

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 53035 of 2018

[Arising out of Order-in-Appeal No. 281(CKJ)ST/UDR/2018 dated 14.06.2018 passed by the Commissioner of Central Excise & Central Goods and Service Tax, (Appeals), Udaipur]

M/s. Mayur Inorganics Limited

...Appellant

Near Railways Station,
Gotan, Nagaur,
Rajasthan - 342902

VERSUS

**Commissioner of CGST & Central Excise-
Jodhpur**

...Respondent

G-105, New Industrial Area,
Basni, Near Diesel Shed, Jodhpur,
Rajasthan - 342003

WITH

Service Tax Appeal No. 50943 of 2019

[Arising out of Order-in-Appeal No. 80 (CRM)/ST/JDR/2019 dated 23.01.2019 passed by the Commissioner of Central Excise & Central Goods and Service Tax, (Appeals), Jodhpur]

M/s. Mayur Inorganics Limited

...Appellant

Near Railways Station,
Gotan, Nagaur,
Rajasthan - 342902

VERSUS

**Commissioner of CGST & Central Excise-
Jodhpur**

...Respondent

G-105, New Industrial Area,
Basni, Near Diesel Shed, Jodhpur,
Rajasthan - 342003

APPEARANCE:

Shri Om.P. Agarwal, Advocate for the Appellant
Shri Shashank Yadav, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 27.03.2025
DATE OF DECISION: **25.07.2025**

FINAL ORDER NO. 51071-51072/2025

DR. RACHNA GUPTA

Present order disposes of two appeals which are as follows:

S.No.	Appeal No.	SCN	OIO	OIA	Refund claim	No. of Debit Notes
1.	ST/53035/2018	03/2016	06/2016 Dated 19.05.2016	281/2018 dated 14.06.2018	Rs.6,95,985/-	9
2.	ST/50943/2019	18/24/2017	03/2017 Dated 03.01.2018	80/2019 Dated 23.01.2019	Rs. 21,13,639/-	21

2. The facts in brief culminating into the said order are as follows:

2.1 M/s. Mayur Inorganics Limited, the appellant herein is registered with Service Tax Department w.e.f. October, 2017 being engaged in providing the taxable services. The appellant had filed the application for refund of service tax for the amount as mentioned above, being the amount of service tax paid by the appellant as per debit notes raised by Rajasthan State Mines & Minerals Limited (RSMML), the owners of mines of limestone with whom appellant entered into an agreement to mine the limestone from those mines. However, the said refund claim was proposed to be rejected on following grounds:

(i) *It appears that the claimant had not furnished concerned documentary evidences by which it could be established that the amount of Service Tax was actually paid by Assessee to M/s RSMML. Therefore, the refund claim of Rs. 21,13,639/- appears liable to be rejected.*

(ii) *The particulars of 21 Debit notes/ Invoices issued by M/s RSMML in favour of the claimant for collecting Service Tax have been given in the chart annexed with the refund application. On examination of the refund application and averments made by the applicant therein, it appears that the sole ground for filing the instant refund claim is that the claimant treats it as self service.*

However, M/s RSMMI, appeared to have charged and collected service tax from the claimant as evident from the debit notes raised by them. Thus, on primarily view, it appears that two different entities are involved in the activity/transaction and as such the same cannot be treated as self service' as claimed by the claimant. Hence, on this ground also the refund claim of Rs. 21,13,639/- appears liable to be rejected.

(iii) The claimant has, inter alia, relied upon the Agreement dated 27.08.1997 for the claim of the instant refund. However, it appears that the said agreement was executed between two persons namely M/s Rajasthan State Mineral Development Corporation Limited and M/s Mayur Chemicals, Jodhpur. Thus, there are two persons involved in the said agreement and therefore, the claimant as co-promoter has no locus standi to file the instant refund claim for Rs. 21,13,639/- and the same appears liable to be rejected on this ground also.

(iv) It appears that M/s RSMM are registered with Service Tax Department having Service Tax Registration No. AAACR7857HST001. As such the service tax collected by M/s RSMM is deemed to have been deposited in the Government Account. As such, the claimant has no locus standi to file the instant claim for service tax, which was collected from them by M/s RSMML.

(v) Even if the contention of the claimant that they were not liable for service tax is accepted, then also M/s RSMML, Who has collected the amount representing service tax was under obligation to deposit the same to the credit of the Central Government in terms of Section 73A(2) of the Finance Act, 1994, The claim of refund for Rs. 21,13,639/- so filed by the claimant appears liable to be rejected on this ground also.

