CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 53227 of 2018

[Arising out of Order-in-Appeal No. 695 (CRM)ST/JDR/2018 dated 03.07.2018 passed by the Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jodhpur]

M/s. Bajaj Resources Limited **...Appellant**
(Formerly known as M/s. Bajaj Consumer Care Limited),
Old Station Road, Udaipur,
Rajasthan - 313001

VERSUS

Commissioner of Central Excise
and CGST, Udaipur **...Respondent**
142-B, Sector-11,
Hiran Magri, Udaipur,
Rajasthan - 313001

WITH

Service Tax Appeal No. 51121 of 2017

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-0115-16-17 dated 28.03.2017 passed by the Commissioner of Central Excise, Udaipur]

M/s. Bajaj Resources Limited **...Appellant**
Sevashram Chauraha, Old Station Road,
Udaipur, Rajasthan

VERSUS

Commissioner of Central Excise
and CGST, Udaipur **...Respondent**
142-B, Sector-11,
Hiran Magri, Udaipur,
Rajasthan - 313001

APPEARANCE:
Shri B.L. Narasimhan and Ms. Shagun Arora, Advocates for the Appellant
Shri Aejaz Ahmad, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 25.02.2025
DATE OF DECISION: **06.06.2025**

FINAL ORDER No. 50874-50875/2025

DR. RACHNA GUPTA

Present order disposes of two appeals pertaining to the same appellant and involving the same issue. The details of both the appeals are as follows:

	ST/51121/2017	ST/53227/2018
Order-in-Appeal	-	695/2018 dated 03.07.2018 ('Refund-OIA')
Order-in-Original No.	0115-16-17 dated 24.03.2017 (Order confirming demand)	16/2015/ST dated 02.03.2015 ('Refund-OIO')
Show Cause Notice	1190/35/2016 dated 14.10.2016	18/06/2014 dated 03.02.2015
Period of dispute	2014-15 and 2015-16	2013-14
Demand	Rs.2,14,16,141/- demand confirmed under Section 73(1) of the Finance Act, 1994 ('Act')	Refund of Rs.79,52,935/- is rejected

2. The facts in brief which have culminated into the said order, in brief, are as follows:

2.1 M/s. Bajaj Resources Limited [Formerly known as M/s. Bajaj Consumer Care Limited (BCCL)], the appellant herein, are registered with the service tax department under the category of "Intellectual Property Services". The appellants were paying service tax under the said category towards grant of license to M/s. Bajaj

Corp Limited (hereinafter referred to as 'BCL'), a wholly owned subsidiary of M/s. BCCL for use of its trademark on a **non-exclusive basis** in the defined territory (State of Andhra Pradesh) for a period of 10 years in terms of Trademarks License Agreement dated 12.03.2008. Vide agreement dated 22.01.2010, the tenure of the license was increased from 10 years to 25 years and the territory was State of Rajasthan. The said agreement was further novated vide agreement dated 24.02.2010 vide which the tenure was increased from 25 years to 99 years and the license was granted on **exclusive basis worldwide**. However, M/s. BCCL still continue to pay service tax under the category of Intellectual Property Services. Later when it was realized that the amount of royalty which is received by M/s. BCCL from M/s. BCL for grant of exclusive license to BCL that it shall not attract service tax in the new service tax regime w.e.f. 01.07.2012, it being 'Deemed Sale' within the meaning of Article 366 (29A) of the Constitution of India which is specifically excluded from the definition of term 'service' as per Section 65B(44) of Finance Act, 1994.

