CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20805 of 2016

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-272-15-16 dated 23/12/2015 passed by Commissioner Of Central Excise, Customs and Service Tax(Appeals), COCHIN]

Techno Engineering Corporation
C-3102, International Stadium,
Kaloor
COCHIN
KERALA
682017

Appellant(s)

VERSUS

C.C.,C.E.& S.T-Cochin-cce
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN,
KERALA
682018

Respondent(s)

Appearance:

Shri M V JAYANARAYANAN NAIR, Advocate for the appellant.

Smt. C.V. Savitha, Superintendent(AR) for the respondent.

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER
HON'BLE MR. P DINESHA, JUDICIAL MEMBER

Final Order No: 20142 / 2022

Date of Hearing: 15/02/2022

Date of Decision:30/03/2022

Per : P. DINESHA

The undisputed facts are that the appellant is an electrical contractor, providing services of execution of works contract involving composite contract, for supply of materials as well as electrical wiring and other works. It is the case of the appellant that it was persuaded by the Service Tax Department in October, 2004 to obtain service tax registration under 'erection, commissioning and installation' which was duly complied with by the appellant and, thereafter, started paying the service tax from 30/10/2004 and continued to pay the same till June 2007. Service tax on works contract was introduced w.e.f. 01/06/2007 which made the appellant to realise that the services rendered by it fell under the newly introduced service, which prompted the appellant to approach the Revenue seeking refund of the tax paid by it and the said claim was made vide the application dt. 21/02/2011. The Deputy Commissioner after hearing the appellant, however, rejected the appellant's claim both on merits as well as limitation and also on the ground of unjust enrichment, against which, the appellant filed an appeal before the Commissioner of Central Excise, Customs and Service Tax(Appeals-I), Cochin, wherein it had taken all possible contentions. After hearing and after verifying the records, the First Appellate Authority vide Order-in-Appeal dt. 23/12/2015 impugned herein, has observed as under:-

> *12. I find that during the disputed period the appellant has obtained service tax registration under the category of erection, commissioning or installation and remitted service tax under that head. The appellant stand appears to be that their services are actually classifiable under works contract which was imposed with tax only from 01.06.2007 and payments made before that year was by mistake of law.*
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> *13. On verification of the records submitted by the appellant it is observed that the appellant had paid VAT during the periods 2004-05, 2005-06, 2006-07 and 2007-08. I also find from the invoices that service tax had not been collected from their clients. Since the work undertaken by the appellant is a composite contract and VAT had been paid, by relying the latest decision of the Hon'ble Supreme Court in the case of CCE Vs. Larsen & Toubro reported in [2015(39) STR (913) SC], I find that the appellant is eligible for refund claim. The appellant had produced proof to evidence that they have not collected any service tax form the recipient and the incidence of such tax had not been passed on to any other person by submitting a certificate from the Chartered Accountant and some invoices where I could find that they have not collected service tax from their customers. Hence there is no question of unjust enrichment.*

The above factual finding, on merits, is accepted by the Revenue without any challenge. The learned First Appellate Authority thereafter rejected the refund on the ground that the appellant’s claim was hit by time bar.

2. Heard both sides and perused the records and we have gone through the decisions relied upon during the course of arguments.

3. We find from the impugned order of the First Appellate Authority that the appellant was not liable to pay service tax on works contract up to 01/06/2007 and hence, the collection of the tax/duty amounts to the one without the authority of law, which takes away the case of the appellant from the mischief of limitation prescribed under Section 11B of the Central Excise Act, 1944. The jurisdictional Hon’ble High Court of Karnataka in the case of Way2Wealth Brokers Pvt. Ltd. Vs. CCT, Bengaluru [2021-VIL-770-KAR-ST] had an occasion to consider the claim of refund of the tax paid when there was no mandate to pay service tax. After considering various other decisions as also the relevant statute, the Hon’ble High Court has held as under:-

> “ … …
>
> *17. Indisputably, the exemption notification is not under consideration. If the payment made by a mistaken notion*

does not come within the realm of duty, Section 11B of the Act, 1944 would not be applicable. The arguments of the learned counsel for the Revenue that no material evidence was placed to show that in the account statement of invoice/bill, etc, it was shown that delayed payment charges was indicated separately, is wholly misconceived since the Commissioner of Service Tax (Appeals) has categorically held that the rejection of the claim by the adjudicating authority without considering the certification issued by the chartered accountant amounts to technical/procedural lapses which should not be a ground for rejection of refund. Therefore, placing reliance on the finding of the Tribunal in the case of ***CST, Delhi .v. Convergys India P*** *td. [2009 (16) S.T.R. 198 - 2009-VIL-08-CESTAT-DEL-ST], the appellate authority has remanded the matter to a certain period while rejecting the petition for the periods under consideration. The Tribunal also has dismissed the appeal solely on the ground that the claim is barred by limitation. Moreover, on analyzing the material evidence, refund has been granted for the period October 2010 to March 2011, relying on the Board Circular referred to above.*

18. As we have discussed in the preceding paragraphs, the period of limitation would not be applicable in the present case. Accordingly, the appeal deserves to be allowed setting aside the impugned order passed by the Tribunal and the authorities.

… …"

4. In view of the above binding ratio decidendi, we are of the view that the denial of refund only on the ground of limitation in the case in hand cannot be sustained and hence, the same is set aside. Consequently, the appeal is allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open court on 30/03/2022)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(P DINESHA)
JUDICIAL MEMBER

Raja...