

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

REGIONAL BENCH - COURT No. III

(1) Service Tax Appeal No.40144 of 2016

(Arising out of Order-in-Original No.14 & 15/2015- Commr. dated 29.10.2015 passed by Commissioner of Central Excise, Customs & Service Tax, 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018).

M/s.Aircel Limited

.... Appellant

CODISSIA Towers,
7A, Huzur Road,
Coimbatore 641 018.

VERSUS

**The Commissioner of GST &
Central Excise,**

... Respondent

Coimbatore GST Commissionerate,
6/7, ATD Street, Race Course Road,
Coimbatore 641 018.

WITH

**(2) Service Tax Appeal No.40145 of 2016 (Aircel Ltd.
Vs CGST & CE, Coimbatore)**

(Arising out of Order-in-Original No.14 & 15/2015- Commr. dated 29.10.2015 passed by Commissioner of Central Excise, Customs & Service Tax, 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018).

**(3) Service Tax Appeal No.40183 of 2016
(Commissioner of GST & Central Excise, Coimbatore Vs
Aircel Ltd.)**

(Arising out of Order-in-Original No.9/2015-COMMR dated 26.08.2015 passed by Commissioner of Central Excise, Customs & Service Tax, 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018).

**(4) Service Tax Appeal No.40680 of 2016 (Aircel
Cellular Ltd. Vs CGST & CE, Chennai North)**

(Arising out of Order-in-Appeal No.368/2015 (STA-II) dated 28.12.2015 passed by Commissioner of Customs, Central Excise, & Service Tax

(Appeals-II), Newry Towers, 3rd Floor, Plot No.2054, I Block, II Avenue, Anna Nagar, Chennai 600 040)

(5) Service Tax Appeal No.41198 of 2015 (Aircel Cellular Ltd. Vs CGST & CE, Chennai North)

(Arising out of Order-in-Original No.CHN-SVTAX-001-COM-027-2014-15 dated 27.02.2015 passed by Commissioner of Service Tax-I, Newry Towers, No.2054- I, II Avenue, Annanagar, Chennai 600040.)

(6) Service Tax Appeal No.41742 of 2015 (Aircel Ltd. Vs CGST & CE, Coimbatore)

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-118-15 dated 12.05.2015 passed by Commissioner of Customs, Central Excise, & Service Tax (Appeals-I), 6/7, A.T.D. Street, 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018)

(7) Service Tax Appeal No.42379 of 2015 (Aircel Ltd. Vs CGST & CE, Coimbatore)

(Arising out of Order-in-Original No.9/2015-COMMR dated 26.08.2015 passed by Commissioner of Central Excise, Customs & Service Tax, 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018).

(8) Service Tax Appeal No.42471 of 2015 (Aircel Cellular Ltd. Vs CGST & CE, Chennai North)

(Arising out of Order-in-Original No.21 & 22/2015 dated 01.09.2015 passed by Commissioner of Central Excise, Chennai-II Commissionerate, MHU Complex, Nandanam, Chennai 600 035).

(9) Service Tax Appeal No.42472 of 2015 (Aircel Cellular Ltd. Vs CGST & CE, Chennai North)

(Arising out of Order-in-Original No.21 & 22/2015 dated 01.09.2015 passed by Commissioner of Central Excise, Chennai-II Commissionerate, MHU Complex, Nandanam, Chennai 600 035).

(10) Service Tax Appeal No.41468 of 2013 (Aircel Ltd. Vs CGST & CE, Coimbatore)

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-129-13 dated 28.03.2013 passed by Commissioner of Customs, Central Excise, & Service Tax (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018).

APPEARANCE :

Ms. Shwetha Vasudevan, Advocate
Shri G. Sheerabdinath, Advocate for the Assessee

Shri C. Dhanasekaran, Special Counsel
for the Revenue

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.40643-40652/2025

DATE OF HEARING : 11.06.2025
DATE OF DECISION : 20.06.2025

Per: Shri P. Dinesha

Ld. Advocate Ms. Shwetha Vasudevan submitted that the appellant had approached NCLT for liquidation and NCLT after satisfying itself, approved the Resolution Plan and therefore demands raised in the impugned order cannot survive as the appeals themselves are to be treated as 'abated' except Appeal ST/41468/2013 as it pertains to refund claim.

2. *Per Contra* Shri C. Dhanasekaran, Ld. Special Counsel agrees with the submission that the NCLT has accepted the Resolution Plan and Resolution Professional has already been

appointed, but however the Resolution Professional has sought to withdraw himself and has filed appeal and also sought for appointment of another Resolution Professional and hence, there is no finality as contended by the Ld. Advocate. He would thus pray for disposal of Appeals after hearing the parties since substantial demands have been raised in the impugned orders.

