CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70432 of 2019

(Arising out of Order-in-Appeal No.37-47-ST/APPL/LKO/2019 dated 31/01/2019 passed by Commissioner (Appeals) Customs, Central Excise & GST, Lucknow)

Commissioner, CGST & Central Excise, Lucknow .Appellant
(7A-Ashoka Marg, Lucknow)

VERSUS

M/s U.P. Projects Corporation Ltd., ...Respondent
(Unit-17, Raebareli, 2/840, Vivek Khand, Gomti Nagar, Lucknow-226010)

APPEARANCE:

Shri Manish Raj, Authorised Representative for the Appellant-Revenue
None, for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70286/2023

DATE OF HEARING : 08 December, 2023
DATE OF DECISION : 08 December, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.37-47-ST/APPL/LKO/2019 dated 31/01/2019 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order Commissioner (Appeals) has held as follows:-

"5. I have gone through the case record. The refund claims were rejected mainly on the ground that while branches filed refund claim the service tax was paid by their head office. On this issue the appellants have submitted that the headquarter has deposited the service tax on behalf of individual units for administrative convenience and no statutory provision of Finance Act,

1994 prohibits the sanction of refund claim filed by the branches. In this regard it is apparent that all the appellant are a single corporate entity. Further, the corporation has obtained centralized registration at Lucknow from 12.8.2016. Thus, filing of refund claim by the branches instead of the head office is a minor technical infraction which cannot be the basis for denying substantial benefit of refunds which is otherwise admissible on merits.

6. Regarding the issue of challans not mentioned in ST-3 returns of the branches, it is argued that total tax liability was discharged by the head office and the Challans are mentioned in the ST-3 returns of the head office. They have also submitted the copy of ST-3 returns of head office in which details of all the challans are reflected. Also, there is no requirement of submission of original contracts (GOs).

7. Unjust enrichment- The appellants argued that the Service Tax liability is discharged from the corpus of the fund sanctioned by the government organization. Thus, no invoice/bills are issued in this regard. Also, prior to 01.04.2015, Service Tax was exempted on such work orders of government. Therefore, the funds received by them during 2015-16, in respect of work orders issued prior to 01.3.2015, could not have included Service Tax as there was exemption from service tax. Thus, the appellants had borne the incidence of Service Tax and had not passed on the same. The claim of the appellants is also supported from the balance sheet as the claimed amount of Service Tax paid by them is shown as receivables. Thus, the refund claims are not hit by bar of unjust enrichment.

8. The appellant vide their letter dated 24.01.2018 has provided a certified chart showing appeal-wise the GOs (Work orders) in respect of which the claimed service tax was paid and the Challan details by which the same was paid. As the conditions stipulated under section 102 of the said Act are satisfied, there in no sufficient ground to deny *the refund. The appellant has also submitted the copy of orders granting refunds to the appellant on the same issue, issued by Central Excise Division Sitapur and Central Excise Division Bareilly. Therefore, the impugned orders are not sustainable and the same are set aside. The appeals are allowed."*

2.1 From the facts available on the record, we find that the Tribunal vide Final Order No.72465-72468 dated 23.10.2018 upheld the order-in-Appeal No.37-47-ST/APPL/LKO/2019 dated 31.01.2019 by observing as follows:-

"Both the appeals filed by the Revenue are being disposed of by a common order. We have heard learned Authorised Representative Shri Rajeev Ranjan appearing for the Revenue. Nobody appeared for the respondents.

2. As per facts on record, the respondents are engaged in providing construction services to various Departments of U.P. Government and were registered with the Service Tax Department. They paid service tax on the said services under the category of works contract, as vide Notification No.6/2015- ST dated 01/03/2015 effective from 01/04/2015 the exemption in respect of service provided to the Government, a local Authority or the Government Authority were omitted and became taxable. Subsequently vide Notification No.09/2016-ST dated 01/03/2016 exemption was again restored by inserting entry 12A in the Mega Notification No.25/2012-ST dated 20/06/2012.

3. Subsequently in the Financial Year 2015-16, Section 102(2) provided for refund of such service tax paid in Financial Year 2015-16. Accordingly the respondents filed for refund of the service tax which was rejected by the Original Adjudicating Authority on the ground of unjust enrichment. The said order was appealed against before Commissioner (Appeals), who set aside the same and allowed the appeals.

4. Revenue being aggrieved with the said order filed the present appeals on the ground that the same are hit by bar of unjust enrichment.

5. We note the provisions of Rule 102 were specifically introduced in the Finance Act for refund of the service tax so paid, which was actually paid on account of inadvertant withdrawing of exemption. The contracts with the U.P. Government were inclusive of all taxes, thus, not attracting the provisions of unjust enrichment. As such, we find no infirmity in the impugned order and accordingly Revenue's appeals are rejected. Cross application also gets disposed of."

3.1 We have heard Shri Manish Raj learned Authorized Representative appearing for the appellant-revenue. None appeared on behalf of the Respondent.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 We find that since this appeal is arising out from the bunch of appeal filed by the revenue against the same Order-in-Appeal dated 31.01.2019 decided by the Tribunal vide Final Order No.72465-72468 dated 23.10.2018, this appeal also gets disposed of.

5.1 Appeal is dismissed.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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