2.2 Based on the said understanding, the appellant filed a refund claim for Rs.79,52,935/- on 05.12.2014 in respect of service tax paid on royalty received during the period 2013-14. While scrutinizing the said refund, it was observed that the agreement dated 24.02.2010 based whereupon the impugned refund claim was filed, grants license to use trademarks or goods and does not transfer the legal right of possession. Resultantly, the transfer of use of trademark in such circumstances cannot be termed as 'Sale' or 'Deemed Sale'. The transfer shall continue to be called as a

taxable service i.e. 'Intellectual Property Service' and the amount of royalty received shall be the consideration for rendering the said service on which the appellant was liable to pay service tax. Hence the service tax/amount in question was rightly paid. Also, it was opined that the incidence of tax has been passed on to the other persons. Accordingly, vide show cause notice dated 03.02.2015, the refund claim of Rs.79,52,935/- was prayed to be rejected as in Appeal No. ST/53227/2018

2.3 The subsequent show cause notice dated 14.10.2016 has been issued in the Appeal No. ST/51121/2017 based on the audit observations that M/s. Bajaj Resources Limited have shown royalty income of Rs. 761.36 lakhs received in the Year 2014-15 in P&L account which was received towards use of the appellant's trademark as was allowed to be used by M/s. BCL vide agreement dated 12.03.2008 which was amended on 22.01.2010 and again novated on 24.02.2010 (as per Invoice No. 001 dated 31.03.2015). But the appellants have not paid the service tax. Appellants mentioned that the transactions, subsequent to agreement dated 24.02.2010, are the transaction of 'Deemed Sale'. However denying the said contention the said show cause notice dated 14.10.2016 was issued proposing the demand of service tax of the amount as indicated above along with the interest and the proportionate penalties. Both the said proposals have been confirmed vide the Orders-in-Original as indicated in the table above. The proposal of rejection of refund has been accepted even by Commissioner (Appeals). Being aggrieved of the respective

orders, as indicated above, both the present appeals have been filed.

3. We have heard Shri B.L. Narasimhan and Ms. Shagun Arora, learned Advocates for the appellant and Shri Aejas Ahmad, learned Authorized Representative for the department.

4. Learned counsel for the appellant has mentioned that vide agreement dated 12.03.2008, the appellant agreed to transfer the right to use of various trademarks licenses in favour of M/s. BCL for 10 years. The right to use of the said trademarks was transferred on a non-exclusive basis within the territory comprising of 19 countries. However, vide agreement dated 24.02.2010, the transfer of right to use the trademark was affected on an exclusive basis and the tenure of agreement was increased to 99 years. Further, the appellant granted right to use the trademarks to M/s. BCL to be used across the whole world.

4.1 It was also stipulated that the appellant would not manufacture any product which were being manufactured by M/s. BCL under the said novation agreement dated 24.02.2010. The relevant clause of both the agreements have been brought to the notice. It is impressed upon that in lieu of transferring an inclusive right to use the trademark a royalty fee equivalent to 1% of the annual net sales turnover of M/s. BCL was agreed to be received by the appellant M/s. BCCL. Based on the exclusive nature of the modified agreement/novation agreement, the appellant carried a *bona fide* belief that the act amounts to transfer of right to use the trademarks which is as good as 'Deemed Sale' and hence do not

qualify as rendition of services. Accordingly, the appellant stopped paying service tax on the said activity from April 2014 onwards. However, the department has alleged that the activity which has been agreed through the agreements executed between appellant and M/s. BCL is nothing but a 'Declared Service' defined under Section 66E(c) of the Finance Act i.e. an act of temporary transfer or permitting the use or enjoyment of any intellectual property right. Hence, the proposals of two show cause notices i.e. the one demanding service tax for 2014-15 and another proposing the rejection of refund of the amount which was paid as tax despite the activity not being "service anymore", are absolutely wrong. The orders accepting those proposals are therefore liable to be set aside.

4.2 Learned counsel further submitted that entry 54 of List II of the Seventh schedule to the Constitution of India empowers the State to levy tax on sale and purchase of goods. The relevant entry is extracted hereunder for ready reference:

> *"54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92 A of List I"*

4.3 The expression 'sale of goods' used in the Constitution was interpreted to have the same meaning as in the Sales of Goods Act, 1930. The Legislature vide the 46th Amendment to the Constitution of India, extended the meaning of 'sale and purchase of goods' by giving an inclusive definition of the phrase 'tax on sale purchase of goods' under Article 366 (29A) of the Constitution of India.