(vi) It also appears that the amount of Rs. 21,13,639/- for which said refund claim has been filed has not been deposited in the Government Account by the claimant. Further, the amount so collected by M/s RSMM as service tax appears to had not been deposited under the jurisdiction of this office. Therefore, the

instant claim of Rs. 21,13,639/- filed by the claimant appears liable to be rejected for want of jurisdiction.

(vii) Further, the claim in respect of Debit Notes/ Invoices mentioned at S.No. 1 to 12 in the list mentioned at Para 2 above, have been filed after expiry of the one year from the relevant date, hence, the refund claim of Rs. 7,26,647/- in respect of said 12 debit notes/ invoices appears to hit by bar of limitation of one year in terms of Section 11B of the Central Excise Act, 1944 and the same appears liable to be rejected on this ground also.

(viii) It appears that the claimant has not paid any service tax to the Central Government and therefore, have no locus standi to file refund claim in this regard. The claim appears liable to be rejected on this ground also.

(ix) It also appears that the amount of service Tax charge by M/s RSSM Ltd Jodhpur which is recovered from the claimant & the claimant has sold the goods to buyers & the sell price must be inclusive of service Tax amount. Hence the Service Tx amount has already been recovered by the claimant from the buyers of the good & thus they are not eligible for refund as per the provision of section 12B of the central Excise Act 1944 as made applicable under section 83 of the finance act 1994.

2.2 Based on those discrepancies noticed, the above mentioned show cause notices were served upon the appellant proposing the rejection of refund claims of the amounts as mentioned above. The said proposal was initially confirmed vide above mentioned Order-in-Original. The appeal against the said order has been rejected vide the above mentioned Order-in-Appeal. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri O.P. Agarwal, learned counsel for the appellant and Shri Shashank Yadav, learned Authorized Representative for the department.

4. Learned counsel for the appellant has mentioned that the appellant was a newly constituted company in the name and style of M/s. Mayur Inorganics Limited. RSMM has provided limestone mines to the appellant for mining of limestone. Accordingly, the appellant was mining the limestone and selling the same in the market under the invoices issued by the appellant. Further, RSMM was also separately issuing the invoice (debit note) to the appellant charging a consideration of @ 125/- PM'T (cost of limestone) for the quantity of limestone sold by the appellant and charging the service tax from the appellant on consideration amount. RSMM was paying the service tax as collected in the Government Account. RSMM has also invested in the share capital of the appellant company as well as have also nominated one director on the Board of Directors of the appellant company. The appellant was of the view that service tax was not payable on consideration on such quantity of limestone mined by them as per agreement on the grounds that the appellant and RSMM are co-promoters and that RSMM here cannot be called as service receiver. Therefore, the services of mining here is self-service.

5. Due to these reasons the appellant had applied for the refund of the impugned amount of service tax. The rejection thereof is alleged to be absolutely wrong and illegal foremost for the reason that appellant is a joint venture between RSMM and appellant company and therefore it amount to the services being provided to self. Otherwise also, the mined limestone was sold by RSMM to the appellant company against the consideration of 125/- PMT. There can be no service tax can be charged when there is sale of goods.

Otherwise also, appellant has borne the incidence of tax and they have not included the same in cost of goods sold by them. Hence they were entitled for the refund. The claim is wrongly held barred by unjust enrichment. Learned counsel prayed for the orders under challenge to be set aside while relying upon the following decisions:

(i) CCEST Vs Indian Farmers Fertilizers Coop. Ltd. reported as 2014 (35) STR 492 (All.)

(ii) CCE Vs. KVR Construction reported as 2012 (26) STR 195 (Kar.)

(iii) CCE Vs. KVR Construction reported as 2018 (14) GSTL J7 (SC)

(iv) Tripura Cricket Association Vs. UOI reported as 2023 (2) Centax 147 (Tripura)

(v) S.P. Builders Vs. CCGSTCE, Jodhpur vide Final Order No. 50234-237 dated 22.02.2023

6. While rebutting these submissions, learned Departmental Representative has foremost reiterated the findings arrived at by both the adjudicating authorities below. It is submitted that the department countered that the appellant is a joint venture (JV) with RSMML hence both are distinct legal entities. RSMML is providing mining-related services to the appellant-JV for consideration (service charge of Rs. 125 per MT), making it a taxable service under the Finance Act, 1994. Learned Departmental Representative also argued that the appellant lacked standing to claim a refund since they did not pay the tax directly to the government and that

part of the second claim (Rs.7,26,647/-) was time-barred under the one year limitation period. With these submissions and impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

