CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50261 of 2021-SM

(Arising out of order-in-appeal No. DDN/EXCUS/000/APP/56/2020-21 dated 20.07.2020 passed by the Commissioner (Appeals), Central Goods & Service Tax, Dehradun).

M/s Ravindra Kumar Gupta & Sons **Appellant**
35/25, Civil Lines, Roorkee-247667
Uttarakhand.

VERSUS

Commissioner, Central Goods and Service Tax, **Respondent**
E-157 - 158, Nehru Colony, Dehradun.

APPEARANCE:

Shri Anubhav Jain, Advocate for the appellant
Shri Ravi Kapur, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 52110/2021

DATE OF HEARING/DECISION: 14.12.2021

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the refund claim has been rightly rejected on the ground of unjust enrichment and the *locus standi* of the appellant contractor who is rendering construction services to the Ministry of Defence – MES, Raiwala, Meerut Cantt.

3. Brief facts of the case are that the appellant was providing construction services to Ministry of Defence – MES, Raiwala, Meerut Cantt. under Contract CA No. CEB/MRT/18 of 2014-2015, PROVN OF OTEM ACCN FOR NO. 2 MED REGT at Meerut.

3.1 Earlier the appellant who is registered with the Service Tax Department was enjoying exemption for the work done for the Government Department being non-commercial nature, under Sl. No. 12 of Mega exemption Notification No. 25/2012. This exemption under notification lapsed on 01.03.2015, and thereafter the appellant started depositing service tax with the Department on the said service and also started charging in their bills – running bills issued to MES. Subsequently, vide Notification No.9/2016-ST, the exemption was reinstated by the Government with retrospective effect from 01.03.2015. Further, provided that for refund of the service tax already deposited in the intervening period, as the tax was no longer payable. Further, in the amendment a window of six month for refund was given from the date of the Finance Act, 2016, has received accent of the Hon'ble President, on 14.05.2016.

3.2 MES issued a general letter / Circular No. 66546/ Manual/659/E8 dated 17.10.2016 directing their contractors to apply for refund of the tax paid for the intervening period, particularly stipulating there in clause (e) and clause (g) as follows:-

> "(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.
>
> (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."

4. As directed the appellant contractor applied for refund vide refund application dated 03.11.2016 for an amount of Rs. 43,90,918/-. In the first round the refund was allowed in part by the Assistant Commissioner relying on the report of the Range Superintendent, who observed that as per the ST-3 returns for the relevant period i.e. 01.03.2015 to 31.03.2016, appellant have deposited service tax amounting to Rs. 34,02,766/- and hence the differential amount Rs. 9,88,152/- may be rejected. Accordingly, the Assistant Commissioner observed that the refund is not hit by the doctrine of unjust enrichment, taking into notice the correspondence with Garrison Engineers, MES, Chief Engineer, wherein reply dated 14.02.2017 was received being letter No. 8511/P/CEB/367/E1 – that there is no objection for refund of service tax to the contractor under intimation to this office against work order/ contract No. CEB/MRT/18/2014-15. The refund of service tax shall be directly credited to the contractor's account. Further, the contractor will refund the amount to AGE/ GE office Public Fund. Accordingly, the Assistant Commissioner was pleased to sanction an amount of Rs.34,02,766/- and rejected the balance amount of Rs.9,88,152/-.

5. Revenue preferred appeal before the Commissioner (Appeals) and by order-in-appeal dated 06.05.2019, the Commissioner (Appeals) was pleased to hold whole refund claim of

Rs.43,90,918/- was bad, on the ground that the respondent assessee did not have *locus standi* to apply for refund and it was only the Ministry of Defence, MES who were entitled to refund claim, as they have borne the incidence to tax, referring to Section 11B of the Act. Accordingly, the Commissioner directed for recovery of refund already sanctioned. Further, he was pleased to remand the refund matter to the Adjudicating Authority for denovo adjudication particularly with regard to the doctrine of unjust enrichment.

6. In the second round of litigation vide the order-in-original dated 07.11.2019, the Assistant Commissioner was pleased to reject the refund claim, both on the ground for unjust enrichment as well as *locus standi* and directed the appellant to deposit Rs.34,02,766/- with interest.

7. Being aggrieved, the appellant was before the Commissioner (Appeals) who vide order-in-appeal dated 20.07.2020 was pleased to reject the appeal upholding the order of the Assistant Commissioner. Being aggrieved, the appellant is before this Tribunal.

8. Learned Counsel Sh. Anubhav Jain appearing for the appellant has taken me through all the facts on record as narrated hereinabove. He further bring to my notice that the appellant have already repaid the amount of Rs.25,39,537/- on being pressurised by MES vide Cheque No. 638611, which has been encashed as is evident from the copy of the bank account on 21.12.2017. He also

brings to my notice that MES has already deducted Rs.9,38,719/- against running bills, and refers to copy of order dated 09.10.2021, issued by the Assistant Garrison Engineer (I), Raiwala, being letter No. 8316/70/E8, informing the appellant that an amount of Rs. 9,38,719/- has been deducted from the RAR/Final bill of CA work against GST. As regards the balance amount of Rs.8,76,960/- out of the total amount of Rs. 43,55,216/-, the MES has issued another letter dated 17.08.2020, wherein it is stated that MES is not concerned with the refund dispute of the appellant – contractor with the Service Tax Department and further stated that the balance amount of Rs. 8,76,960/- shall be recovered from any amount due to the appellant or from the FDR held with the Department against the subject work. Learned Counsel mentions that the said amount is also likely to be recovered and refers to further letter dated 26.08.2021 issued by the GE (P) No. 2, MES Meerut being letter No.8511/P/CEB/1056/E8, wherein the appellant has been directed to deposit the balance amount of Rs. 8,76,960/- in the Government Treasury, only thereafter their FD lying with the MES for Rs. 10 lakhs shall be released.

9. In this view of the matter, learned Counsel urges that the issue of *locus standi* and the issue of unjust enrichment both do not survive and the appellant has been properly authorised by the Principal - Ministry of Defence, MES to take refund from the Service Tax Department as their duly authorised representative, under the

Military command. Accordingly, learned Counsel prays for allowing the appeal with benefits.

10. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

11. Having considered the rival contentions and after going through the record, I find that the appellant have applied for refund under proper authorisation and knowledge of the principal (receiver of service). Thus, there is no issue of *locus standi*. In the facts and circumstances, I hold that the appellant is competent to apply for the refund.

11.1 So far the issue of unjust enrichment, the lower Court has raised doubts regarding the re-payment of the amount of tax, the refund of which has been sought. In view of the aforementioned facts taken notice by this Tribunal, I hold that the issue of unjust enrichment no longer survives, and the appellant have discharged their onus as required under the provisions of Section 12B of the Act. Accordingly, I hold that the appellant is entitled to refund of the amount of Rs.43,90,718/-. The Adjudicating Authority is directed to grant refund of the balance amount within a period of thirty days from the date of receipt or service of this order with interest as per Rules, starting from the end of three months from the date of refund application till the date of payment.

12. Accordingly, the impugned order is set aside and the appeal is allowed. The appellant is entitled to consequential benefits, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant