

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.54979 of 2023

[Arising out of Order-in-Appeal No.07/ST/DLH/2023 dated 06.03.2023 passed by the Commissioner (Appeals-I), Central Tax, Goods and Service Tax and Central Excise, Delhi)

M/s. Wave Megacity Centre Private Limited, **Appellant**
M-4, Mezzanine Floor,
South Extension Part-II,
New Delhi-110 049.

VERSUS

Commissioner (Appeals-I), Central Tax Goods **Respondent**
And Service Tax and Central Excise,
Room No.134, Central Revenue Building,
Indraprastha Estate, New Delhi.

AND

Service Tax Appeal No.54980 of 2023

[Arising out of Order-in-Appeal No.08/ST/DLH/2023 dated 06.03.2023 passed by the Commissioner (Appeals-I), Central Tax, Goods and Service Tax and Central Excise, Delhi]

M/s. Wave Megacity Centre Private Limited, **Appellant**
M-4, Mezzanine Floor,
South Extension Part-II,
New Delhi-110 049.

VERSUS

Commissioner (Appeals-I), Central Tax Goods **Respondent**
And Service Tax and Central Excise,
Room No.134, Central Revenue Building,
Indraprastha Estate, New Delhi.

APPEARANCE:

Shri A.K. Batra and Ms.Sakshi Khanna, Chartered Accountants for the appellant.
Shri S.K. Meena, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs.51242-51243/2025

DATE OF HEARING:18.08.2025
DATE OF DECISION:27.08.2025

BINU TAMTA:

1. M/s. Wave Megacity Centre Pvt. Ltd.¹ is aggrieved by the impugned orders² rejecting the refund claim as being time barred under Section 11B of the Central Excise Act,³ 1944 read with Section 83 of the Finance Act, 1994⁴.

2. The appellant is engaged in providing construction service, other than residential complex, including commercial, industrial building or civil structures along with other services such as contract service, legal consultancy service, etc. The appellant is developing a project named as 'Wave City Centre' in which dynamic product, Mix of premium and ultra luxury serviced residences, multi-use Studio Apartments, Premium Offices, High Street Shop, Condominiums, Mall and Multiplex is to be constructed.

3. The appellant raised demand notes to customers/clients for booking of property during the month of April 2011 to June 2017. The assessee charged service tax on the demand notes and collected the said amount and also deposited the same with the government exchequer. During September 2017 to November 2017, various customers/clients cancelled their bookings and the entire sum collected on account of booking was refunded inclusive of service tax of Rs.33,79,762/- by issuing credit notes to the customers.

4. The appellant filed refund claim of Rs.33,79,262/- on August 19, 2019 for the refund made during the period September 2017 to November 2017 to the customers on account of cancellation of the bookings. As the appellant

¹ The Appellant

² Order-in-Appeal No.07 & 08/ST/DLH/2023 dated 06.03.2023

³ CEA, 1944

⁴ Act, 1994

failed to submit the required documents, show cause notice dated 13.05.2020 was issued as to why the refund claim should not be rejected. The adjudicating authority rejected the refund claim on the ground of limitation as the application was filed beyond the period of one year from the relevant date. Moreover, the appellant had not submitted any proof of payment of taxes, service tax returns, and several other documents to prove that taxes had been paid on the demand notice issued. The appeal filed by the appellant has been dismissed by the Commissioner (Appeals) upholding that refund claim is hit by bar of limitation. Hence, the present appeal has been filed before this Tribunal.

5. Heard Shri A.K. Batra and Ms. Sakshi Khanna, Chartered Accountants for the appellant and Shri S.K. Meena, Authorised Representative for the Revenue.

6. The issue for consideration is whether the appellant is entitled to refund on the service tax paid on credit notes which were issued to their customers due to cancellation of agreement without meeting the condition of limitation as prescribed under Section 11B of CEA?