7. Having heard both the sides.

8. We have observed that the Commissioner (Appeals) rejected the impugned refund claim on the following grounds:

(i) As per debit notes of corporation (RSMM), it is seen that service charges of Rs. 125/- were charged by the corporation for mined limestone from the new company. The corporation is registered under Section 69 of the Finance Act, 1994 and having Service Tax Registration No. AAACR78571IST001 and charging service tax on the services charges plus royalty recovered. Commissioner (Appeals) finds that the appellant filed the instant refund in respect of this service tax paid by them to the corporation. We observe that after the introduction of Negative List w.e.f. 01.07.2012, the terms 'service' is defined under Section 65(B)(44) of the Finance Act, 1944, as "any activity carried out by a person for another for consideration and includes a declared service." In the instant case two distinct legal entities viz M/s. Mayun Inorganics Ltd., (the appellant) and M/s. Rajasthan State Mineral Development Corporation Ltd. (the Corporation) are involved in the transaction and a consideration is also flowing for activity performed by the Corporation. We held that it cannot be termed as 'self service' in as much as two different legal persons/entities are involved in the said transaction.

(ii) With respect to the plea that the activities undertaken as per joint venture agreement cannot be said to be a service between co-partners of the joint venture and it is for the joint venture which is a single party, we refer to Explanation 3(a) of the definition of service, according to which an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons. Resultantly, Joint Venture and the members of the Joint Venture are to be treated as distinct person and held that taxable services provided for consideration, by the Joint Venture to its members or vice versa and between the members of the Joint Venture are therefore taxable. M/s. Mayur Inorganics Ltd. being new Company is having distinct legal existence and the consideration flowing from the new Company to the CORPORATION is liable for service tax even in terms of the said CBEC Circular dated 24.09.2014.

(iii) The instant claim for refund of service tax of Rs.21,13,659/- has been rejected on the ground of non submission of documentary evidences as the challans furnished by the appellant were found not relatable to service tax paid by the appellant to the CORPORATION and thus it was held that the appellant failed to correlate the tax paid with respective returns filed by the corporation and the services availed by the appellant.

9. To check the correctness of these findings in the impugned order, we have perused the circular as relied upon by the appellant. The circular has clarified as follows:

"With effect from 1st July, 2012, under the negative list approach, all services are taxable subject to the definition of the service [available in section 65B (44) of the Finance Act, 1994], other than the services specified in the negative list [section 66D] and exemption notification [Notification No. 25/2012-ST]. According to Explanation 3(a) of the definition of service, "an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons". In accordance with the above explanation, JV and the member of the JV are treated as distinct persons and therefore, taxable services provided for consideration, by the JV to its members or vice versa and between the members of the JV are taxable.

3. in the context of a JV project, cash calls are capital contributions made by the member of JV to the JV. If cash calls are merely a transaction in money, they are excluded from the definition of service provided in section 65B(44) of the Finance Act, 1994. Whether a 'cash call' is 'merely.... A transaction in money' [in terms of section 65B(44) of the Finance Act, 1994] and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

10. The terms and conditions of the agreement dated 27.08.1997 of appellant with RSMM are also perused. Para 26(b)(iii) reads as follows:

"The New company shall charge and realize the royalty rates, taxes, cess and other statutory duties/levies etc. in relation to the limestone raised/dispatched from the earmarked are from the buyers/clients on behalf of the corporation at the rate as may be applicable or prescribed from time to time by any competent authority and shall deposit the same with the corporation every month regularly after adjusting advance paid, if any as per sub clause 26(b) (ii) above."

11. The activity in question falls within the scope of taxable services as defined under Section 65B(44) of the Finance Act, 1994. Section 65B(37) defines the person. According to both the

provisions, any activity carried out by one person for another person for consideration is a service and the company and its subsidiary company/joint ventures are the distinct persons. Resultantly, it stands established that the services provided by RSMM to newly formed joint venture company for a consideration are covered under the aforesaid definitions. Both being the separate entities and the admitted fact that appellant had paid service tax as apparent from above mentioned invoices/debit notes. Accordingly, we hold that RSMM had correctly paid the service tax. The appellant cannot claim refund of the service tax paid, as per its liability.

12. As a result of the above discussions, we do not find any infirmity in the order under challenge. Same is hereby upheld. Consequent thereto, both the appeals are hereby dismissed.

[Order pronounced in the open court on **25.07.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

HK