

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 2405 of 2011**AND****Service Tax Appeal No. 2407 of 2011**

(Arising out of common impugned Order-in-Appeal No. 237 to 239 of 2011 dated 29/03/2011 passed by Commissioner of Central Excise and Service Tax (Appeal), BANGALORE-II.)

Commissioner Of Central Tax

BMTC BUILDING
OLD AIRPORT ROAD, DOMLUR,
BANGALORE – 560 071.
KARNATAKA

Appellant(s)

*VERSUS***Yahoo Services Development
India Pvt Ltd**

Embassy Golf Link
Business Park,
Off: Intermediary Ring Road,
Bangalore – 560 071.
KARNATAKA

Respondent(s)

APPEARANCE:

Shri K. B. Nanaiah, Asst. Commissioner, Authorised Representative for the appellant.

Ms. Sudeshna Banerjee, Advocate for the respondent.

CORAM:**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER****HON'BLE MR. P DINESHA, JUDICIAL MEMBER****Final Order No. 20024-20025 / 2022**

Date of Hearing: 09/02/2022

Date of Decision: 09/02/2022

Per : P. ANJANI KUMAR

Learned Authorized Representative for the department submits that respondents had also filed appeal Nos.ST/480/2012-DB; ST/1810/2011-DB and Appeal No. ST/1811/2011-SM against the very same impugned order wherein they have assailed the decision of the learned Commissioner (A) with regard to disallowance of refund of credit on certain services holding that there is no nexus. The said appeals have been decided by this Tribunal vide Final Order No.21898-21899/2014 and No.20796/2015, in favour of the appellant. Learned counsel for the respondent submits that the Tribunal has remanded the matter to the Original Authority to examine the claim of the appellants on the nexus of some services.

2. Learned counsel for the respondent submits that department has erred in holding that the remand order made by the learned Commissioner (A) is a remand in the normal sense of law; the said remand was only to the extent of quantification of refund on the services which the learned Commissioner (A) had held to be eligible for refund; Madras High Court in the case of *A. S. Babu Sah Designs vs. Commissioner of Central Excise (Appeals-I), Chennai reported in 2020 (38) GSTL 161* and the Tribunal in the case of *Commissioner of Service Tax vs. KBACE Technologies Pvt. Ltd.: 2012 (280) ELT 526 (Tri.-Bang.)* have held that Commissioner (A) has the power of remand.

3. Heard both sides and perused the records.

4. On going through the final orders of the Tribunal, we find that it is an open remand to the original authority while making it clear that no opinion is expressed on any of the issues and nexus issue in respect of the input services on which refund has been claimed will be considered afresh and for those input services that have been allowed by the Commissioner (A), Revenue is not in appeal.

5. We find that the appeals filed by the department is on two grounds, one is that the commissioner (A) has no power to remand and the other ground is that nexus between input services and services exported is not established. However, we find that Revenue has not filed any appeal against the final order of this Bench on the issue of nexus between certain input services and the export services which have been allowed by the Commissioner (A). Moreover, we find that the Commissioner (A) remanded the case to the Original Authority for the purpose of quantification only.

6. In view of the above, we find that the department's appeal on the issue of Commissioner (A)'s having no power of remand is not maintainable for two reasons that in the instant case, the impugned order is not a case of normal remand but was only for the limited purposes of quantification. Moreover, judicial pronouncements on this issue make it very clear that the Commissioner (A) has the power of remand. In addition to the above, we find that on the merits of the issue, the department has not placed anything on record that the Tribunal's order in respect of respondent's appeals have been appealed against.

7. In view of the above, we find that the appeals filed by the department are not maintainable, hence, they are dismissed.

(Dictated and pronounced in open court on **09/02/2022.**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(P DINESHA)
JUDICIAL MEMBER

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