IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.40798 of 2021

(Arising out of Order in Appeal No.30/2021 (CTA – II) dated 29.3.2021 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai)

M/s. Thirumal Façade Solutions **Appellant**
60/49, Easwaran Koil Street
Alandur (At Kathipara Junction)
Chennai – 600 016.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, 692, Anna Salai
Nandanam, Chennai – 600 035.

APPEARANCE:

Shri S. Prabhakaran, Advocate for the Appellant
Shri N. Satyanarayanan, AC (AR) for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40137/2024

Date of Hearing : 17.11.2023
Date of Decision: 06.02.2024

This appeal is filed by the appellant against Order in Appeal No.30/2021 (CTA – II) dated 29.3.2021 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai.

2. Brief facts of the case are that the appellant is registered with the Service Tax Department under the category of civil construction and works contract service. The appellant filed refund claim for Rs.4,32,566/- in respect of service tax paid on the amounts received as advances before 30.6.2017. They were paying service tax on the amounts received as advances and were subsequently adjusted with

the corresponding sales invoice raised. The service tax paid on advances for these contracts were shown as prepaid taxes in their books of accounts. On introduction of GST they took the prepaid service tax to GST TRAN – 1. On being pointed out by the Department about having wrongly carried forward the prepaid service tax to TRAN-1, they reversed the same. Consequent to reversal, they filed refund claim on 12.3.2019 for the refund of prepaid service tax. A Show Cause Notice dated 1.9.2020 was issued proposing to reject the claim and to produce all the evidences. After due process of law, the original authority rejected the claim on observing that the ST-3 return filed by the appellant during the specified period showed that the amount of tax paid by the appellant is only on the net taxable value and as such there is no excess payment. Further while the last return filed by them was on 13.8.2017 and last challan on which service tax was paid by them was on 6.7.2017 the refund claim was filed on 12.03.2019. He therefore rejected the refund claim as time-barred. The Commissioner (Appeals) vide the impugned order has rejected their appeal against the Order-in-Original. Aggrieved by the said order, the appellant is now before the Tribunal.

3. I have heard learned counsel Shri S. Prabhakaran for the appellant and Shri N. Satyanarayanan, learned AR for the Revenue.

3.1 The learned counsel for the appellant submitted that

➢ The appellant is having a proprietary firm viz. Thirumal Façade Solutions, who are into architectural aluminium and glass products providing engineering, consultancy and construction solutions.

- Many of the construction projects undertaken by the appellant takes few years to complete since the construction work is being carried out based on the financial inflow.
- The appellant therefore takes advance from the customers for commencing the work and a final bill is raised after completion of the project.
- As per Service Tax Rules, the appellant used to pay service tax on the advances in the same month in which it is received.
- The service tax paid on advances is captured in the ST-3 returns field for the relevant period.
- The appellant has not raised any invoice on the customer for the advance received and has not passed on the servie tax paid to the customers. Therefore, the question of unjust enrichment will not apply in this case.
- Some of our customers had financial constraints and hence though the appellant had taken advance for the projects in the year 2003 onwards, the projects were completed much later i.e. after the introduction of GST.
- So, for the projects completed after introduction of GST, our customers insisted that GST may be charged as service tax has become obsolete.
- Thus, the appellant decided to pay GST on the entire value for all the bills issued post GST era. Since the appellant has paid service tax on advances, the appellant filed TRAN-1 to carry over the same to GST.

- Later on, the Department informed the appellant that TRAN-1 was not envisaged for such situations and asked to reverse the service tax credit taken.
- Accordingly, the appellant have reversed the credit and have filed refund claim since the appellants have paid GST on the entire value (include advance received) in respect of those customers for whom service tax was paid on advances.
- The appellants are enclosing a statement containing the details of service tax paid on the advances received from customers vis-à-vis the details of GST paid on the same.
- The appellant are further submitting ledger extracts for such customers containing all relevant particulars.
- From the said documents, it can be confirmed that for a particular transaction, both service tax and GST has been paid and hence the service tax paid is liable for refund to us.
- They have filed the claims with required documentation which includes Forms ST3 for the relevant years, the TRAN 1 form, Form GSTR-3B, GST Payment Receipt, details of advance received in Service Tax and bills made in GST, abstract showing service tax paid on advance payments received, GST paid in Final Invoice etc, and answered multiple query references from the RO Alandur Range, all of which has not been mentioned in the OIO.

3.2 The learned AR has stated that the date of last challan on which service tax was paid was on 08/07/2017 and the last return filed on 13/08/2017, whereas the Appellant filed refund claim only on 12/03/2019 for the refund of prepaid service tax and hence the claim was time barred. He further reiterated the points given in the impugned order and prayed that the appeal may be rejected.

4. I find that that the appellant is involved in civil construction and works contract service and the completion of a project is spread over a period of time. They have filed a Trans1 declaration for the service tax paid on advances after the introduction of GST on 01/07/2017. On being pointed out by the Department about having wrongly carried forward the prepaid service tax to TRAN-1, they reversed the same in the GST return filed in the month of January 2019. Consequent to reversal, they filed refund claim on 12.3.2019 for the refund of prepaid service tax. The cause of action took place only after the introduction of GST due to which they had to pay duty once again under the GST regime for part taxes paid under Service tax for their projects. The matter is hence not time barred. The factual question is whether tax has been discharged twice for the same activity. The transition from one tax regime to another has its own challenges for tax payers and an overtly legalistic view is not called for in this difficult period. The Appellant has made available documents that would facilitate the verification of double taxation as claimed. Since the department has asked the Appellant to reverse the prepaid service tax claimed as per GST TRAN – 1, and if the facts on verification are found in order then the amount has to be refunded in cash to the Appellant. The ends of justice would be met if Revenue verifies the facts of the activity being taxed twice and decides on the refund application accordingly.

5. Having regard to the discussions above the refund matter is remanded back to the Original Authority for verification of facts and de novo adjudication on the only issue of taxation of the same activity

twice which has led to the claim of refund. The lower authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellant should also co-operate with the adjudicating authority in completing the process expeditiously and in any case within ninety days of receip of this order. The appeal is disposed of accordingly.

(Pronounced in open court on 06.02.2024)

(**M. AJIT KUMAR**)
Member (Technical)

Rex