7. Shri A.K. Batra, learned Counsel for the appellant has argued that the refund application is not barred as Section 142(3) of the CGST Act , 2017 has overriding effect on Section 11B of CEA and, therefore, the time limitation provided under section 11B is not applicable. In support of his submissions, the learned Counsel has relied on the following decisions:-

(1) M/s. Uppal Chadha Hitech Developers Pvt. Ltd. Vs. Commissioner (Appeals-1), New Delhi ⁵

⁵ Final Order No.54529/2024 dated 30.01.2024 –CESTAT, New Delhi

- (2) **M/s.Wave One Private Limited Vs. Commissioner (Appeals-I), New Delhi⁶**
- (3) **M/s. Jai Mateshwaari Steels Pvt. Ltd. Vs. Commissioner, CGST, Dehradun dated 11.02.2022⁷**
- (4) **M/s. Doowon Automotive Systems India Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Chennai dated 19.05.202⁸**
- (5) **Punjab National Bank Vs. Commissioner of Central Tax, Bangalore North dated 7.7.2021⁹**
- (6) **M/s. Lifecell International Pvt. Ltd. Vs. Commissioner of GST & Central Excise, Chennai dated 22.06.2022¹⁰**
- (7) **M/s. Rattan India Power Ltd. Vs. Commissioner of Customs, Central Excise & Central GST, Delhi dated 05.04.2022¹¹**
- (8) **Credence Property Developers Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai East dated 05.01.2023¹²**

8. The second submission of the learned Counsel is that the time limit of one year as given under Section 11B is applicable only in respect of refund of duty, tax and interest and not in the case of amount deposited. According to him, the appellant had not rendered any services to the customers, as the booking of the flats were cancelled and they had refunded the entire amount including the service tax. Reliance was placed on the decision in **M/s. Credence Property Developers Pvt.Ltd. versus Commissioner of CGST & Central Excise, Mumbai East¹³**.

9. The learned Authorised Representative for the Revenue reiterated the findings of the Authorities below and in addition thereto has challenged the maintainability of the refund application in view of the decision of the Apex

⁶ Final Order No.51564/2023-CESTAT NEW Delhi dated 31.10.2023 CESTAT, New Delhi

⁷ 2022 (3) TMI 49 –CESTAT-New Delhi

⁸ 2022 (5) TMI 984 –CESTAT-Chennai.

⁹ 2021 (7) TMI 326 –CESTAT-Bangalore

¹⁰ 2022 (6) TMI 1134-CESTAT-Chennai

¹¹ 2022 (5) TMI 651-CESTAT-New Delhi

¹² 2023 (1) TMI 252 –CESTAT Mumbai

¹³ 2023(1)TMI 252 – CESTAT MUMBAI.

Court in **ITC Limited Vs. CCE, Kolkata**¹⁴, read with the decision of the Delhi High Court in **BT (India) Pvt. Ltd Vs. Union of India**¹⁵ and subsequently followed by the Tribunal on the principle that refund proceedings cannot overturn the self- assessment made by the party as assessment includes self-assessment of service tax by the assessee.

10. The issue of refund in similar circumstances and the contentions raised by the learned Counsel have been considered in series of decisions by different learned Single Members, as referred above. The consistent view taken in all these decisions is that refund claim of service tax paid under the existing law (Central Excise Act, 1944) in respect of services not provided shall be disposed of under the existing law and has to be paid in cash, however such refund is subject to the provisions of sub-Section (2) of section 11B of CEA, which means that it is only in case of unjust enrichment that the refund amount can be denied. The refund application cannot be rejected on the ground of time bar under Section 11 B. The learned Single Member has taken support from the decision of the Apex Court in the case of **Collector of Central Excise, Chandigarh Vs. M/s. Doaba Cooperative Sugar Mills Ltd., Jalandhar**¹⁶ and concluded that there is no reason to invoke section 11B and the amount needs to be refunded, notwithstanding anything, contrary in the erstwhile law. The observations have also been made that the relevant date would not be the date of payment of service tax by the appellant but the date of issuance of credit notes to its customers subsequent to cancellation of agreements for providing construction service between those customers and the appellant. Accordingly, the appeal was allowed with consequential relief.

¹⁴ 2019 (368) ELT 216 (SC).

¹⁵ W.P. (C) 13968/2021 dated 6.11.2023/2023 13 CENTAX 89 (Delhi)

¹⁶ 1988 (37) ELT 487 (SC)

11. We may also refer to the decision of the learned Single Member in the case of **Credence Property Developers Pvt.Ltd.** where the issue of refund of service tax amount which the builder has returned or refunded to the buyer along with the advance amount paid upon cancellation of the two flats booked by the said buyer was in consideration and the relevant para deciding the issue is quoted hereunder: -

