 and the authorities have rejected the claim by holding that the appellant was not liable to pay under RCM and hence credit taken was wrong and therefore, they are not eligible for refund. Further the said amount was mistakenly made under RCM. Therefore, they filed appeals before the Commissioner (Appeals) and the same was also rejected through an order dated 29.07.2016. As against the said orders, appeals were preferred before the CESTAT, Chennai and the same were also dismissed vide final order dated 13.04.2017 and directed the appellant to seek refund under other facilitating provisions in the law. Based on the said order dated 13.04.2017, the appellant took re-credit of the said amount and filed refund claims for Rs.6,33,962/- and Rs.4,27,776/- under Section 11(B) of Central Excise Act, 1944 and the lower Adjudicating Authority vide Final Order No.41548 / 2017 dated 10.08.2017, sanctioned refund of the above said amounts holding that for the period from July 2014 to September 2014 relating to the same issue, the CESTAT held that revenue at the time of receipt of service tax from the appellant never objected and accepted such service tax deposited by them and as such, the denial of refund to the assessee under Rule 5 of CCR, 2004 is not justified and the service was used by the appellant in relation to their business activity and satisfied the essential requirement of use for rendering output service. The Service tax was paid on renting of immovable property service received from the Director of the



company in her individual capacity qualifies as an eligible input service tax credit and the same is eligible to be refunded under Section 11B in terms of Rule 5 of the CENVAT Credit Rules, 2004 reviving their original claim and also held that the instant claim cannot be treated as a fresh claim and the question of limitation for the date of filing of this claim does not arise. Aggrieved by the said order, the Revenue filed appeals in Appeal Nos.170 and 171 of 2018 before the Commissioner (Appeals). The said appeals were allowed through an order dated 07.09.2018. Aggrieved by the said order, the appellant filed appeals before the Tribunal. The Tribunal vide Final Order Nos.40789 and 40790 of 2019 dated 13.05.2019 dismissed the said appeals. Now challenging the same, the appellant has filed these appeals before this Court.

8. It is an admitted fact that already CESTAT vide its Final Order No.41582 of 2017 dated 10.08.2017 held that the appellant was indeed eligible input credit on the service tax paid by them under RCM basis on rent paid to Director. Therefore, based on the said order, the Original Authority has allowed the claim of refund. However, in these proceedings, the same CESTAT, in Appeal Nos.40789 and 40790 of 2019 had taken a contrary view. Therefore, the authorities were wrong in rejecting the legitimate claim by citing the procedural lapses and it was hit by limitation. The Tribunal ought to have followed the principal of final order passed in No.41548 / 2017 dated 10.08.2017 for the



same appellant for the different period.

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9. Further, the authorities took a stand that the payments were only due from the Director and hence the same would not qualify as input service for the appellant and the authorities have merely passed the claim stating that the claim was not eligible for refund. It is well settled law that when the tax paid under mistake of law is bound to be refunded and cannot be rejected.

10. The learned counsel appearing for the appellant has relied upon the judgement of Hon'ble Supreme Court in a case of *Union of India v. ITC Ltd., reported in 1993 (67) E.L.T. 3 (SC)*, wherein the Hon'ble Supreme Court held that *"Assessee's claim to refund would not be disallowed solely because it seemed barred by limitation. Since the Assessee in that case made the claim for refund shortly after learning about their entitlement for the same, it would not be just to hold that such claim is hit by latches"*. Further, this Court in a case of *3E Infotech v. Cestat Chennai reported in 2018 (18) G.S.T.L. 410 (Mad)*, held that *The application under Section 11B cannot be rejected on the ground that is barred by limitation, provided for under Section. The claim for return of money must be considered by the authorities"*.



11. Therefore, from the above judgments it is clear that the issue as to whether the limitation prescribed under Section 11B of Central Excise Act applies to a refund claimed in respect of service tax paid under a mistake of law is no longer *res integra*. Therefore, the Tribunal has erred in passing the impugned order merely rejecting the refund claim despite the fact that the tax was paid under mistake of law.

12. Despite the interpretations of the authorities, the claim is eligible for refund. If it is considered an input service that is used by the appellant, the tax for the same has been rightly discharged by the appellant and hence must be granted credit as input service. Further, if the service tax has been rendered only to the Director in their individual capacity, the tax is not payable by the appellant as per law, it is liable to be refunded as it has been paid under mistake of law. Therefore, the Tribunal, by ignoring the precedents laid down by the higher Forums, passed the order, thereby it amounts to violation of the core principle of Judicial Discipline. Therefore, all the substantial questions of law are answered in favour of the appellant.

13. Both the appeals are ***allowed*** and the ***order in No.40789 / 2019 and 40790 / 2019 dated 13.05.2019*** passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai ***is set aside*** and the ***order*** passed by the



Adjudicating Authority vide O-in-O No.63 of 2017 and 64 of 2017 dated

31.10.2017 sanctioning refund is restored. There shall be no order as to costs.

Consequently, the connected miscellaneous petitions are closed.

(ANITA SUMANTH J.)(P.DHANABAL J.)

02-01-2026

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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To

THE COMMISSIONER OF GST and
Central Excise,
(Ponicherry) No.1, Goubert Avenue,
Beach Road, Puducherry - 605 001.



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