

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

DIVISION BENCH
COURT NO. I

APPEAL NO. ST/60657/2018-ST[DB]

[Arising out of Order-in-Appeal No. Appeal/ST/PKL/337/2017-18 dt. 09.03.2018 passed by the Commissioner of C.Ex. (Appeals), Panchkula]

M/s Vijay Builders : **Appellant(s)**

VS

CCE & ST, Rohtak : **Respondent(s)**

Appearance:

Present for the Appellant(s): Mr. Akhil Gupta, Advocate

Present for the Respondent(s): Mr. G.M. Sharma, A.R.

CORAM:

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

Hon'ble Mr. Bijay Kumar, Member (Technical)

Date of hearing/decision: 05.12.2018

FINAL ORDER NO. 63594/2018

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 rendered the services under the 'Work Contract Services' for the construction of flats/houses under EWS and BPL category of Housing Board of Haryana. The Hon'ble Punjab & Haryana High Court in their case vide order dt. 11.08.2006 has held that services provided by the appellant are

exempted from payment of service tax vide Notification No. 25/2012-ST dt. 20.06.2012. Consequent to the order of the Hon'ble High Court, the appellant filed the refund claim. Initially the refund claim was rejected on two grounds: (a) limitation and (b) unjust enrichment. On appeal before the Ld. Commissioner (Appeals), it was held that on limitation the refund is maintainable, but he rejected the refund claim on account of bar of unjust enrichment. Against the said order, the appellant is before us.

3. The Ld. Counsel for the appellant submits that they have produced the certificate from Housing Board of Haryana before the authorities below that they have not paid service tax to the appellant. In these circumstances, bar of unjust enrichment is not applicable to the facts of this case. Therefore, the impugned order, rejecting the refund claim on account of bar of unjust enrichment, is to be set aside.

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

5. Heard the parties and considered the submission.

6. On consideration of the certificate produced by the appellant before us, we find that it has been certified by the Housing Board of Haryana (service recipient) that they have not paid any service tax to the appellant for construction of EWS and BPL category of houses, but the same has not been considered by the Ld. Commissioner (Appeals). In these circumstances, the impugned order deserves no merit.

7. As the appellant is able to discharge the onus of bar of unjust enrichment by producing the certificate from the service recipient. In

that circumstance, we hold that bar of unjust enrichment is not applicable to the facts of this case. Therefore, we set aside the impugned order and allow the refund claim to the appellant by allowing the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

RAS'