(2023) 05 CESTAT CK 0026

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20902 Of 2021

M/S. Cheeran Structurals APPELLANT

Vs

Commissioner Of Central Tax & Central Excise RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 243W
Finance Act, 1994 — Section 65B(44), 102(1)

Citation : (2023) 05 CESTAT CK 0026

Hon'ble Judges : Hemambika R Priya, Member (Technical)

Bench : Single Bench

Advocate : Aryaman Ghulatih, K Vishwanatha

Final Decision : Allowed

Judgement

Hemambika R Priya, Member (T)

1. The Appellant has filed the present appeal against the impugned Order in Appeal, wherein the Appellate Authority has partly rejected the Appellant's claim for refund.

2. The brief facts case is that the appellant filed a refund application claiming refund for the service tax paid by them during the period 01.04.2015 to 29.02.2016 in respect of works contract services provided to the government on the grounds that they were entitled for refund of the said amount paid by them or exempted services in terms of section 102 of the Finance Act, 1994. Subsection(1) of section 102 provides retrospective exemption in respect of services provided to the government, local authority or governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of(a) a civil structure or any other original works meant predominantly for use other than for commerce industry or any other business or profession;(b) a structure meant predominantly for use (i) an educational establishment;(ii) clinical establishment;(iii) an art or

cultural establishment;(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in explanation 1 to clause(44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable been paid before that date. As per sub-section(2) of the said section, refund shall be made of all such service tax which has been collected but which would not have been so collected had subsection(1) been in force at all material times.

3. By order in original dated 06. 02. 2017, the Asst Commissioner rejected the refund claim filed by the appellant. Vide order-in-appeal dated 22.12.2020, the Commissioner (Appeals) partly allowed the refund and rejected the following refund claims as tabulated below:

Sl no	Name	Amount(in Rs)
1	Regional Cancer Centre, Trivandrum	6,37,569
2	Regional Cancer Centre, Trivandrum	68,369
3	Vadakara Taluk Hospital	1,23,648

4. The learned counsel appearing for the appellant submitted that the refund to the Regional Cancer Centre (RCC) was rejected as copies of bills raised on RCC, Trivandrum had not been produced before the adjudicating authority. He submitted that copies of the agreements executed with the RCC, Trivandrum, invoices raised by them, the VAT returns filed and copies of service tax paid on the works executed along with form 26AS and a certificate certifying that the appellant had provided services to the Regional Cancer Centre had been enclosed. Despite having enclosed all relevant documents, the refund had been rejected. With regard to the services provided to M/s CAPE, the learned counsel submitted that that the organisation was covered within the ambit of government/local authority, as the effective control is vested with the government of Kerala and this can be seen in the Constitution of the board. He also is informed that the said authority comes under the purview of the Right to

Information Act, 2005 as a public authority. In respect of the rejection of the refund claimed on the Vadakara Taluk hospital, the counsel submitted that copies of the agreements executed with the municipality, invoices raised by them, the VAT returns filed in copies of the service tax paid on the works executed had been submitted to the adjudicating authority. In view of the same, he submitted that the refund was admissible.

5. The learned authorised representative contended that the appellant had not produced the copies of the bills raised but had only produced the running bills from which it was not possible to ascertain whether the said payment of tax was in fact relating to the tax paid on exempted services only. He also contended that the appellant did not avail the opportunity to submit these bills before the appellate authority as well. The authorised representative stated that CAPE was not a body set up by the state legislature act nor was it established by the State government and it is merely promoted by the State Government. Therefore, there was no reason to interfere with the findings in the impugned order

6. I have heard the learned counsel for the appellant and the authorised representative. As regards the claims of refund for the service tax paid towards construction of the Regional Cancer Centre Trivandrum, and the Vadakara Taluk hospital, I find that the appellant has submitted copies of the Agreements executed with the Hospital, and other corroborative documents such as the invoices, VAT returns, 26AS statement, as well as a certificate from the service recipient regarding the services executed by the appellant. A perusal of the invoice raised by the appellant towards the Regional Cancer Centre indicates the quantum of service tax paid at the prevailing rate of 14% during the relevant time. There is no doubt that the appellant had submitted other statutory documents from where verification can be done. In view of the above, I hold that the refund claim for services provided to the Regional Cancer Centre, Trivandrum and Vadakara Taluk hospital is admissible.

7. I now take up the issue of admissibility of refund to services provided to M/s CAPE, Kerala. In order to understand whether the service recipient is eligible for the exemption of service tax, we need to go through the definition of ‘governmental authority‘ as specified under Sr no. 2(s) of the notification no. 25/2012-ST. dated 20.06.2012, which defines ‘Governmental Authority’ as an authority or a Board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government with 90% or more participation by way of equity or control, carry out any function entrusted to Municipality under article 243W of the Constitution

7.1 As per the above definition, in order to qualify as governmental authority the body has to be either setup by an Act of Parliament or State Legislature, or established by the Government as per the conditions mentioned supra. In the instant case, it is clear that the service recipient M/s CAPE is a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 and is engaged in imparting professional education. As per the details available on the public domain, the Cooperative Academy of Professional Education, Kerala is promoted by the Cooperation Department of the Government of Kerala and is an autonomous society under the same. There is nothing on record to show that the State Government exercises 90% or more by way of control of the trust. Consequently, I hold that there is no reason to interfere in the findings in the impugned order in this regard.

8. The order in appeal is modified to the extent indicated above and the appeal is allowed to the extent indicated above.

