(2016) 07 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 53539 Of 2015, Service Tax Cross No. 50190 Of 2016

C.C.E. And ST, Jodpur — APPELLANT

Vs

G.S. Bansal And Company — RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Citation : (2016) 07 CESTAT CK 0004

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : M.R. Sharma, Arun Goyal

Final Decision : Dismissed

Judgement

1. Brief facts of the case are that during the disputed period, the respondent had mistakenly paid service tax on the taxable service, which was

exempted from payment of service tax in terms of Notification No.25/2012-ST dated 20.06.2012. Realizing such mistake, the appellant had filed the

refund applications before the jurisdictional service tax authorities, which were disallowed mainly on the ground that in terms of Notification

No.30/2012-ST dated 09.07.2012, the respondent in the capacity of service provider, had deposited 50% of the tax liability and the balance 50% was

paid by the service recipient M/s. RSWC. Thus, the respondent is not entitled to claim refund of the portion of service tax paid by the service

recipient. The other ground assigned for rejection of the refund application is the bar of unjust enrichment. In appeal against the adjudication order

dated 10.10.2014, the ld. Commissioner (Appeals) vide the impugned order dated 30.06.2015 has allowed the appeals in favour of the respondent by setting aside the adjudication orders. Feeling aggrieved with the impugned order, the Revenue has filed the present appeal before the Tribunal.

2. Heard the ld. Counsel for both sides and perused the records.

3. The Revenueâ??s contention in this appeal is that since the service receiver M/s. RSWC Ltd. had discharged the service tax liability of 50%

under reverse charge mechanism, only the said receiver is entitled to claim the refund and not the respondent herein.

4. I find that the issue raised by the Revenue in this appeal has been adequately dealt with by the ld. Commissioner (Appeals) vide the impugned

order, wherein by relying on the decision of Tribunal in the case of Macnally Bharat Engineering Co. Ltd. Vs. CCE, Guntur reported in 2006 (194)

ELT 318 (Tri.- Bang.), he has held that the person who was borne the duty burden can claim the refund. On examination of the records, the ld.

Commissioner (Appeals) in the impugned order has also arrived at the conclusion that there is no third-party involved in this case and the 100%

service tax liability towards the taxable service has been borne by the respondent, and therefore, the provisions of unjust enrichment will not be

applicable.

5. In view of the fact that the Commissioner (Appeals) has recorded specific findings with regard to the issues involved in this appeal, I am of the

view that the same needs no appellate intervention, since is in conformity with the statutory provisions. Therefore, I do not find any infirmity in the

impugned order and accordingly, dismiss the appeal filed by the Revenue. The cross appeal stands disposed of.

[Dictated and Pronounced in the Open Court]