4.4 Learned counsel further submitted that the intellectual property rights include trademarks, which are also goods as held by the courts of law. However, the intention of the legislature under the Act is specifically to cover a temporary transfer of rights in an intellectual property under the category of 'Declared Services'. A permanent transfer of such rights to use would clearly render such a transaction as a 'Deemed Sale'. On such permanent transfer, the person selling these rights no longer remains a 'holder of intellectual property right' and would therefore not come under the purview of the taxable service. Learned counsel has relied upon the following decisions:

(i) Bharat Sanchar Nigam Ltd. Vs. Union of India reported as 2006 (3) TMI 1 – Supreme Court

(ii) Commissioner of Service Tax, Delhi II Vs. Future Brands reported as 2022 (9) TMI 436-CESTAT New Delhi

(iii) Tripti Alcobrew Private Limited Vs. Commissioner of Central Excise & GST, Bhopal reported as 2024 (11) TMI 615-CESTAT New Delhi

(iv) Commissioner of Service Tax Delhi Vs. Quick Heal Technologies Limited reported as 2022 (8) TMI 283-Supreme Court

Once there was no liability upon appellant to pay service tax, the amount paid under mistake is not tax, hence, is eligible to be refunded. With these submissions, both the appeals are prayed to be allowed.

5. While rebutting these submissions learned Departmental Representative has submitted that the initial agreement between the appellant and M/s. BCL dated 12.03.2008 was a non-exclusive license to use certain trademarks and labels subject to the terms and conditions in the said agreement. Though the said principal agreement was modified initially extending the tenure of the agreement to 25 years from the date of the principal agreement. Subsequently also, it was further modified vide novation agreement dated 24.02.2010, but the fact remains is that the absolute ownership and proprietary rights of the trademark always remained with the licensor/the appellant who permitted those to be used by the licensee (BCL) for a specified period irrespective worldwide, but only for certain products. The said perusal is sufficient to hold that the agreement was not an agreement of permanent transfer of intellectual property rights owned by the appellants. Learned Departmental Representative impressed upon the definition of service in Section 65B (44) of the Finance Act. It is submitted that the transaction in question is out of the scope of Article 366 (29A) of the Constitution. It is submitted that Article 366 (29A) is generic and includes any transfer of right to use the goods while Section 66B of the Finance Act specifically targets element of service.

5.1 The CBE&C Circular No. 80/10/2004 dated 17.09.2004 has been impressed upon wherein it was clarified that the IPRs covered under Indian Law in force at present alone are chargeable to service tax and IPRs like integrated circuits or undisclosed information (not covered by India Law) would not be covered under taxable services. The agreements in question sufficiently show that the appellant has

not permanently transferred the Intellectual Property Rights owned by the appellant, hence, the transaction cannot be called as 'Deemed Sale'. It has rightly been qualified as a taxable service, hence, demand of service tax confirmed has no infimity. Learned Departmental Representative has relied upon the following decisions:

(i) Mc Donalds India Pvt. Ltd. Vs. Commissioner of Trade & Taxes, New Delhi reported as 2017 (5) GSTL 120 (Del.)

(ii) Malabar Gold Pvt. Ltd. Vs. Commercial Tax Officer, Kozhikode reported as 2013 (32) STR 3 (Ker.)

(iii) Hero Honda Motors Ltd. Vs. Commissioner of Service Tax, New Delhi 2012 (27) STR 409 (Tri.-Del.)

(iv) ITC Ltd. Vs. Commissioner of Central Excise, Kolkata-IV reported as 2019 (368) ELT 216 (SC)

(v) Kalyan Toll Infrastructure Ltd. Vs. Commissioner of Central Excise and CGST (2024) 20 Centax 540 (Tri.-Del)

5.2 While submitting with respect to rejection of refund, it is mentioned that M/s. BCCL, the appellant, had issued tax invoices to M/s. BCL which included the service tax amount thereby indicating that the tax burden was passed on to M/s. BCL. No documentary evidence was produced by the appellant M/s. BCCL to prove that the burden was not passed on. Resultantly, there is no infirmity when the refund claim has been rejected. Learned Departmental Representative has relied upon the decision of Hon'ble Supreme Court in the case of **Mafatlal Industries Ltd. Vs. Union of India**

reported in the year 1997. Finally, learned Departmental Representative has relied upon the decision of Hon'ble Supreme Court in the case of **ITC Ltd. (supra),** vide which it has been held that the refunds cannot be granted unless the assessment is modified. With these submissions, both the orders under challenge i.e. the Order-in-Original dated 24.03.2017 is Appeal No. ST/51121/2017 and Order-in-Appeal No. 695//2018 dated 03.07.2018 are prayed to be upheld and the appeals are prayed to be dismissed.

