CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. ST/61026/2018-ST[SM]

[Arising out of Order-in-Appeal No. 395/ST/CGST-Appeal/Gurugram/SG/2017-18 dated 23.03.2017 passed by the Commissioner (Appeals), Gurugram]

Central Public Work Department : Appellant(s)

VS

C.C.E., Gurgaon-I : Respondent(s)

Appearance:
Present for the Appellant(s): Mr. Vikas Bansal, C.A.
Present for the Respondent(s): Mr. Tarun Kumar, A.R.

CORAM:

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

Date of hearing/decision: 10.10.2018

FINAL ORDER NO. 63287/2018

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the Ld. Commissioner (Appeals) rejected the refund claim on the ground that the appellant has not paid service tax with the Service Tax Department.

2. Brief facts of the case are that the appellant namely Central Public Work Department (in short 'CPWD') has filed a refund claim of service tax borned by them as they have awarded a work contract to one of the contractor namely Sh. Babulal who executed the work paid service tax thereon, which was deposited with the Revenue. Later on,

the service tax on the works executed by Sh. Babulal was exempted from the payment of service tax. Therefore, the appellant filed the refund claim, which was rejected on the ground that the appellant did not pay the service tax to the department directly, therefore they are not entitled to claim the refund for the department.

3. Heard the parties.

4. Considering the facts that the issue has already been settled by the Hon'ble Apex Court in the case of *Mafatlal Ltd. vs. UOI – 1997 (89) ELT 247 (S.C.),* wherein the Hon'ble Apex Court held that in terms of Section 11(B) of the Act, a person who has suffered the duty can get the refund. Admittedly, the appellant has borned the service tax paid by the contractor, therefore in terms of Section 11B of the Act, the appellant is entitle to claim the refund of service tax paid by the contractor. Further, I find that in appellant's own case, the Assistant Commissioner, Central Tax, Div. Wazirpur, GST West Delhi Commissionerate has already granted the refund to the appellant, therefore I hold that the appellant is entitled to claim the refund of service tax paid by them to the contractor who in turn paid to the department. Therefore, I do not find any merit in the impugned order, accordingly the same is set aside.

5. In result, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

RAS'