CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

Appeal No. ST/60027/2018-SM

Date of Hearing/ Decision : 04.04.2018

[Arising out of Order-in-Appeal No. OIA-APPEALS-ST-PKL-183-2017 dated 03.10.2017 passed by the Commissioner (Appeals) Central Excise & ST., Panchkula]

M/s. Ess Aar Builders : **Appellant**

vs.

Commissioner of Central Excise & ST, Panchkula : **Respondent**

Appearance:

Shri Pawan Kumar Pahwa, Advocate for the Appellant(s)
Shri Tarun Kumar, A.R. for the Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order No. 62039 / 2018

Per : Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim of service tax paid by them, which was not liable to be paid, was denied on the ground of unjust-enrichment.

2. The facts of the case are that, appellant is providing construction services to M/s. HUDA for execution of construction of Police Station building and 12 Nos. of officers residential housing complexes. During the period

2015-16, the services provided by the appellant were exempted by Notification No. 25/2012-ST dated 20.06.2012. During the period of execution of work by the appellant, by Notification No. 06/2012, the said exemption granted by Notification No. 25/2012-ST was withdrawn. Later on, by Notification No. 09/2016, the services executed in terms of Notification No. 25/2012 were become exempted with retrospective effect. As the appellant paid service tax in terms of Notification No. 06/2015 and the same was exempted retrospectively, the appellant filed refund claim of service tax paid during intervening period. The refund claim was initially rejected on two grounds (a) HUDA is not a government authority and, (b) the appellant has failed to pass the bar of unjust-enrichment as the contract price is inclusive of all taxes. The ld. Commissioner (Appeals) held that HUDA is a government authority but rejected the refund claim on the ground of unjust-enrichment. Against the said order, appellant is before me.

3. Ld. Counsel for the appellant submits that appellant has not recovered any amount towards service tax paid by them during the impugned period and as their service provided to HUDA is exempted from payment of service tax, therefore, bar of unjust-enrichment is not applicable. He submits that the tax is paid by mistake. It is also his contention that appellant has obtained certificate from HUDA certifying that they have not paid any amount towards service tax to the appellant. In that circumstance, bar of unjust-enrichment is not applicable to the appellant.

4. On the other hand, ld. AR reiterated the findings in the impugned order.

5. Heard the parties, considered the submissions. I find that as per the terms and conditions of the Work Order, are that – *"the rates given are for the finished work are inclusive of Octroi charges, Sales tax, all duties and all other taxes* ***as applicable*** *and including labour cess 1%.".* As per the terms of the agreement, the amount of service tax is includable if it is payable. As the service tax is not payable therefore, the same has not formed part of the amount of service provided by the appellant. In that circumstances, it is clear from the terms of the contract that appellant is not liable to pay service tax and have not received any amount towards service tax from the service recipient. In that circumstance, I hold that appellant has passed the bar of unjust enrichment and the refund claim cannot be rejected merely on the ground of unjust-enrichment.

In these terms, the impugned order qua rejecting the refund claim on account of bar of unjust-enrichment is set-aside. In result, the appeal is allowed with consequential relief.

(Order dictated and pronounced in the court)

Ashok Jindal
Member (Judicial)

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