CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 52039 of 2019-SM
(Arising out of order in appeal No. 211 (SM)ST/JPR/ 2019 dated 30.05.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur).

M/s Barwal Construction Company **Appellant**
Village Danteli, Goner Road
Tehsil – Sanganer
Jaipur - 302011.

VERSUS

Commissioner, Central Excise and Central Goods & Service Tax **Respondent**
NCR Building, C-Scheme
Statue Circle, Jaipur-302005.

APPEARANCE:

Ms. Priyanka Goel, Advocate for the appellant
Shri V. B. Jain, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 50673/2020

DATE OF HEARING/DECISION: 06.03.2020

ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein the refund claim has been rejected on the ground that the appellant has failed to pass the bar of unjust enrichment.

2. The facts of the case are that the appellant is engaged in the activity of construction of residential complex awarded by the Rajasthan Housing Board and appellant has paid service tax during the period 01.04.2016 to 30.09.2016 on the ground that any housing scheme of the State Government is exempted from the payment of service tax by

virtue of Notification No. 09/2016-ST dated 01.03.2016, therefore, appellant was not liable to pay service tax. The appellant filed refund claim of service tax paid for the intervening period. The refund claim was rejected on the ground that the appellant has failed to pass the bar of unjust enrichment as they have recovered service tax from the service recipient as the price of the contract is inclusive of service tax. Against the said order, the appellants have filed appeal before me.

3. Learned Counsel for the appellant submits that the agreement between the appellant and the Rajasthan Housing Board is providing for construction of residential complexes, which are exempted from the payment of service tax and the agreed price was cum duty price, therefore, no service tax was paid by the appellant. In these circumstances, it is prayed that bar of unjust enrichment is not applicable. Hence, refund claim be allowed.

4. On the other hand, learned Authorised Representative for the Department supported the impugned order.

5. Heard both sides.

6. Considering the submissions, I find that the similar issue has come up before the Tribunal in the case of **Jagran Prakashan Ltd. vs. Commissioner of Central Excise, Delhi-I -2017 (9) TMI 933 – CEGAT New Delhi** where the facts of the case are as under:-

> "2. The facts of the case are that the appellant were providing 'Event management' Service and registered with the Service tax department. The appellant also entered into agreement with Madhya Pradesh Government for providing 'Mobile Health Van' for Mobile Health Project to the Madhya Pradesh Government in various districts. As the said service relate to various medical advices, creating awareness of family planning and distribution of medicines, preventive cure etc. thorough Mobile Health van service etc., the agreement between the appellant and Madhya government there was fixed price and if any

> service tax is payable, that shall be borne by the appellant. On the premise that activity of providing mobile health van is covered under rent-a-cab service, the appellant paid Service Tax thereon but on receipt of letter from the Asstt. Central Excise and Service Tax Division, Bhopal that service provided by the appellant does not fall under taxable category, the appellant filed refund claim of Service tax paid by them. The said refund claim was rejected as the appellant has failed to pass the bar of unjust enrichment. Aggrieved from the order, appellant is before me."

and this Tribunal observed as under:-

> "6. On perusal of the record, I find that agreement between the appellant and the MP government is for providing mobile medical van and as per the agreement price was cum service tax price. As no service tax is payable by the appellant, therefore, question of recovery of service tax from MP Government does not arise. In the circumstances, bar of unjust enrichment is not applicable to the facts of this case. Therefore, the appellant is entitled for refund claim."

7. It is not disputed that as per the agreement between the appellant and the Rajasthan Government the construction of housing complex which was on agreed price, if any, service tax is payable, the same shall be payable by the appellant which means the amount of service tax is included in the value of service provided, if any, payable as no service tax is payable by the appellant. Therefore, question of recovery of service tax does not arise. In these circumstances, I hold that bar of unjust enrichment is not applicable to the facts of the case, therefore, I hold that the appellant is entitled for refund.

8. In view of this, I do not find any merit in the impugned order, the same is set aside.

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

(Dictated and pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Pant