6. Having heard both the parties, we observe that the issues to be decided in two separate appeals are as follows:

(i) Whether the service tax was leviable on amount of royalty received by M/s. BCCL for grant of license in favour of M/s. BCL to use the trademark or not (Appeal No. ST/51121/2017)?

(ii) Whether the appellant is entitled for the refund of the amount of service tax paid after executing the novation agreement dated 24.02.2010 (Appeal No ST/53227/2018)?

7. **Issue No. 1**

7.1 We foremost have to look into the novation agreement dated 24.02.2010 to understand the intent of the parties to ascertain as to whether the appellant agreed to transfer the right to use his trademark in a manner that it amounted to be called as 'Deemed Sale' in terms of Article 366 (29A) of the Constitution of India or the appellant intended to temporarily transfer/permit the use and enjoyment of its trademark (Intellectual Property Right) to be called

as 'Declared Service' in terms of clause 66E (c) of the Finance Act, 1944. Foremost, we need to look into these provisions. Section 66E (c) reads as follows:

> ***66E. Declares services*** *– The following shall constitute declared services, namely:*
>
> *…*
>
> *(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;*

Section 65B (44) of the Act defines Service as follows:

> *66B. Interpretations – In this Chapter, unless the context otherwise requires,*
>
> *(44) "service" means any activity carried out by a person for another for consideration, and* ***includes a declared service****,* ***but shall not include;***
>
> *(a) an activity which constitutes merely,-*
>
> *…*
>
> ***(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or***
>
> *…*

7.2 Article 366 (29A) of the Constitution of India reads as follows:

> ***"(29A)*** *tax on the sale or purchase of goods" includes—*
>
> *(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;*
>
> *(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*
>
> *(c)a tax on the delivery of goods on hire-purchase or any system of payment by installments;*

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

This provision was incorporated vide the 46th Amendment to the Constitution of India whereby the meaning of sale or purchase of goods was extended, empowering the states to levy sales tax/VAT on the transactions in the nature of "transfer to right to use the goods" which were earlier not exigible to sales tax as such transactions were not covered by the definition of 'sale' as given in the Sale of Goods Act 1930. Section 2(g) of the Act reads as follows:

"2(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred or for any other valuable consideration, and includes:-

(i) ……

(ii) ……

(iii) …….

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

7.3 A conjoint reading of these provisions clarifies that the transfer of property in goods is sale. In addition, the transactions where there may not be a conventional transfer of property in goods but a transfer of right to use the goods also got included to be called as sale of goods/the 'Deemed Sale'. We also observe that the term "transfer of right to use goods", as got coined with the said 46th Amendment, is not defined in the Constitution nor it is defined in any other statute. The said phrase for the first time got interpreted by Hon'ble Supreme Court of India in the case of **Bharat Sanchar Nigam Ltd. Vs. Union of India reported in 2006 (2) STR 161 (SC)** wherein the Hon'ble Apex Court enunciated following five attributes for a transaction to constitute a "transfer of right to use the goods". The relevant extract from the said judgment is extracted here under:

> *"91. To constitute a transaction for the transfer of the right to use the goods, the transaction must have the following attributes:*
>
> *a. There must be goods available for delivery;*
>
> *b. There must be consensus ad idem as to the identity of the goods;*
>
> *C The transferee should have a legal right to use the goods- consequently all legal consequences of such use including any permission or licenses required therefore should be available to the transferee;*
>
> *d. For the period during which the transferee has such legal right, it has to be the exclusion of the transferor this is the necessary concomitant of the plain language of the statute--viz. a 'transfer of the right to use' and not merely a license to use the goods;*

e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others."

