

(2020) 12 CESTAT CK 0039

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 60358 Of 2020

M/s Verma Brothers @Hash C.C.E. And S.T., Rohtak

Date of Decision : 01-12-2020

Acts Referred:

Citation : (2020) 12 CESTAT CK 0039

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Vikrant Kackria, M.S. Dhindsa

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order, wherein the refund claim of Rs.36,24,372/- has been rejected. This is the second round of litigation.

2. The facts of the case are that the appellant is engaged in providing works contract service to Garrison Engineers (MES) a unit of Department in

Ministry of Defense who is not engaged in any commercial activity. Prior to 01.04.2015, the said service was exempted from service tax vide entry

No.12(a) of Mega Exemption Notification No.25/2012-ST dated 20.06.2012, the said entry was withdrawn vide Notification No. 06/2015-ST dated

01.03.2015 and the above mentioning construction services became taxable with effect from 01.04.2015, subsequently, vide Notification No. 09/2016-

ST dated 01.03.2016, the said entry was again inserted thereby exempting the service tax providing in relation to construction of noncommercial Govt.

building from whole of service tax retrospectively. In view of this, the appellant filed refund claim of Rs.36,21,372/- on 07.11.2016 for the service tax

paid in respect of works contract relating to the services provided for construction of Non-Commercial building pertains to Garrison Engineers (MES)

a unit in Ministry of Defense the period March, 2015 to December, 2015. Initially an amount of Rs.3,50,746/- for the period March, 2015 was rejected

as time barred and the refund claim of Rs.32,70,626/- was sanctioned but was credited to Consumer Welfare Fund being hit by unjust and enrichment.

The said order was challenged before the Ld. Commissioner (Appeal) by the appellant who allowed the refund claim of Rs.32,70,626/- to the appellant

holding that the said amount be given back to the appellant who will in turn refund the same to the military or the in the bank account of the M/s

Garrison Engineers (MES) Ministry of Defense. The amount of Rs.3,50,746/-was rejected as time barred. Against the order of sanctioning refund

claim, the revenue filed an appeal before this Tribunal and against the order of holding the refund of Rs.3,50,746/- as time barred an appeal has been

filed by the appellant. The appeal filed by the Revenue was dismissed by this Tribunal under litigation policy Vide Final Order No. A/61032/2019 dated

20.11.2019 and the appeal of the appellant was allowed holding that refund claim cannot be held time barred and the appellant is entitled to claim of

the amount paid for the period March, 2015. The Department did not file appeal against any of the orders of this Tribunal, before the Honâ??ble

High Court or the Honâ??ble Supreme Court. Thereafter, the appellant made a request to the Assistant Commissioner to refund the amount. The

adjudicating authority instead of complying the direction of Commissioner (Appeals) as well as this Tribunal transferred the whole of the amount of

Rs.36,21,376/- to the Consumer Welfare Fund holding that the same is hit by the principle of unjust enrichment. An appeal against the said order was

filed before the Ld. Commissioner (Appeals) was also dismissed. Hence, this appeal.

3. The Ld. Counsel for the appellant submits that the order of Adjudicating Authority as well as Commissioner (Appeals) is illegal as Commissioner

(Appeal) as himself held in the earlier round that the refund is admissible and the same may be transferred directly to the Garrison Engineers (MES)

and the said order has attained finality as against the said order appeal filed by the Revenue before this Tribunal has been dismissed and the said order

has not been challenged. Therefore, in subsequent round of litigation, the Commissioner (Appeals) has taken contrary view which is not permissible

under the law.

4. He further submitted that a similar issue came up before this Tribunal in the case of M/s A.P. Enterprises Vs. C.C.E & S.T. Panchkula and this

Tribunal Vide Final Order No. 63567/2018 held that the said amount of the refund is payable in the account of service recipient directly and the said

order has been accepted by the Revenue. In That circumstances, the impugned order is to be set aside and refund claim be allowed along with interest.

5. On the other hand, the Ld. AR drew the attention to the impugned order as well as of the adjudication order saying that this refund claim has been

filed by the appellant who has failed to pass barred by unjust enrichment as it is an admitted fact that the appellant has collected the service tax from

the service recipient. Further, the service recipient has not filed the refund claim, in that circumstances, the authorities below has rightly held that the

amount of refund is to be transferred to Consumer Welfare Fund.

6. Heard both side, considered the submissions.

7. In this case, it an admitted position that in the earlier round of litigation this Tribunal has held that the refund claim is not barred by limitation and the

order of the Ld. Commissioner (Appeals) dated 12.03.2019 passed in earlier round of litigation was upheld by dismissing the appeal filed by the

Revenue under the litigation policy. The Revenue came with an application for rectification of mistake on the ground that the appeal cannot be

dismissed under litigation policy as it involves a substantial question of law, therefore, the order dated 20.11.2019 be recalled. The said application for

rectification of mistake has been dismissed. Moreover, while passing the order by this Tribunal on 20.11.2019, the Ld. AR Shri M.S. Dhindsa was

present in the court and he did not raise any issue with regard to that appeal cannot be dismissed under litigation policy, as the issue is of substantial

question of law. Moreover, it is seen that the issue involved in the matter has been dealt by this Tribunal in detail in the case of M/s A.P. Enterprises

Vs. C.C.E & S.T. Panchkula (Supra) therefore, no substantial question is involved. Accordingly, the application for rectification was dismissed. In that

circumstances, it is to be seen that whether the refund claim is hit by barred of unjust enrichment or not?

8. Admittedly, the issue involved in the matter has been dealt by this Tribunal, in the case of M/s A.P. Enterprises Vs. C.C.E & S.T. Panchkula

(Supra) Wherein this Tribunal observed as under:

6. Considering the fact that the service recipient vide their letter dt. 22.10.2016 has directed the appellant to file the refund claim of service tax

borne by them and refund claim is to be sent in the account of service recipient directly only. The said letter is extracted herein below for better

appreciation of the facts of the case:

On going through the said letter, I find that in terms of Section 11B(2)(e), the person who has borne the tax, can file the refund claim. Therefore, the

service tax in the impugned matter paid by the appellant is required to be refunded to the service recipient directly. In these circumstances, I hold that

the refund of service tax paid by the appellant cannot be rejected. Therefore, I sanctioned the refund claim, but the same is payable in the account of

service recipient directly. Therefore, the appellant is directed to provide all the details of the service recipient required for sanctioning the refund claim.

If already provided by the appellant, the adjudicating authority shall sanction the refund claim to the service recipient directly within 30 days from the

receipt of this order.

7. In view of the above discussion, the impugned order is set aside.

8. In result, the appeal is allowed. As the issue has been settled that in such a cases, the refund claim is to be given directly to the service recipient

i.e Garrison Engineers (MES), therefore, the refund claim is allowed along with interest after three months from the date of filing the refund claim till

its realization as held by the Hon'ble Apex Court in the case of Ranbaxy Laboratories Ltd. Vs. Union of India reported in 2011 (273) E.L.T. 3

(S.C),.

9. In view of this, the appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)