

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

REGIONAL BENCH, COURT NO. 2

SERVICE TAX APPEAL NO. 10311 OF 2019

[Arising out of OIA-RJT-EXCUS-000-APP-34-14-15 dated 13/05/2014 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT(Appeal)]

SHIV LOGISTICS

6 Gayatri Complex, Near Swati Hotel Adani Port Road,
Taluka Mundra, Kutch
Gujarat

Appellant

Vs.

**COMMISSIONER OF CGST & CENTRAL EXCISE-
CGST & CENTRAL EXCISE KUTCH GANDHIDHAM**

Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot,
Gujarat-360001

Respondent

Appearance:

Shri Vikas Mehta, Consultant for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR)for the Respondent

CORAM:

HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10594/2025

Date of Hearing : 01.07.2025

Date of Decision : 23.07.2025

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the Order-in-Appeal dated 13th May, 2014 through which the learned Commissioner confirmed the Order-in-Original dated 29th April, 2013 passed by Joint Commissioner and rejected the appeal.

1.1 The facts of the case in brief are that during the course of audit, it appeared to the officers of the department that during the quarters October-2007 to December, 2007 and January-2008 to March-2008 the appellant had adjusted excess paid service tax amounting to Rs. 6,06,031/-. It also appeared to the officers that the appellant had failed to comply with condition no. (iii) and (iv) of sub-rule (4B) of Rule 6 of Service Tax Rules, 1994 in as

much as the amount adjusted by appellant exceeded the monetary limit of one lakh rupees per month / quarter and further the appellant had failed to intimate the details and reasons of such adjustment to the Jurisdictional Superintendent within a period of 15 days from the date of adjustment. Show Cause Notice dated 6th December, 2012 was issued to the appellant by invoking extended period asking them to show cause as to why:-

“(i) The excess amount paid to the account of Central Government and adjusted the said excess amount in payment of service tax beyond the prescribed monetary limit with resulted in short payment of service tax to the tune of Rs. 6,06,031 should not be recovered under proviso to Section 73(1) of the Finance Act, 1994;

(ii) Interest at the appropriate rate on the aforesaid amount should not be recovered from them under Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994;

(iv) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for failure to pay service tax or failure to pay service tax within prescribed time limit;

(v) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppressing the fact.”

1.2. The first Adjudicating Authority / Joint Commissioner adjudicated the show cause notice and confirmed the demand after brushing aside the various submissions advanced by appellant in the course of adjudication proceedings. On appeal, the learned Commissioner (Appeals) rejected the appeal filed by the appellant.

1.3. Being aggrieved with the impugned order of learned Commissioner (Appeals), the appellant has filed the present appeal before this Tribunal.

2. The learned consultant for the appellant submitted that lower authorities have not disputed the fact that the appellant had paid excess amount of service tax in the earlier period, but for the procedural lapses narrated in the show cause notice. Hence, the department cannot deny the adjustment on the ground of procedural lapses once there is no dispute about excess payment of service tax by the appellant.

2.1. The learned consultant for the appellant has also submitted that the demand is time barred in as much as there can be no malafied intention on the part of appellant when there is no dispute over the fact that there was excess payment of service tax by appellant which they sought to adjust. Thus, show cause notice issued in December, 2012 for recovery of excess amount of service tax adjusted by appellant during the quarter October, 2007 to December, 2007 and January, 2008 to March, 2008 is time barred. The learned Consultant for the appellant prayed that in view of the above position the appeal may be allowed and the impugned order passed by the learned Commissioner be set aside.

3. The learned Authorised Representative for the department argued that in sub-rule (4A) and (4B) of Rule 6 of Service Tax Rules, inserted by Notification No. 1/2007-ST dated 1st March, 2007 provides the procedure and condition of adjustment of excess amount paid by the noticee against his service tax liability for the succeeding month or quarter. The relevant sub-rules (4A) and (4B) of Rule 6 of Service Tax Rules are as follows:-

(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

(4B) The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the following conditions, namely:-

- (i) excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation, exemption notification, applicability of any exemption notification,
- (ii) excess amount paid by an assessee registered under sub-rule (2) of Rule 4, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit
- (iii) in cases other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit of rupees fifty thousand for a relevant month or quarter, as the case may be,
- (iv) the details and reasons for such adjustment shall be intimated to the Jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment."