7.4 The 'Intellectual Property Rights' are held equivalent to goods. We draw our support from the decision of this Tribunal in the case of **Commissioner of Service Tax, Delhi-II Vs. Future Brands reported as 2022 (9) TMI 436-CESTAT New Delhi,** wherein it was held that the exclusive license to use the trademark would qualify as "transfer of right to use the goods" and would be covered by article 366 (29A) (d) of the Constitute of India.

7.5 Reverting to the facts of the case/the content and intention of novation agreement dated 24.02.2010, we observe following to be the relevant clauses:

2. GRANT OF LICENSE:

In pursuance of this agreement and for good and valuable consideration inter alia Royally as mutually agreed between the parties subject to the provision for its revision, the sufficiency, adequacy whereof the BCCL doth hereby acknowledge, ***and hereby grant UNTO the Licensee a right to use the Licensed Trade Mark(s)*** *together with the goodwill of the business concerned, attached /associated therewith, subject to the terms and conditions of this Agreement.*

BCCL grants to the Licensee, an non-exclusive license to use the said licensed Trade Marks on or In connection with the manufacture, advertisement, distribution and sale of the Goods within the Territory during the term of the Agreement and strictly in accordance with the terms and conditions set out under this agreement.

TERRITORY' appearing in Clause 1.13 of the Principal Agreement with the following definition:

TERRITORY

Territory shall mean all geographic locations and jurisdictions across the whole world.

3. Clause 2 of the "Principal Agreement" with the heading 'Grant Of License be amended and modified by this Novation Agreement, to grant an exclusive license to the Licensee to use the said licensed Trade Marks and Goods. ***The word 'non-exclusive' will be replaced with the word 'exclusive'.***

4. Clause 3 of the said "Principal Agreement" as modified by Clause 3 of "Agreement" whereby the term of "Principal Agreement" was enhanced to 25 years from the date of the "Principal Agreement" is now further enhanced to 99 years from the date of the "Principal Agreement".

5. The "Principal Agreement" as modified by "the Agreement", granted a license and certain rights for Territories specified in Annexure "C" to the "Principal Agreement". However, in view of Clause 2 above and the subsequent amendment of the definition of 'Territory' to mean the whole world, Annexure-"C" of the "Principal Agreement" will cease to have any effect from the date hereof. ***BCCL grants an exclusive worldwide, global license and rights in respect of the Goods in favour of the Licensee.***

6. Clause 5.51 of "Principal Agreement" as modified by "the Agreement" be further modified by this Novation Agreement and replaced with the following:

"In consideration of the License granted under this "Agreement", the Licensee shall pay to BCCL a royalty of 1% (one percent) of the annual net sales turnover of the Licensee in respect of the Goods".

7. In view of the exclusive License granted by BCCL in favour of the Licensee; BCCL shall not manufacture the products developed, manufactured and marketed by Licensee or any other products similar to those of the Licensee during the pendency of the "Principal Agreement", as modified by the "Agreement" and of this Novation Agreement.

The perusal of these clauses of the agreement dated 24.02.2010 clarifies that there was an established identity of the goods/IPR. M/s. BCL, the transferee was allowed right to use the goods/IPR and all legal consequences for a period as long as for 99 years (the period of a perpetual lease in terms of Sale of Goods Act). During the entire period of the agreement, the transferor, M/s. BCCL/the appellant was also restrained from transferring the same rights to others during the agreed period of transfer. The appellant/transferor also restrained itself to manufacture any goods using the same IPR as stands transfer to M/s. BCL during the entire period of said agreement to transfer IPR.

7.6 In light of these observations, read with the decision of Hon'ble Apex Court in **Bharat Sanchar Nigam Ltd.** (supra), we hold that the agreed transaction between M/s. BCCL and M/s. BCL was for the transfer of right to use the goods/IPR though for a specified period but to the exclusion of the appellant. The specified period is also substantial i.e. 99 Years. Hence, as held by Hon'ble Supreme Court, the transaction was that of a transfer of right to use goods and was not merely a license to use the goods. Such transfer of right to use, in light of article 366 (29A) of the Constitution is an act of 'Deemed Sale' as different from an act of 'Declared Service' of transferring the use of IPR/goods. The literal meaning of phrase "transfer of right" otherwise is the acquisition of right by the transferee and loss of it by the transferor. The concept of 'Deemed Sale' is with respect to the transfer for a certain period.

