CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

Service Tax Appeal No. 11628 of 2018

[Arising out of OIA-AHM-EXCUS-002-APP-326-17-18 dated 23.03.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SERVICE TAX - AHMEDABAD]

M/s Electricals India .....**Appellant**
74, Ajanta Commercial Centre, Ashram Road,
Ahmedabad- 380 014

VERSUS

C.C.E.- Ahmedabad-ii .....**Respondent**
Ahmedabad-North Commissionerate-Ahmedabad

APPEARANCE:

Shri. R. Subramanya (Adv.) for Appellant
Shri. T.K. Sikdar, Authorized Representative for Respondent

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

FINAL ORDER NO. A/ 12213 /2019

DATE OF HEARING/DATE OF DECISION: 04.04.2019

PER: S.K. MOHANTY

Brief facts of the case are that the appellant herein, is engaged in providing taxable service under the category of work contract service and for that purpose, was registered with the service tax department. During the disputed period, the appellant had filed the refund claim application on 11.11.2016, claiming refund of service tax of Rs. 2,07,407/-on the ground that the works contract service executed by it for the Military Engineering Service Department was fully exempted from payment of service tax under Notification No. 25/12-ST dated 20.06.2012. The refund application was favourably considered by the Assistant Commissioner of Service Tax vide order dated 07.02.2017. Filling aggrieved with the said adjudicating order, Revenue had preferred appeal before the Ld. Commissioner (Appeals), which was disposed of vide the impugned order dated 23.03.2018, in allowing the appeal in favour of Revenue (respondent herein). Vide the impugned order, the Ld. Commissioner (Appeals) has held that the present appellant (Respondent therein) did not produce the documentary evidence to demonstrate that the incidence of service tax had not been passed on to any other person and that such incidence had all along being borne by it. In support of allowing the Revenue's appeal, Ld. Commissioner (appeals) has referred to and relied upon the judgment of Hon'ble Supreme Court delivered in the case of Mafatlal Industries, reported in 1997 (89) ELT 247 (SC).

2. Heard both the sides and perused the records.

3. I find that in the impugned order at paragraph 3, the Ld. Commissioner (Appeals) has observed that the appellant herein had already received the amount of service tax paid by Military Engineering Service Department and such amount had not been refunded back to such organisation. From the observations recorded in the impugned order, it transpires that the incidence of service tax had in effect, been passed on by the appellant in favour of the recipient of service. Thus, under such circumstances, if the refund claim is considered favourably, then the appellant will be unjustly enriched at the cost paid by somebody else. Hence, the doctrine of unjust enrichment is squarely applicable to deny the benefit of refund for crediting into the appellant's account. Such refund benefit should appropriately be credited to the Consumer Welfare Fund (CWF), which has appropriately been observed by the Ld. Commissioner (Appeals).

4. Therefore, I do not find any infirmity in the impugned order passed by the Commissioner (Appeals). Accordingly, appeal filed by the appellant is dismissed.

(Dictated and Pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

Seema