(2021) 10 CESTAT CK 0024

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20337 Of 2021

Lekshmi Engineers APPELLANT

Vs

Commissioner of Central Excise And Central Tax, Mangalore Commissionerat RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:
Central Excise Act, 1944 — Section 11B

Citation : (2021) 10 CESTAT CK 0024

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellant is a service provider providing Works Contract Service, Maintenance and Repair Service and Manpower Recruitment/Supply Agency Service. Brief facts, leading to the present dispute are that the appellant filed a refund claim for Rs. 21,41,724/-(Rupees Twenty One Lakhs Forty One Thousand Seven Hundred and Twenty Four only) on 10/11/2016, claiming refund of service tax paid on the services provided to Military Engineering Services (MES). The said services were exempted from payment of service tax vide Notification No. 25/2012-ST dated 20/06/2012 as amended by Notification No. 09/2016-ST dated 01/03/2016. Notification No. 09/2016 ibid provided for retrospective exemption from service tax on specified services. A show-cause notice was issued proposing to reject the refund claim on the ground of unjust enrichment and the adjudicating authority after due process, rejected the appellant's claim for refund of Rs.16,77,362/- (Rupees Sixteen Lakhs Seventy Seven Thousand Three Hundred and Sixty Two only). Aggrieved by the said order, the appellant preferred an appeal before the Commissioner of Central Excise and Central Tax, Karwar who vide impugned order No. MLR-EXCUS-000-APP-MSC-133-2018-19 dated 15/09/2018 allowed the appeal, but however, denied refund on the grounds of unjust enrichment, against which, the present appeal is filed.

2. Heard Mr. Saket Agarwal, learned CA and Mrs. C.V. Savitha, Superintendent for the Revenue, perused the documents placed on record and have also gone through various decisions/orders relied on during the course of hearing.

3. I find that this Bench on an earlier occasion, in an almost identical situation, in the case of SN Atiwadkar Versus Commissioner of Central Tax And Central Excise, Belgaum - 2019 (5) TMI 661 CESTAT-Bangalore, has considered this very issue, has also referred to a number of decisions/orders of various fora and has held as under:

"....6. After considering the submissions of both sides and perusal of records, I find that the appellants have paid the service tax and the same was charged from the MES. Further I find that the appellant has filed the refund claim of service tax reimbursed by the MES based on their letter dt. 24/01/2016 and the refund claim has been filed at the instance of the MES as the MES is the ultimate consumer and the entire tax burden borne by the MES only and has not been passed on to any other person. Further I also find that the appellant is claiming the refund as a representative of the MES and not on his own account and therefore the principle of unjust enrichment under the provisions of Section 11B of the Central Excise Act is not applicable to the present case. Further I find that on identical facts, other Commissionerates are allowing the refund under the same notification which is involved in the present case and one of such order has been placed on record. Therefore keeping in view of the facts, I am of the view that the appellants are entitled to the refund of Rs. 8,51,384/- which the appellant would pay in the account of MES as per their agreement. Accordingly, appeal is allowed."

4. The order of Chennai Bench in the case of M/s. The Madras Club Vs. The Commissioner of G.S.T. & Central Excise - 2020 (9) TMI 434-CESTAT Chennai referred to by the Revenue is distinguishable inasmuch as the service recipient is a Government entity in the case on hand. In view of the above, I am of the considered view that the denial of refund cannot be sustained and hence, the impugned order deserves to be set aside. The impugned order is therefore set aside and the appeal is allowed with consequential benefits if any, as per law.

(Order was pronounced in Open Court on 12/10/2021)

