IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.42712 of 2018

(Arising out of Order-in-Appeal No. 510/2018 (CTA-I) dated 26.9.2018 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

M/s. GAIL India Ltd. **Appellant**
1st and 2nd Floor, AHM Complex
164, Kamraj Salai
Karaikal – 609 602.

Vs.

Commissioner of GST & Central Excise **Respondent**
Puducherry Commissionerate
No. 1, Goubert Avenue, Beach Road
Puducherry – 605 001.

APPEARANCE:

Shri G. Natarajan, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40481/2023

Date of Hearing: 15.06.2023
Date of Decision: 26.06.2023

Per M. Ajit Kumar,

This appeal is filed by M/s. GAIL India Ltd., Karaikal against Order in Appeal No. 510/2018 (CTA-I) dated 26.9.2018.

2. Brief facts are that the appellants were registered with the Service Tax Department and were engaged in the business of transporting and trading of industrial gases through their own pipelines on which they were discharging service tax. The tariff charges are fixed by the Government agency known as Petroleum and Natural Gas Regulatory Board (PNGRB). Until the pendency of approval of the pipeline tariff from PNGRB, the appellants collected the previously

agreed contractual provisional rates from their customers in consideration with their services for transportation of gas through pipeline network along with service tax and deposit the same to the Government. The appellant has filed a refund claim of Rs.10,54,78,124/- on 9.7.2015 under Rule 173S of the Central Excise Rules, 1944 in respect of service tax paid on gas transmission charges collected by them from their customers and duly remitted to the Government during the period 1.4.2011 to 31.7.2014. The said refund claim arose due to differential price charges i.e. the difference between tariff already charged as per contract by the appellant and the tariff amount as received by PNGRB. On scrutiny of the ST-3 returns of the appellant, it appeared to the Department that the said refund amount had already been adjusted / utilized by the appellant under Rule 6(3) of Service Tax Rules, 1994. Hence after due process of law, the refund claim was rejected by the original authority. Aggrieved by the same, the appellant filed appeal before Commissioner (Appeals) who has also upheld the Order in Original. The relevant portion of the impugned order is extracted below:-

> *"7. The only ground for rejection of the refund by the respondent is that on verification of the ST-3 returns of the period in dispute, it was seen that the appellant had adjusted an amount of Rs.11,47,41,041/- under Rule 6(3) of the Service Tax Rules, 1994 towards their service tax liability. The appellant on the other hand claimed that this was an inadvertent error and that in fact they had adjusted only an amount of Rs.66,24,847/-. However, there is no evidence on record placed by the appellant to prove that they had not taken credit of Rs.11,47,41,041/- into their books of accounts. Pertinently, the appellant had also not endeavoured to set right the error claimed to have been done by them inasmuch as the appellant had not filed any revised ST-3 returns in terms of Rule 7B of the Service Tax Rules, 1994 for amending the figures.*
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> *8. Thus, inasmuch as it is not evidenced as to whether the amount of Rs.11,47,41,041/- was adjusted fully or not during subsequent periods and also since no amendments or revised returns were filed by the appellant, the balm claim of the appellant*

that it was a technical error remains largely unsubstantiated and hence cannot be accepted.

9. The appellant has placed reliance on case laws. However, these cases are of different material facts where there were procedural lapses, whereas the case on hand in not one of a procedural or technical lapse, but attempting to derive double benefit by the appellant by seeking refund under section 11B of the Act on one hand, and by taking credit in terms of Rule 6(3) of the Service Tax Rules, 1994 on the other hand. Therefore, the various case laws cited by the appellant are of no relevance to the case on hand.

10. In view of the above, the impugned order is upheld in toto and the appeal of the appellant merits rejection."

3. Aggrieved by the impugned order, the appellant is now before the Tribunal assailing the impugned order.

4. No cross-objections have been filed by Respondent-Department.

5. We have heard Shri G. Natarajan, learned counsel for the appellant and Shri R. Rajaraman, learned AR for the Revenue.

5.1 The learned counsel for the appellant has stated that the total excess amount of service tax paid by them due to the revision in the tariff of gas transmitted by them for the period from 1.4.2011 to July 2014 was Rs.11,47,41,041/-. However, they have sought a refund of Rs.10,54,78,124/- as detailed below:-

S. No.	Details	Service Tax	Education Cess	Secondary and High Education cess	Total
1.	Excess service tax paid during the period from April 2011 to July 2014 by adoption of higher transmission charges than the one finalized by PNGRB	11,13,99,069	22,27,980	11,13,992	11,47,41,041
2.	Amount adjusted under Rule 6(3) in Oct. 2014 to March 2015 ST3 return	64,31,892	1,28,642	64,317	66,24,851
3.	Balance available for claiming refund	10,49,67,177	20,99,338	10,49,675	10,81,16,190
4.	Refund claimed				10,54,78,124
5.	Refund not claimed (not able to claim certificates of non-availment of credit from 3 customers)				26,38,066

