CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

(E-HEARING)

Service Tax Appeal No.70397 of 2020

(Arising out of Order-In-Appeal No.GZB-EXCUS-000-APPL-MRT-47-2020-21, dated-10/06/2020 passed by Commissioner (Appeals) CGST, Meerut)

Commissioner, CGST, Ghaziabad **.....Appellant**
(Central GST Division-III, Ghaziabad)

VERSUS

M/s Baba Construction Pvt. Ltd., **....Respondent**
(A-20, HIG Duplex, Sanjay Nagar,
Sector-23, Ghaziabad, U.P.)

APPEARANCE:
Shri Manish Raj, Authorized Representative for the Appellant
Shri Rakshit Verma, Advocate for the Respondent

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

FINAL ORDER NO.-70701/2024

DATE OF HEARING : 24.10.2024
DATE OF DECISION : 24.10.2024

SANJIV SRIVASTAVA:

This appeal filed by the Revenue is directed against the Order-In-Appeal No. GZB-EXCUS-000-APPL-MRT-47-2020-21, dated-10/06/2020 passed by Commissioner (Appeals) CGST, Meerut. By the impugned order Commissioner (Appeals) has dismissed the appeal filed by the Revenue before him observing as follows:

"5. I have carefully gone through the records of the case, ht grounds of appeal, and the submissions made by the respondent. The appellant department has contended that an appeal against the OIA dated 04.11.2019 has been filed in CESTAT on the grounds of applicability of doctrine of

unjust enrichment and that the interest was wrongly paid as the same was payable only after the expiry of three months from the date of the refund application. I find that there was nothing on record that the above mentioned OIA dated 14.11.2019 was either stayed or set aside by a higher appellate authority. Therefore, the same was binding upon the adjudicating authority in adherence of the principle of judicial discipline as reiterated by the Hon'ble Apex Court, in the case of Union of India Versus Kamlakshi Finance Corporation Limited [1991 (55) ELT 433 (SC)]. Accordingly, the legality and propriety of the impugned order passed in compliance of the OlA dated 14.11.2019 cannot be questioned

5.1 I further find that the grounds of appeal mainly incorporate the perceived illegality or impropriety of the OIA dated 14.11.2019 but any such views cannot be a ground for assailing the legality and propriety of the impugned order passed in compliance of an order of the appellate authority which was binding on the adjudicating authority. The grounds of appeal are, therefore, misconstrued and out of the context as far as the present appeal against the impugned order is concerned. I find that vides OIA dated 14.11.2019 it was ordered that the appellant was entitled to the refund of the entire amount along with the intrest after three months from the date of the communication of the Final Order of the CESTAT. Accordingly, the adjudicating authority has allowed the refund along with interest. It was also held by the Commissioner (Appeals) that the principle of unjust enrichment was not attracted in the respondent's case. I find that the appellant department as raised the issues already decided vides OIA date 14.11.2019, before the same appellate authority, in the present appeal filed against an order passed in adherence of principle of judicial discipline. I, therefore, do not find any merit in the appeal filed by the appellant department.”

2.1 In their appeal revenue has assailed the impugned order stating as follows:

'1. That the Order in Appeal No GZB/EXCUS/000/APPL-MRT/47/2020-21 dated 10.06.2020 apparently has been passed by the Commissioner (Appeals) without considering the facts of the case and established tenets of law with respect to refund and thus appears to be arbitrary and bad in law.

2. That, in his Order dated 10.06.2020 the Commissioner (Appeals) has arbitrarily discarded the grounds of appeal put forth by the Department in respect of Appeal filed against the subject Order-in-Original No.R-13/Refund/AC/2019-20 dated 19.12.2019 passed by the Assistant Commissioner, CGST, Division-III, Ghaziabad as also the grounds of appeal in respect of appeal filed by the Department against he said earlier Order-In-Appeal No.GZB/EXCUS/000/APPL-MRT/232/2019-20 dated 14.11.2019, i.e. the OIA on the basis of which the Assistant Commissioner, CGST, Division-III, Ghaziabad had passed the subject Order-in-Original No.R-13/Refund/AC/2019- 20 dated 19.12.2019 whereby the subject refund of Rs.96,92,428/- alongwith interest of Rs.13,71,479/- had been sanctioned to the said party. Thus, the Commissioner (Appeals) vides his subject Order has again arbitrarily failed to appreciate the facts of the case and has thereby wrongfully upheld the said Order- in-Original No.R-13/Refund/AC/2019-20 dated 19.12.2019 passed by the Assistant Commissioner. The facts of the case amply prove that the said party recorded/'accounted for the amount paid during the time of investigation, as "Expenditure" under the head "'Administrative & Other Expenses in their "Profit & Loss Account for the year 2010-11 and 201 1-12 and further, the said payment was also mentioned by them in Note 19 to the Financial Statement and also in 'Trade Tax Nat/Service Tax' Group Summary Ledger of the *relevant years. Thus, the subject Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/47/ 2020-21 dated 10.06.2020 of the Commissioner (Appeals) of upholding the said Order-in- Original No.R-13/Refund/AC/2019-20 dated 19.12.2019 passed by the Assistant Commissioner, CGST, Division-IIl, Ghaziabad and rejecting the appeal of the Department against the said 01O dated 19.12.2019, is in complete disregard of the said concrete facts of the subject case and the established legal position that the amount has to be refunded to an assessee only after the assessee proves that burden of the amount sought as refund has not been passed on to the buyers*

