CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I (E-HEARING)

Service Tax Appeal No. 60241 of 2021

(Arising out of Order-in-Appeal No.CHD-EXCUS-001-APP-03-2021-22 dated 20.4.2021 passed by the Commissioner of Customs & Central Excise, Chandigarh, C.R. Building, Plot No.19, Sector 17C, Chandigarh)

M/s Nasir Mohd Rawat Contractor **......Appellant**
(VPO Misserwala, Paonta Sahib, Distric Sirmour (HP)

VERSUS

Commissioner of CE & ST, Shimla **......Respondent**

<u>APPEARANCE:</u>

Present for the Appellant:Shri Naveen Bindal, Advocate

Present for the Respondent: Ms.Geetika, AR

<u>DATE OF HEARING/DECIISON: 19.08.2021</u>

FINAL ORDER No.60882/2021

The appellant is in appeal against the impugned order wherein the refund claim has been rejected by the authorities below.

2. The facts of the case are that the appellant is a service provider in Himachal Pradesh for various services under the category of 'Manpower Recruitment Supply Agency' and 'Work Contract Services. Investigation was conducted at the premises of the appellant in March, 2018. The statement was recorded. During the course of investigation, 13 lakhs was deposited but thereafter neither the said amount was appropriated nor any show cause notice was issued to the appellant. Thereafter the appellant filed refund claim of

Rs.7,41,939/-. The said refund claim was rejected by the adjudicating authority holding that the appellant was liable to pay service tax and they have rightly paid service tax. On appeal before the Commissioner (Appeals), the Commissioner (Appeals) has held that the amount has already appropriated under section 73 (3) of the Act, therefore, refund claim is not maintainable. Against the said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that although the appellant made deposit, the appellant had neither been provided details/calculation of the amount of service tax nor any show cause notice issued to the appellant to appropriate the amount already deposited by them. Therefore, rejection of refund claim is bad in law. He further submits that the Commissioner (Appeals) has examined the refund claim under section 73(3) of the Act where there is appropriation of the same, therefore the order of the Commissioner (Appeals) is without any basis.

4. On the other hand, ld.AR submits that it is admitted fact that no show cause notice was issued to the appellant either for appropriation or for rejection of the amount but she supported the impugned order.

5. Heard the party and perused the record.

6. It is admitted fact that no show cause notice was issued to the appellant for appropriation of the amount nor for rejection of the refund claim. Therefore, the order of rejection of refund claim is bad in law and against the provisions of Finance Act as well as Central Excise Act,1944, In that circumstance, I hold that the amount paid

during the course of investigation is only an amount of deposit, the same cannot be formed part of service tax. Therefore, rejection of refund claim by the respondent is without authority of law and the same is refundable to the appellant.

7. In view of the above, the appellant is entitled for refund claim. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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