3. We have considered the rival contentions and we have perused the order of NCLT, now that the Resolution Plan stands accepted which is undisputed by both the parties, the present appeals would not survive as ruled by the Hon'ble Apex Court in **Ghanashyam Mishra and Sons Pvt. Ltd. Vs Edelweiss Asset Reconstruction Company Ltd. & Ors. (Civil Appeal No.8129 of 2019) vide judgement dated 13.04.2021 reported in 2021 (4) TMI – SUPREME COURT** which decision has been followed by various CESTAT Benches across India. Ld. Advocate Ms. Shwetha Vasudevan would place reliance on a latest decision of the Hon'ble High Court of Karnataka in the case of **Patanjali Foods Ltd. Vs Commissioner of Customs, Mangalore** in **CSTA No.4 of 2024 dated 30.09.2024** and would pray to hold the abatement of 'demands' and not

'appeals' as directed in the said order of the Hon'ble High Court of Karnataka.

4. The Hon'ble Apex Court in the case of **Ghanashyam Mishra and Sons Pvt. Ltd.** *supra* has after considering the various decisions of its own and after analysing the relevant provisions of **IBC**, has concluded as under :

"95. In the result, we answer the questions framed by us as under :

- (i) *That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, and State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.*
- (ii) *2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into affect;*
- (iii) *Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."*

[emphasis added by us]

5. It is clear from the above that once the Resolution Plan is approved by the Adjudicating Authority under Section 31 (1) of Insolvency and Bankruptcy Code, 2016 (**IBC**) then 'no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan'. That means even the present proceedings before us cannot be continued as held in **Ghanashyam Mishra and Sons Pvt. Ltd. *supra***.

6. With regard to Appeal No.**ST/41468/2013** filed by the Appellant-assessee, Ld. Advocate submitted at the outset, that this appeal pertains to refund claim which was denied by the authorities below. She would further contend that though the Appellant was before NCLT and vide order dated 09.06.2020 the Resolution Plan was approved in terms of **IBC** and thereafter the Appellant-assessee is being managed and controlled by a Monitoring Committee which is conducting the litigation on behalf of the Appellant/Corporate Debtor which, according to her, was in terms with the Resolution Plan. It was further argued that the Corporate Debtor would continue with the present litigation to ensure that claims enduring to the benefit of Corporate Debtor might result in refund which would contribute to the assets of the Corporate Debtor. In this

regard, our attention was drawn to clause 4.5.3 at page 20 of the Resolution Plan.

7. She would further contend that in terms of Section 31 (1) of **IBC**, the approved Resolution Plan is binding on the Corporate Debtor and persons specified therein including Central Government to whom a debt in respect of the payment of dues arising under any law for the time being in force. Further, by taking shelter under the Hon'ble Supreme Court decision in the case of **Swiss Ribbons Private Limited and Anr. Vs Union of India** - (2019) 4 SCC 17, she would further argue that maximization of the value of assets of the Corporate Debtor is one of the important objectives of the **IBC** and since the Corporate Debtor is pursuing its claims which would result in enhancing the assets of the Corporate Debtor, therefore, the present appeal would not 'abate' and hence, the Appeal **ST/41468/2013** has to be heard on merits.

8. *Per contra*, Ld. Special Counsel Shri C. Dhanasekaran invited our attention to the conclusion part of Hon'ble Apex Court decision in **Ghanashyam Mishra and Sons Pvt. Ltd.** (supra) and in particular at Sl. No. (i) of para 95 wherein the Hon'ble Apex Court has very categorically held that no

person would be allowed to initiate or even continue any proceedings and therefore, the present appeal also stands covered by the above decision. In that view of the matter, according to Ld. Special Counsel, the claim of the Appellant-Assessee also extinguishes and therefore, the prayer of the Assessee cannot be allowed.

9. After considering the rival contentions, we find that the Hon'ble Apex Court in **Ghanashyam Mishra and Sons Pvt. Ltd. *supra*** has also covered the above situation where an appeal of identical nature is sought to be pursued since, as contended by the Ld. Special Counsel, paragraph (i) of the conclusion specifically refers to 'any person'. This apart, once the Resolution Plan is approved in terms of Section 31(1) of **IBC**, the original identity of the Corporate Debtor ceases to exist. Moreover, while upholding the objectives of **IBC**, the Hon'ble Apex Court in **Ghanashyam Mishra *supra*** and in **Swiss Ribbons Private Limited *supra*** has categorically held that the liabilities of a Corporate Debtor should not discourage a bonafide successor. No doubt, the maximization of value of assets is viewed as only to benefit such successor but however, once the original identity is lost along with statutory liabilities, such Corporate Debtor cannot choose to stake a claim just because it had litigated its claim

regarding refund, the allowability or otherwise of such claim is a different matter altogether.

10. In view of the above discussion, we are of the clear view that status of Corporate Debtor does not alter depending on whether an appeal pertains to a demand or refund; any litigation cannot be initiated and if initiated, cannot continue as categorically held by the Hon'ble Apex Court in **Ghanashyam Mishra** *supra*. We, therefore, do not see any merit in the Appellant-Assessee's contention and therefore the same is not entertainable.

11. Resultantly, the appeals stand closed/disposed of accordingly.

(Order pronounced in court on 20.06.2025)

(VASA SESHAGIRI RAO)
Member (Technical)

(P. DINESHA)
Member (Judicial)