IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70493-70495 & 70564/2018 – ST[SM]

(Arising out of Order-in-Appeal No. 115-119/ST/ALLD/2018 dated 21/02/2018 passed by CGST & Central Excise Commissionerate (Appeals), Allahabad)

M/s U.P. Projects Corporation Ltd. **Appellant(s)**

Vs.

Commissioner (Appeals), CGST &

Central Excise, Allahabad **Respondent(s)**

Appearance:

Request for Adjournment for Appellant(s)
Shri Pawan Kumar Singh (Supdt.) AR for Respondent(s)

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 13/09/2018
Date of Pronouncement : 23/10/2018

FINAL ORDER NOs. **72465-72468 / 2018**

Per: Archana Wadhwa

All the four appeals are being disposed of by a common order as they are arising out of the same impugned order passed by the Authorities below.

2. As per facts on record the appellants had paid service tax, during 01.04.2015 to 01.03.2016, on 'Works Contract service' taxable under the Finance Act, 1994 (hereinafter referred to as *"the Act"*), provided to various departments of the Government of Uttar Pradesh, as vide Notification

No.06/2016-ST dated 01.03.2015 effective from 01.04.2015, Sl. No. (a), (c) & (f) of the entry 12 of the Notification No.25/2012-ST dated 20.06.2012 (Mega Exemption) were omitted and the services specified therein, provided to the Government, a local authority or a governmental authority, became taxable. However, vide Notification No.09/2016-ST dated 01.03.2016, the aforesaid exemption was restored by inserting entry 12A in the Mega Exemption.

3. Further, Section 102 was inserted in the Act, vide the Finance Act, 2016, to provide as under:

> *Section 102:* *(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of –*

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any business or profession;

(b) a structure meant predominantly for use as –

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of Section 65B of the said Act,

Under which a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

4. Subsequently, the appellants, in terms of Section 102 of the Act, applied for the refunds, under Section 11B of the Central Excise Act, 1944 as made applicable to the Service Tax matters vide Section 83 of the Act, before their respective Deputy/Assistant Commissioner, Central Excise.

5. During examination of the refund claims, it was noticed that (i) the appellants did not provide any documents to correlate their refund claims with the conditions specified in Section 102 of the Act, (ii) they failed to produce any documentary evidence to show that they had not passed on the incidence of Service Tax and (iii) the payments for which

refund claims were filed, had been deposited through challans under Service Tax Code/Registration Number of their Head Office at Lucknow. Accordingly, Show Cause Notices were issued to them for rejecting their refund claims.

6. The Deputy/Assistant Commissioner vide their orders, rejected the refund claims of the appellants, on the grounds that (i) the appellants did not submit any documents to show that the conditions specified in Section 102 of the Act were satisfied, (ii) they failed to prove that they had borne the incidence of Service Tax and (iii) they had filed refund claims with the wrong jurisdiction.

7. Aggrieved with the impugned orders, the appellants filed appeals before the Commissioner (Appeals) mainly, on the grounds that (i) they had filed the refund claims alongwith all the relevant documents, (ii) the incidence of Service Tax had been borne by them and they had not charged Service Tax from the service recipients, i.e., the departments of the Government of Uttar Pradesh, (iii) the jurisdiction of a Service Tax assessee depends on the location of the office/premises of the service provider and (iv) thus, their refund claims were wrongly rejected.

8. While disposing all the said appeals, Commissioner (Appeals) observed that as the Branch Office had not shown the taxable service value alongwith service tax paid in their

ST-3 returns and such details were given only by the Head Office, the refund claims filed by the Branch Office was without jurisdiction. As such he concluded that the Assistant Commissioner/Deputy Commissioner was not having any jurisdiction to pass the said refund claims.

Surprisingly, even after observing, as such, the Original Adjudicating Authority Orders' have been upheld by him. When the Original Adjudicating Authority was not having any jurisdiction to deal with the refund claims, I really fail to understand as to how the same could have been rejected by the Original Adjudicating Authority. Such rejection would also be without jurisdiction, in which case the orders passed by the Original Adjudicating Authority would be null and void.

9. Further Commissioner (Appeals) has observed that appellant had taken the centralized registration only in the month of August, 2006 for their Head Office at Lucknow. As such he observed that it cannot be claimed that they had shown taxable services and value thereof and service tax paid in the ST-3 returns of the Head Office at Lucknow on account of the centralized registration. This observation of the Appellate Authority is self contradictory to the earlier observation made by him that all the taxes were paid by Head Office and reflected in their ST-3 returns as Centralized registration for such payments is not necessary.

10. I further note that the Appellate Authority has relied upon the Hon'ble Allahabad High Court's decision in the case of Vandana Travels & Tours vs. Commissioner of Central Excise & Service Tax (Appeals), reported at 2015 (37) STR 417 (All.) wherein it was held that where an authority lacks inherent jurisdiction to pass a decree or order, the decree or order shown passed by such authority would be non-est and *void ab initio.*

Though the said decision of the Hon'ble Allahabad High Court is in respect of the basic jurisdiction to be exercised by an authority, even if the same is held to be applicable to the facts of the present case, the impugned orders passed by the Original Adjudicating Authority having no jurisdiction to deal with the refund claims would be non-est orders and should not have been upheld by Commissioner (Appeals).

11. Further, the Appellate Authority has observed that the Deputy/Assistant Commissioner should not have rejected the refund claims on merits inasmuch as they did not have any jurisdiction. He further observes that they should have rejected the refund claims only on the ground of jurisdiction and should have referred the same to the authority having jurisdiction to pass these refund claims. In spite of observing as above, the Commissioner (Appeals) has upheld the impugned orders to the extent of rejecting the refund claims

on the ground that the same were filed in the wrong jurisdiction.

12. The question of jurisdiction raised by the Revenue is not about the basic jurisdiction of the Assistant/Deputy Commissioner to deal with the refund claims. The objection is on area based jurisdiction. If the Revenue was of the view that the refund claims should have been filed with the jurisdictional officer of the Head Office, they were within their rights to transfer the same to the officer having the proper jurisdiction. Adopting an analogy that if an appeal against the orders of the Lower Authorities is to be filed before Delhi Benches of the Tribunal and same stands filed before the Allahabad Benches, the normal and accepted course of action would be to transfer the appeal to Delhi in spite of rejecting the same on the point of jurisdiction.

13. In view of the foregoing, I set aside the impugned order of Commissioner (Appeals) and remand the matters to the Original Adjudication Authority. In case the officer feels that he does not have the jurisdiction, based upon the area, to deal with the refund claims in question, the same would be transferred to the appropriate authority for further dealing with the same.

14. In views of the foregoing the impugned orders are set aside and matters are remanded for further action in the light of the observations made as above.

(Pronounced in Court on **23.10.2018**)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ankit