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(D) In view of the foregoing facts and grounds of appeal, the Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/47/2020-21 dated 10.06.2020 passed by the Commissioner (Appeals). Central Goods and Services Tax (Appeals), Meerut, Camp Office at Ghaziabad, in the Appeal No. 101-ST/APPL-MRT/GZB/2019-20 dated 11.02.2020 filed by the Department, does not appear to be legal and proper, in the eyes of law and therefore, appears to be liable to be quashed, and ensuingly the related Order-in-Original No. R-13/Refund/ AC/2019-20 dated 19.12.2019 passed by the Assistant Commissioner, CGST, Division-III, Ghaziabad, where vide the subject refund alongwith interest had wrongfully been sanctioned to the said party, is also liable to be set aside/quashed

(E) Therefore, the Hon`ble Tribunal is prayed to quash the impugned Order-in- Appeal No. GZB/EXCUS/000/APPL-MRT/47/2020-21 dated 10.06.2020 as also the related Order-in-Original No. R-13/Refund/ AC/2019-20 dated 19.12.2019 and/or pass any other order as deemed fit and proper, under the circumstances of the case, for upholding the statutory provisions and for furtherance of the

objectives of judicial discipline and serving the principle of natural justice."

3.1 We have heard Shri Manish Raj, Authorized Representative for the Appellant-Revenue and Shri Rakshit Verma Advocate for the Respondent.

3.2 Authorized representative reiterated the grounds stated in the appeal filed by revenue.

3.3 Counsel for the respondent placed on record the Final Order No 70270/2023 dated 11.12.2023 by which the appeal (Service Tax Appeal No 70043 of 2020) filed by the revenue against the Order in Appeal No GZB-EXCUS-000-APPL-MRT-232-2019-20 dated 14.11.2019 has been dismissed.

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

4.2 Subsequent to the Order-In-Appeal No.GZB-EXCUS-000-APPL-MRT-232-2019-20 dated 14.11.2019 of the Commissioner (Appeal) holding the appeal filed by the Respondent in their favour, the refund was sanctioned by the original authority made to the respondents as per the directions contained in the order dated 14.11.2019.

4.3 The major grievance of the revenue as has been noted by the First Appellate authority in the impugned order and as evident from the appeal filed by the revenue is that, they had preferred the appeal before this tribunal against order dated 14.11.2019 which was pending. Hence the refund claim could not have been sanctioned as per the directions contained in that order. Though other grounds have been stated they are identical to the ground taken by the revenue in the appeal filed by the revenue against the order dated 14.11.2019.

4.4 The appeal by the revenue before the Tribunal against the order dated 14.11.2019 which has been dismissed by us vide Final Order No.70270 of 2023 dated 11.12.2023 in Service Tax Appeal No.70043 of 2020. As the order of the Commissioner (Appeals) dated 14.11.2019 has already been upheld by us there are no merits in the present appeal which is challenging the sanctioning of refund in favour of the respondent by the Lower Authorities on the basis of that order.

4.5 Before we complete the discussions in this appeal we observe that revenue has filed this appeal against the order of the Commissioner (Appeal) whereby he has stated a very vital principle of judicial discipline following the decision of Hon'ble Supreme Court in the case of Kamalakshi Finance Corporation. The said decision which laid down that lower authorities are bound by the orders of the higher judicial forum/ authorities, cannot be faulted with. The Committee of Commissioners reviewing the impugned order or order in original seems to be totally unaware of the principles enshrined in the decision of Hon'ble Supreme Court, supra. Nothing has been stated in the appeal filed as to why this decision following the said principle is not legal and proper.

5.1 Appeal is dismissed.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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