3.1 The learned AR further argued that Condition no. (ii) is applicable to such notice having centralized registration. Since the noticee has not been centrally registered this condition of sub rule (4B) is not applicable. For condition no, (iii) the monetary limit is one lakh rupees w.e.f. 01.03.2008. Prior to 01.03.2008, the said monetary limit was fifty thousand rupees only. In the present case the adjustment of excess amount of ST paid will be subjected to fulfilment of conditions (i), (iii) and (iv) of Rule 6 (4B) and the same have not been complied with by the noticee. The noticee is not entitled even for adjustment of monetary limit of fifty thousand rupees because they have failed to intimate to the Jurisdictional Supdt of C.Ex regarding adjustment of excess amount of service tax stipulated under condition (iv) of Rule 6(4B) of Service Tax Rules, Hence no relaxation can be given for non-compliance of conditions that are stipulated in the statute. He has prayed that the appeal may be rejected.

The revenue has relied upon the following judgements.

1. **BBC World (1) Pvt. Ltd, Vs. Commr. Of S. Tax, New Delhi** 2009 (14) S.T.R. 152 (Frl. -Del.) CESTAT, Principal Bench, New Delhi.

2. **Rishi Shipping Vs. CCE, Rajkot** 2014 (33) 5.T.R. 595 (Tri. -Ahmd.) CESTAT, Ahmedabad

4. I have heard the learned counsel for the appellant and the learned Authorised Representative for the department and perused the record.

4.1 I agree with the learned consultant for the appellant that it is admitted fact that the appellant had paid service tax in excess of their liability during the material period and therefore, appellant is justified to make adjustments in accordance with relevant circular letters and rules. I also agree with the learned counsel for the appellant that the demand of the department is time barred because, it cannot be said that the appellant paid excess amount of service tax with malafied intention or he made adjustments with malafied intention. The show cause notice issued in December, 2012 for the recovery of excess amount of service tax adjusted by appellant during the quarters October, 2007 to December, 2007 and January, 2008 to March, 2008 is in my opinion time barred and extended period cannot be claimed by the department on the ground of suppression of facts with intention to evade tax.

4.2 In this connection, the learned consultant for the appellant cited **Arun Excello Foundation vs. Commissioner of GST and Central Excise Chennai** - 2020 (43) GSTL 558 (Tri. Chennai), in which assessee adjusted excess payment of service tax continuously made for previous month and quarter. Revenue, while allowing adjustment for immediate preceeding one quarter, disallowed adjustment for earlier period on the ground that such adjustment required to be done in immediate succeeding month / quarter. It was held that Rule 6 (4A) of Service Tax Rules, 1994 allow such adjustment against liability of service tax for succeeding month or quarter as the case

may be i.e. period of filing returns under service tax law. Nothing in the said Rule restrict adjustment of excess payment of service tax for period preceeding one month / quarter. Said Rule does not stipulate that succeeding month / quarter has to be immediate succeeding period. Interpretation of word immediate by Revenue goes against plain and natural sense of Rule.

4.3 It has also been held in this decided case that if adjustment of excess payment of service tax was made without intimating to the department, it is procedural lapse only. On this basis, department cannot retain excess payment of Service Tax which was not otherwise due to be paid.

4.4 The learned consultant for the appellant also cited **Collector of Central Excise vs. Chemphar Drugs and Liniments** 1989 (40) ELT 276 (S.C.), in which it has ben held that extended period of five year is applicable only when something positive other than mere inaction or failure on the part of manufacturer is proved. Conscious or deliberate withholding of information by manufacturer is necessary to invoke larger period of limitation of five years. If department had full knowledge or manufacturer had reasonable belief that he is not required to give a particular information then extended period of limitation cannot be invoked and six months limitation is applicable in view of Section 11A of Central Excise Act, 1944.

4.5 In the above mentioned decided case, it has also been held that where value of clearances of other goods was not indicated in declaration filed for claiming exemption for specified goods and unit was visited by Excise officers and department was having full knowledge about the activities of manufacturer, extended period of five years cannot be invoked and six months limitation is applicable.

4.6 I agree with the principles laid down in the above decided cases. In view of the above Rulings, I have arrived at the conclusion that the department cannot be allowed to invoke extended period of limitation of five years in this

case because, excess payment of service tax by appellant is admitted position by the department. The issue regarding adjustment was observed by Audit. The record e.g. Service Tax Returns etc. were filed by appellant with the department from time to time and the same returns were presented at the time mentioned above. Thus, there cannot be any suppression of material facts. The department should have issued show cause notice within normal period of 18 months as provided under section 43 (1) of Finance Act, 1994 but, the Show Cause Notice was issued in fact beyond the period of limitation which is time barred. It is pertinent to mention here that the case is not about evasion but about adjustment of service tax already paid and there seems to be no intention to evade payment of tax.

5. Consequently, the appeal is allowed. The impugned order passed by the learned Commissioner dated 13th May, 2014 and Order-in-Original dated 29th April, 2013 regarding demand of service tax, interest and imposition of penalty are set aside.

(Order pronounced in the open Court on 23.07.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)