7.7 In the light of these observations, we are not inclined to accept the contention of the department that the transaction does not amount to permanent transfer of goods hence will amount to rendering of service. We rather hold that the impugned transaction arising out of novation agreement dated 24.02.2010, the parties to the said agreement agreed to enter into the transaction of 'Deemed Sale' as different from it being called as declared service as the transferee M/s. BCL was allowed to use IPR/goods to the exclusion of the transferor i.e. M/s. BCCL.

7.8 The case law relied upon by the department specifically **M/s. Mc Donalds India Pvt Ltd** (supra) is also held not applicable to the facts of the present case as the said case is with respect to the franchisee agreement for non exclusive transfer of composite system of services whereas in the present case the transferee is the wholly owned subsidiary of the transferor and the transfer of IPR is to the exclusion of the transferor/the appellant. We also draw our support for the department's own Circular No. V2/8/2004 dated 10.09.2004 which says that permanent transfer of Intellectual Property Right does not amount to rendering of service and permanent means when a person transferring the rights no longer remain holder of these rights. As already discussed above, the concept of 'Deemed Sale' has extended the scope of the meaning of permanent transfer to include the transfer of right to use though for a certain period but to the exclusion of the transferor. We draw our support for the decisions of Hon'ble High Court of Madras in the case of **ASG Entertainment Pvt Ltd Vs. Union of India reported as 2013 (32) STR 129 Madras**. In the light of entire

above discussion we hold that the service tax was not leviable on amount of royalty received by the appellants M/s. BCCL. The demand is held to have been wrongly confirmed qua the appellant. This issue stands decided in favour of the appellants.

8. **Issue No. 2**

8.1 Coming to the appeal with respect to rejection of refund of the service tax which inadvertently got paid by the appellant (as submitted), since it has already been held that in view of novation agreement dated 24.02.2010, the agreed act between the appellant and M/s. BCL/the transferee was an act of exclusive transfer of Right to use of trademark of appellant M/s. BCCL for a longer period of 99 years as against the entire world including appellant/transferor itself with all legal consequences. The appellant was restrained to use the said trademark during the said period in any territory of the world and as such the transaction was a transaction of 'Deemed Sale' inviting no service tax liability. Hence, the amount paid by the appellant for which refund has been claimed was the amount not towards the duty but was an amount wrongly deposited by the appellant. We also observe that the Commissioner (Appeals) has upheld the rejection of refund announced by the original adjudicating authority on the ground of unjust enrichment. Apparently and admittedly, the appellant had collected service tax for the relevant period. There is no evidence produced on record to show the reversal of the said amount. Hence, we do not find any infirmity when the doctrine of unjust enrichment has been invoked for rejecting the said refund claim.

8.2 Further, we find no reason to distinguish the present case from the decision of Hon'ble Supreme Court in the case of **ITC Ltd. Vs. Commissioner of Central Excise, Kolkata-IV reported as 2019 (368) ELT 216 (SC)** and also in the case of **Sahkari Khand Udyog Mandal Ltd. reported as 2005 (181) ELT 328** as referred by learned DR. Resultantly, we do not find any infirmity in the impugned Order-in-Appeal when the refund claim has been rejected relying upon the decision of Hon'ble Supreme Court in the case of **M/s. Mafatlal Industries Ltd. Vs. Union of India**. We, accordingly uphold the order of rejection of refund.

9. As a consequence of entire above discussion, the Order-in-Original dated 24.03.2017 confirming the demand of service tax in Appeal No. ST/51121/2017 is hereby set aside. Consequently, the Appeal No. ST/51121/2017 stands allowed. However, the Order-in-Appeal dated 03.07.2018 confirming the rejection of refund claim is hereby upheld. Consequent thereto, the Appeal No. ST/53227/2018 is hereby dismissed.

[Order pronounced in the open court on **06.06.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

HK