5.2 He further submitted that it has been erroneously held by the lower authorities that they have adjusted this entire amount of

Rs.10,54,78,124/- as shown in the ST-3 returns. He submitted that it was only due to inadvertence, at the time of filing of ST-3 returns, that instead of stating that the actual amount adjusted which is Rs.66,24,851/-, they have keyed in the entire amount of Rs.11,47,41,041/- as having been adjusted. This being a clerical error, it could not empower the adjudicating authority to reject the refund claim only on that ground and moreover, they were not able to revise the returns filed in terms of Rule 7B of the Service Tax Rules, 1994 as the time limit for such revision was already over by the time they noticed their mistake. Further, there had been further development in this matter and the Tribunal at New Delhi vide Final Order No. 55445/2017 has taken a view that there can be no levy of service tax on the activity of transportation of gas up to delivery point at customers' premises as it pertains to self-service. Hence the duty itself has been paid under a mistake of law and cannot be retained by the department and should be refunded as per sec. 11B of the Central Excise Act, 1944. Hence he prayed that the appeal may be allowed.

5.3 The learned AR Shri R. Rajaraman stated that the claims of refund have to be made as per the provisions and procedures provided in the Act / Rules. Rule 6 provides a specific procedure for adjustment of excess service tax paid. Further, the ST-3 returns reflect the position of the service tax as discharged by the appellant. They are also guided by the ACES software in case they make an inadvertent data entry mistake. Further, they are also allowed a period of 90 days within which a revision of any mistake or omission that occurred while filing the ST-3 returns can be corrected. The departmental authorities cannot ignore the provisions of the Act and Rules to sanction the refund. When they

are not found eligible as per the prescribed document. He hence prayed that the appeal may be dismissed.

6. We have heard both sides and we find that the only issue involved in the dispute is whether the data entered in the ST-3 Returns will bind the appellant and the act of not correcting an error in time, will close the avenues for a claim of refund, filed subsequently by the appellant.

7. The ST-3 Returns filed by the appellant show that the appellant had adjusted an amount of Rs.11,47,41,041/- under Rule 6(3) of the Service Tax Rules, 1994 towards their service tax liability. The appellant on the other hand claimed that this was an inadvertent error and that in fact they had adjusted only an amount of Rs.66,24,847/-. In the normal course departmental officers have powers to correct an error of clerical or arithmetical nature, which are obvious, apparent or patent as do not admit of any debate or discussion. The original authority however felt that since the ST-3 Returns showed that an amount of Rs.11,47,41,041/- which was greater than the refund amount claimed, has been adjusted under Rule 6(3), no refund could be paid. The Original Authority felt bound by the legal frame work and found that he could not deviate from the entries made in the Return. Para 26 of the OIO is reproduced below:-

> *"In their replies to Show Cause Notice and during personal hearing, they had reiterated that the amount which was claimed as refund was inadvertently included in the ST-3 returns as utilized towards payment of service tax. They had stated that their tax liability was never near the amount claimed as refund to require adjustment of the same in the manner done in their returns. In this connection, I find that ST-3 return is prescribed under Rule 7(1) of Service Tax Rules, 1994 read with section 70 of Finance Act, 1994. The manner in which it has been filed is also prescribed under the Service Tax Rules read with Finance Act, 1994. There is also provision to amend the same provided in Service Tax Rules read with Finance Act, 1994. This authority granting refund is a 'creature established by statute', the*

statute being Finance Act, 1994 and rules established thereunder. Therefore, this authority bound by the legal framework and can function only within that framework. I am duty bound to take the submission made by the party in their statutory returns and cannot deviate from the same. In case the party wished to correct it beyond the time set in statute, the could have approached judiciary to allow them to do for whatever the grounds they may have. As such I am bound by the taxation laws and there is no provision under Finance Act, 1994 or the rules made thereunder by which I can grant refund of the amount claimed by the party overlooking their declaration in ST-3. The citations which they had quoted are judicial directions on particular cases which are not squarely applicable in this case. Therefore, I reject the refund claim filed by the party under Rule 6(3) of ST Rules, 1994 read with Finance Act, 1994."

