Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11047 of 2019

(Arising out of OIA-AHM-EXCUS-002-APP-11-19-20 dated 31/05/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Psp Projects **......Appellant**

Psp House Opp Celesta Courtyard Opp Lane Of Vikramnagar Colony Iscon Ambi Road Ahmedabad, Gujarat

VERSUS

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

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat - 380009

APPEARANCE:

None appeared for the Appellant
Shri R.P Parekh, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 10378 /2022

DATE OF HEARING: 04.04.2022
DATE OF DECISION: 04.04.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant's refund claim is hit by unjust enrichment or otherwise. When the matter was called out, none appeared on behalf of the appellant nor any adjournment request placed on record. I observed that on the last occasion this tribunal vide order dated 24.03.2022 passed the following order.

> "*When the matter was called out, a letter of the appellant was produced seeking physical hearing on any date in April, 2022. I have gone through the matter and there is nothing on record to suggest that it requires physical hearing. It is noticed that the appellant has not appeared before the Commissioner(Appeals).The appellant has also not appeared before this Tribunal almost six hearings have been given. In the interest of justice as a last chance , the matter may be listed on 04th April, 2022. This may be treated as last opportunity.*"

Even today when the matter was listed for the physical hearing the appellant does not appear. Accordingly, the matter is taken up for the disposal.

2. Shri R.P Parekh, Learned Superintendent (AR) appearing for the revenue submits that it is the admitted fact that the appellant have not

submitted any documentary evidence to prove that the incidence of the service tax for which the appellant seeking a refund claim has not been passed on to any other person. This Tribunal in the first round of the appeal remanded the matter to the adjudicating authority to decide a fresh after ascertaining the fact regarding the unjust enrichment. It is his submission that even after the remand the appellant have not produced any evidence either before the adjudicating authority or before the Commissioner (Appeals). Therefore, the impugned order was rightly passed by denying the refund on the ground of unjust enrichment.

3. I have carefully considered the submission made by the Learned (AR) and perused the records. I find that in terms of section 11 B it is up to the assessee to prove that the incidence of duty for which the refund is sought for have not been passed on to any other person. If the assessee fails to establish this fact the amount shall be credited into the Consumer Welfare Fund. In the present case it is revealed from the records that the appellant initially have charged the service tax from the service recipient and the same was not returned by them. Accordingly, the incidence of the service tax was passed on while payment of service tax. I find that the appellant undertakes re-credit the amount of service tax to the service recipient. I am of the view that mere undertaking would not help to overcome the issue of unjust enrichment. Therefore, since the appellant have not established that incidence of service tax was not passed out to any person, the provision of unjust enrichment is clearly applicable, accordingly, the refund is hit by the unjust enrichment, hence, I do not find any infirmity in the impugned order.

4. Accordingly, the impugned order is upheld appeal is dismissed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

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