"5. The first principle of service tax is that tax is to be paid on those services only which are taxable under the said statute. But for that purpose there has to have some 'service'. Unless service is there no service tax can be imposed. For the applicability of the provisions as referred to in the deficiency memo or in the Adjudication order or appellate order, the pre-condition is 'service'. If any service has been provided which is taxable as specified in the Finance Act, 1994 as amended from time to time then certainly the assessee is liable to pay, but when no such service has been provided then the assessee cannot be saddled with any such tax and in that case the amount deposited by the assessee with the exchequer will be considered as merely a 'deposit' and keeping of the said amount by the department is violative of Article 265 of the Constitution of India which specifically provides that "No tax shall be levied or collected except by authority of law." Since Service Tax, in issue, received by the concerned authority is not backed by any authority of law, the department has no authority to retain the same Buyer booked the flat with the appellant and paid some consideration. The appellant as a law abiding citizen entered the same in their books of accounts and paid the applicable service tax on it after collecting it from the huyer. But when the buyer cancelled the said booking on which service tax has been paid and the appellant returned the booking amount along with service tax collected then where is the question of providing any service by the appellant to that customer. **The cancellation of booking coupled with the fact of refunding the booking amount along with service tax paid would mean as if no booking was made and if that is so, then there was no service at all. If there is no service then question of paying any tax on it does not arise and the department can't keep it with them. No law authorises the department to keep it as tax. The net effect is that now the amount, which earlier has been deposited as tax, is merely a deposit with the department and the department has to return it to the concerned person ie. the assessee. In the fact of this case it can be safely concluded that no service has been provided by the Appellant as the service contract got**

terminated and the consideration for service has been returned.

6. As per Rule 66E(b), Service Tax Rules, 1994 in construction service, service tax is required to be paid on amount received from buyers towards booking of flat before the issuance of completion certificate by the competent authority and the booking can be cancelled by the buyer any time before taking possession of the flat. Once the buyer cancelled the booking and the consideration for service was returned, the service contract got terminated and once it is established the no service is provided, then refund of tax for such service become admissible. The authorities below are not correct in their view that mere cancellation of booking of flats does not mean that there was no service. If the booking is cancelled and the money is returned to that buyer then where is the question of any service? Once it has been held that there is no service then by any stretch 'Point of Taxation Rules, 2011' can't be roped in as for the applicability of the said Rules firstly providing of any 'service' by the Appellant has to be established. Therefore, the authorities below were not justified in invoking the Provisions of Point of Taxation Rules, 2011 for denying the refund."

12. We fairly accept the views taken by the learned Single Member Bench in respect to the same controversy and being in conformity with the provisions of Section 142 of CGST Act. As noted by the learned Single Member in **Credence Property Developers**, that when there is no incidence of service there cannot be any leviability of service tax. Once the booking has been cancelled and the amount has been refunded, there is no scope for rendering any service on which the Department can hold the amount towards service tax. The appellant had issued credit notes in respect of service which is not rendered to the customers on account of cancellation of the agreement and hence there was no scope of rendering any services on which the service tax could be levied.

13. The learned Counsel for the appellant has relied on the provisions of Rule 6 of Service Tax Rules, 1994, which entitles the assessee to take the credit of such excess service tax paid by him. Rule 6 during the period 01.04.2011 to 30.06.2017 is quoted below:-

“(3) Where an assessee has issued an invoice, or received any payment, against a service to be provided, which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee.-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.”

There is no doubt that the appellant was entitled to the credit as the present case falls within the ambit of Rule 6 since the appellant had received the amount against the service to be provided, however, for the reason stated above, the same could not be provided by him, and the amount of invoice was to be returned back to the customers, the appellant therefore could have taken the credit of such excess service tax paid by him subject to the conditions specified in the rules. For the said reason also, the refund needs to be allowed.

14. The reliance placed on the Revenue on the decision of the Apex Court in **ITC**, and the Delhi High Court in **BT (India) Pvt Ltd.** are not really applicable in the facts of the present case for the basic reason that no services have been rendered by the appellant and, therefore, the refund is not of any tax or duty. In effect, the refund sought is merely of a ‘deposit’.

15. The Adjudicating Authority had noticed that the appellant had not produced any evidence so as to satisfy that there is no unjust enrichment, we find that the same still has to be complied with in terms of Section 142 (5) of CGST Act, 2017. We, accordingly remand the matter to the Adjudicating Authority to decide on the applicability of the principle of unjust

enrichment granting an opportunity to the appellant to place on record all the requisite documents in that regard. The appellant is also required to comply and co-operate with the Directors.

16. We, therefore, set aside the impugned orders to the extent stated above. The appeals are, accordingly allowed, by way of remand.

[Order pronounced on 27th August, 2025]

(Binu Tamta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

Ckp.