The reasoning appears to be not very sound. We find that the Order in Original extensively records the large amount of data submitted by the appellant, including CA's statements to justify their claim. This data has also been examined, as stated at para 8 of the Order in Original and no discrepancies have been noticed based on the data provided. Yet one entry, claimed to be made by mistake by the appellant, in the ST-3 Return has resulted in the claim being rejected. A question arises that if the appellant had inadvertently or otherwise entered a lesser figure as the value of taxable service and the amount of tax payable in Part B of the ST-3 Return, would the Original Authority be similarly bound? The answer lies in Section 72 of finance act, 1994 which gives power to central excise officer to make best judgment assessment if he finds that the Assessee has filed the service tax return but has failed to assess service tax as per provisions of Finance Act, 1994. Assessment in its broad sense means determination of tax liability. Since Revenue cannot retain any money deposited / collected without the authority of law, excess collection has to be refunded. Rule 6 of the Service Tax Rues, 1994 has been introduced as a part of the procedure to bring in a tax payer friendly regime. The taxpayer is trusted to

assess his own return and file the same and to adjust excess payments made without going through a bureaucratic process. While the self-assessed Return is to be ordinarily accepted by the department there is no dilution of the statutory responsibility of the jurisdictional officers in ensuring the correctness of the duty paid. In such a situation we cannot accept the stand taken by the original authority that he could not deviate from the entries in the ST-3 Return especially when verifying a refund claim with independent data provided to support the claim. The CBIC has a scheme for the scrutiny of ST-3 Returns as in Circular No. 113/07/2009-St, dated 23.04.2009 and has brought out a 'Return Scrutiny Manual for Scrutiny of ST-3 Returns', for this very purpose. As per these instructions Division/Range offices should, among other things, at first carry out a preliminary online scrutiny of the ST-3 Returns filed. The purpose is to ensure the completeness of the information furnished in the Return, arithmetic correctness of the amount computed as tax and its timely payment, timely submission of the return etc. A Return contains the details of the tax related transactions that a taxpayer has done during a given period. It gives give information about the total tax paid by the tax payer and how he has arrived at it. The Revenue Department cannot retain an amount just because of an inadvertent error relating to the information provided in supporting documents such as a Return. Hence refund claim should not have been rejected because of an error in the Return when it is otherwise found eligible.

8. Further the appellant has as an alternate plea requested the Department to consider their claim under Section 11B of the Central Excise Act as made applicable to Service Tax refunds, stating that even

if it is assumed that the entire service tax stands adjusted in terms of Rule 6(3) and thereby credited to Govt they are still eligible to claim refund under section 11B. They had also stated that with the issuance of credit notes inclusive of the amount of service tax, the incidence of service tax had not been passed on and hence the question of unjust enrichment (UJE) did not arise. We find that the refund claim under 11B was rejected by the Original Authority on the ground that the claim cannot be modified by the appellant to include a totally new ground. While the Commissioner (Appeals) in the impugned order felt that the appellant was seeking a refund claim under section 11 B to derive a double benefit by also taking credit of the same amount. We have examined the table given at para 6 above and find that as per the appellant the total excess service tax paid by was Rs 11,47,41,041/- during the period April 2011 to July 2014. However, they have claimed a refund of Rs 10,54,78,124/- only as stated in para 2 of the impugned order. The balance of Rs 92,62,917/- which was not claimed was due to the fact that Rs 66,24,851/- was adjusted by the appellant under Rule (3) in the October 2014 to March 2015 ST 3 Returns and Rs 26,38,066/- that was not claimed due to being able to produce 'certificates of non-availment of credit' from 3 customers. (Rs 66,24,851/- + Rs 26,38,066/- = Rs 92,62,917/-). It is seen that as per the table the amount of Rs 66,24,851/- was not included in the refund claim of Rs 10,54,78,124/- and no double benefit was claimed.

9. The appellant has now in their appeal before us brought to notice that in a subsequent development the Hon'ble new Delhi Tribunal's vide its Final Order No. 55445/2017 has held that there can be no levy of service tax on the activity of transportation of gas up to delivery point

at customers premises as it pertains to self-service. Hence on this ground too they would be eligible for a refund under section 11B of the Central Excise Act, 1944. While this is a fresh legal issue which has not been examined by the Original Authority, it is no longer in dispute that claims for refund, even where tax has been paid under a mistake of service tax law are to be filed and decided upon under Section 11B of the Central Excise Act, 1944, subject to the claimant establishing that burden of duty has not been passed on to third parties. However, we find that the only issue for rejecting the refund claim is a data entry in the ST-3 Return, which when claimed to be erroneous by the appellant was not verified for its correctness just because the original authority mistakenly found himself 'bound by the legal framework'. We hold that the appellant's claim was wrongly dismissed without examining the claim based on verifiable facts. Hence the impugned order merits to be set aside.

10. In the light of the discussions we set aside the impugned order and allow the appeal with consequential relief. Revenue can however verify the mathematical accuracy in computing the refund claim before sanction. The appeal is disposed off accordingly.

(Pronounced in open court on 26.6.2023)

(**M. AJIT KUMAR**)
Member (Technical)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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