

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

REGIONAL BENCH - COURT NO. 01

**Service Tax Appeal No. 87418 of 2015**

(Arising out of Order-in-Original No.16/ST-VII/RS/2015-16 dated 19.08.2015  
passed by the Commissioner of Service Tax-VII, Mumbai)

**M/s Reliance Infratel Limited**

H Block, First Floor, DAKC, Thane Belapur Road,  
Koparkhairane, Navi Mumbai - 400710.

**.....Appellant**

*VERSUS*

**.....Respondent**

**Commissioner of Service Tax-VII, Mumbai**

115, New Central Excise Building, M.K. Road,  
Church Gate, Mumbai - 400 020.

**and**

**Service Tax Appeal No. 87621 of 2015**

(Arising out of Order-in-Original No.20-21/ST-VII/RS/2015-16 dated 28.08.2015  
passed by the Commissioner of Service Tax-VII, Mumbai)

**M/s Reliance Infratel Limited**

H Block, First Floor, DAKC, Thane Belapur Road,  
Koparkhairane, Navi Mumbai - 400710.

**.....Appellant**

*VERSUS*

**.....Respondent**

**Commissioner of Service Tax-VII, Mumbai**

115, New Central Excise Building, M.K. Road,  
Church Gate, Mumbai - 400 020.

**Appearance:**

Shri Vipin Jain, Advocate a/w Shri Ramnath Prabhu and Ms. Anu Shah,  
Advocates for the Appellant

Shri Piyush Barasu, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86148-86149/2023**

Date of Hearing: 23.03.2023

Date of Decision: 24.07.2023

**PER : M.M.PARTHIBAN**

These appeals have been filed under Section 86 of the Finance Act, 1994 (for short, 'the said Act'), by M/s Reliance Infratel Limited (herein referred to as 'appellants') against the Orders-in-Original No.16/ST-VII/RS/2015-16 dated 19.08.2015 and No.20-21/ST-VII/RS/2015-16 dated 28.08.2015 (herein referred to as 'impugned orders') passed by the Commissioner of Service Tax-VII, Mumbai.

2.1. Briefly stated, the facts of the case are that the appellants are engaged in the activity of setting up telecommunication towers and leasing them to Telecom Service providers, and pay service tax under the category of Business Support Services in respect of such activity. The appellants have availed CENVAT credit on inputs/capital goods and input services to erect telecom towers which the department had claimed as immovable property and that it is neither excisable goods nor leviable to service tax. Accordingly the Department interpreted that the appellants have availed ineligible CENVAT credit, which were proposed for recovery by issue of show cause proceedings. The brief details of various Show Cause Notices (SCNs)/Statement of Demand issued to the appellants which culminated in the impugned orders are given below:

<b>SCN/Statement of Demand Reference</b>	<b>Period of dispute&amp; Amount of service tax demand (in Rs.)</b>	<b>Impugned Order Ref.</b>
F. No. V/ST-VII/Dn.VIII/Gr.I/RelInfratel/24/14-15 dated 27.03.2015	2013-2014 Rs.5,02,70,892/-	No. 16/ST-VII/RS/2015-16 dated 19.08.2015
F. No. V/ST/D-V/Bel/G-7/Audit/75/09 dated 12.05.2014	2012-2013 Rs.90,60,334/-	No.20-21/ST-VII/RS/2015-16 dated 28.08.2015
F. No. V/ST-VII/Dn.VIII/Gr.2/Rel Tel/Infra/119/14-15 dated 06.04.2015	2013-2014 Rs.1,35,98,122/-	

The learned Commissioner of Service Tax-VII, Mumbai in the impugned orders had confirmed the demands along with interest as proposed in the SCNs besides imposing penalties under Sections 77 and 78 of the said Act. Being aggrieved against the impugned orders, the appellants have filed the above appeals before this Tribunal.

2.2. During the pendency of these appeals the appellants had undergone Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC). The National Company Law Tribunal, Court-I, Mumbai Bench (NCLT) issued an order dated 15.05.2018 for initiating CIRP under section 13 of IBC. The Resolution Plan submitted before NCLT was approved by NCLT vide order dated 03.12.2020. The learned advocate for the appellant submits that the CIRP was completed on 28.12.2022 i.e., the effective date when the entire payment to the creditors in terms of the Resolution Plan was made by the resolution applicant and thereby taking over the management and business of the appellant. He further submitted that in so far as the demand arising from the impugned order dated 28.08.2015 is concerned, department have filed the claim before the Interim Resolution Professional (IRP) as operational creditor. However, no such claim was filed in respect of demand arising from the impugned order dated 19.08.2015 before the IRP. In terms of the NCLT approved Resolution Plan, all claims or demands made by or liabilities owed or payable to or assessed by Government Authority, in relation to any dues, indirect taxes or other taxes, in relation to appellant as corporate debtor, whether or not such claims or demands are admitted, due or contingent, asserted or not, known or unknown, secured or unsecured, disputed or undisputed, in relation to any period of up till the effective date i.e., 28.02.2022 will be written off in full upon payment of the total resolution amount, and the resolution

applicant shall in no point of time be, directly or indirectly, held responsible or liable in relation thereto.

