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/60273/2018-ST[SM]

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-258-18 dated 12.01.2018 passed by the Commissioner (Appeals), Ludhiana]

Shree Construction Company	**:**	**Appellant(s)**
VS		
C.C.E. & S.T., Ludhiana	**:**	**Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. G.S. Sandhe, Advocate
Present for the Respondent(s): Mr. V. Gupta, A.R.

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

Date of hearing/decision: 29.11.2018

FINAL ORDER NO. 63566/2018

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the refund claim has been rejected on the ground of unjust enrichment by authorities below.

2. The facts of the case are that the appellant is a service provider to Garrison Engineer (MES,) Faridkot, which is the part of the Ministry of Defence. As per the Section 102 of the Finance Act, 1994, the service tax on the services provided to the Ministry of Defence became exempt retrospectively. As the appellant was not required to pay the service tax on the services provided by them, therefore, they filed the refund claim of the service tax paid on the services provided

to the Ministry of Defence. As the Ministry of Defence paid the service tax to the appellant at the time of providing of the services, therefore, the refund claim was rejected on the ground of unjust enrichment as the appellant has passed on the burden of service tax on the service recipient. Against the said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that although they have recovered the service tax from the service recipient but the Ministry of Defence vide their letter 17.10.2016 directed the appellant to file the refund claim on their behalf and requested that the refund sanctioned be credited to their account i.e. in the account of service recipient. In these circumstances, it is prayed by the Ld. Counsel that the refund claim may be sanctioned. He further submits that as the appellant is not required to pay the service tax, therefore, the interest paid by the appellant is required to be refund to them.

4. On the other hand, the Ld. A.R. reiterated the impugned order.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submissions made by both the sides, as per Section 11B(2)(e), the person who has borne the tax, can file the refund claim. Admittedly, this refund claim has been filed by the appellant on persuasion of the service recipient vide letter dt. 17.10.2016. The said letter is extracted herein below for better appreciation of the facts of the case:

Tele: 011-23015930

Regd/Fax
Dte of Contract Management
Military Engineer Services
Engineer-in-Chief's Branch
Integrated HQ of MoD (Army)
Kashmir House, Rajaji Marg
New Delhi – 110 011

No. 66546/Manual/ 659/E8 17Oct 2016

All Command CEs,
ADG (OF & DRDO), Zonal CEs
CCEs,CsWE, GE(I)s ,GEs,AGE(I)s

REFUND OF SERVICE TAX CONSEQUENT TO UNION BUDGET 2016-17

1. Ref this Dte letter No. 66546/Manual/586/E8 dated 09 Sep 2016.

2. Subsequently feedbacks have been recd from various Comd CEs on the modalities to be adopted for refund/recovery of Service Tax paid for contracts concluded prior to 01 Mar 2015.The matter was also discussed by MES BAI during their meeting with the EinC on 06 Oct 2016.

3. The suggested modalities to be followed for refund of Service Tax from the contractors are as follows :-

(a) The contractor will process refund cases to the Service Tax Deptt. While processing refund, they will intimate clearly that this amount has already been reimbursed to them from MES(the concerned name of GE/GE(I)/ AGE(I) formation to be mentioned) and that the refund be directly credited to the acct of the GE/GE(I)/ AGE(I). The acct no. of the GE/GE(I)/ AGE(I) shall be intimated by them and requisite NOC/affidavit for transfer of refund to the GE's acct shall also be submitted in the specified form of Service Tax Deptt.

(b) A copy of above documents shall be given by the contractors to the concerned GE/GE(I)/ AGE(I) alongwith affidavits containing the declaration that if the service Tax Deptt. does not accept their request for refund directly to MES, but the refund is made to the contractor, then they will deposit the amount in Govt Treasury within seven days of receipt of refund, failing which they will be liable for disciplinary action.

(c) The responsibility of timely processing of the refund with Service Tax Deptt. shall be with the contractors. (The deadline is approaching fast).

(d) The MES BAI confirmed that they have already sensitized the builders of the requirement of processing refunds within the deadline.

Contd....2/-

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(e) The contractor who fails to process refund with Service Tax Deptt. within the time limit, shall be responsible for the consequences. Deptt. shall recover the Service Tax amount reimbursed to him from any amount payable to him and if not available then through MRO.

(f) The contractors shall ensure that copies of these documents submitted to Service Tax authorities alongwith necessary affidavits, shall be submitted to GE/GE(I)/ AGE(I) within 10 days of last date of submission of refund documents with Service Tax authorities, failing which it will be considered as willful delay on their part and they will be liable for disciplinary action. In addition the amount due from them shall be recovered from any amount payable to him and if not available then through MRO.

(g) Service Tax deptt generally completes the refund process within three months. Hence in case refund is not recd by GE/GE(I)/ AGE(I) in three months , the amount of refund shall be withheld from any payment due to the contractor which shall be subsequently released as and when the refund amount is recd by the GE/GE(I)/ AGE(I) from the Service Tax Deptt.

(h) For contracts which are cancelled/foreclosed and which are completed and final bill is under process during the period upto three months from the last date for processing refund, the refund amount shall be withheld from contractor's dues till finalization of case with Service Tax Deptt..

4. **The Command CEs shall centrally monitor the refund status in their Command and issue further directions to the fmns under their AOR after discussion with PCDA/CDA.**

5. This letter is being uploaded in mes website under General Info tab against E8 CONTRACTS and no hard copy is being distributed.

(Bhagirathi Pani)
Dir (Contracts)
For Engineer-in-Chief

Copy to : MES BAI : For priority action as already directed by EinC during the meeting on 06 Oct 2016 and direct your local branches & builders for necessary action.

NAMDEV Digitally signed by NAMDEV ATUL KUMAR DN: c=IN, o=HQ CE SOUTH

On going through the letter dt. 17.10.2016, I find that the service recipient has directed the appellant to file refund claim on their behalf under section 11B(2)(e) of the Central Excise Act, 1944. In these circumstances, the refund of the service tax paid by the appellant for which no service tax is payable, the appellant is entitled to file the refund claim on behalf of service recipient. As the appellant has paid the said amount of the service tax from the service recipient and as per the request of the service recipient, the same is required to be deposited in the account of service recipient. Therefore, the said refund is to be given to the service recipient only. In these circumstances, I hold that the service recipient is entitled for the refund of the service tax amount. As it has been held that the service recipient is entitled for refund claim, therefore the appellant is directed to provide the details of the service recipient so the refund claim be sanctioned. The adjudicating authority is directed to deposit the amount of refund in the account of the service recipient with the further 30 days.

7. Further I find that the appellant has claimed the refund of interest paid by them on late payment of the service tax. I have gone through the application for refund filed by the appellant. In the application of refund, the appellant has not claimed the refund of any interest; therefore, refund claim of interest cannot be entertained at this stage.

8. Further, I find that at the time of payment of service tax with a delay, the appellant was required to pay service tax. In these circumstances also, the appellant can not claim the refund of interest.

9. In result, the appeal is partly allowed as discussed hereinabove.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

RAS'