2.3. The learned Advocate further submitted that Revenue was one of the operational creditors and on the basis of the Resolution Plan, and since the appeals are pertaining to the periods 2012-2013 and 2013-2014, which is prior to the effective date, the same stands fully and finally settled in terms of the above resolution plan approved by the NCLT. Thus no part of the demands confirmed in the impugned orders is recoverable from the appellant. Hence he pleaded that the Resolution Plan approved by NCLT is binding in nature. In support of the same he quoted the decision of the Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. (2020) 8 SCC 531*.

3. When the matter was taken up for consideration, the Learned Advocate for the appellants and the Learned AR for the respondent submitted that the issue involved herein is covered by the judgment of Hon'ble Supreme Court .

4. We find that the matter is no more *res integra*, as the Hon'ble Supreme Court in the case of *Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited & Ors. (Civil Appeal No. 8129 of 2019) reported in 2021 SCC Online SC 313* vide judgement dated 13.04.2021. The relevant portions of the said judgment are extracted below:

" 2. *The short but important questions, that arise for consideration in this batch of matters, are as under:-*

*(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution Plan once it is approved by an adjudicating authority*

*under sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code,2016 (hereinafter referred to as 'I&B Code')?*

*(ii) As to whether the amendment to Section31 by Section 7 of Act 26 of 2019 is clarificatory/declaratory or substantive in nature?*

*(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?*

XX XX XX XX

## CONCLUSION

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, any 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 apart 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 effect;*

*(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."*

5. We also find that CBIC has vide Instruction No.1083/04/2022-CX9 dated 23.05.2022 has laid down the guidelines in the form of Standard Operating Procedure (SOP) for handling the NCLT cases by the department, which reiterates the legal position that once the plan is approved by NCLT,

no demands can be raised on the Resolution Applicant. The relevant paragraph of said instructions is extracted as follows:

"C.B.I. & C. Circular No. 1083/04/2022-CX.9  
F. No. 296/286/2021-CX. 9

Government of India  
Ministry of Finance (Department of Revenue)  
Central Board of Indirect Taxes & Customs, New Delhi

Dated 23.05.2022

To All Principal Chief Commissioner(s)/ Chief Commissioner(s) of Customs/  
Customs (Preventive)/ Customs & CGST, All Principal Chief Commissioner(s)/  
Chief Commissioner(s) of CGST, Webmaster:cbic@icegate.gov.in

Madam/Sir,

*Subject: Standard Operating Procedure (SOP) for NCLT cases in respect  
of the Insolvency and bankruptcy Code (IBC) – reg.*

*I am directed to inform the Insolvency and Bankruptcy Board of India has requested that role of GST and Customs authorities in certain key issues under the Insolvency and bankruptcy Code, 2016 needs to be formulated. Further, GST and Customs Authorities have been classified as operational creditors and are required to submit their claims against corporate debtors when the Corporate insolvency and resolution process is initiated and public announcement inviting claims is made by the insolvency professional.*

*2. A timeline of 90 days from the insolvency commencement date is available for filing of claims. However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan is approved. It is also observed that the authorities then litigate on the rejection of each claims, despite the settled position that no claims can be raised once the plan is approved and no demands can be raised on the Resolution Applicant who has taken over the company through such a resolution plan."*

6. Appellants have also claimed that the refund of pre-deposit paid by them at the time of filing the captioned appeals should be paid back to them. In this regard, we find that the matter has already been decided by the Hon'ble Supreme Court in the case of *Ruchi Soya Industries Limited Vs. Union of India - 2022 (380) ELT 8 (SC)*. The relevant paras of the judgement is extracted as follows:

*“14. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent No. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the Learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.*

*15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant.”*

7. From the above decisions of the Hon’ble Supreme Court, it is clear that from the date of approval of the resolution plan approved by the NCLT, the appeals filed by the applicant has abated and CESTAT has become *functus officio* in the matters relating to this appeal.

8.1. Taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the corporate debtor, we are of the view that the appeals before this Tribunal are abated.

8.2. Both the appeals filed by the appellant are disposed of accordingly.

(Order pronounced in the open court on 24.07.2023)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M. Parthiban)**  
**Member (Technical)**