CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

COURT NO. II

Service Tax Appeal No.51684 of 2018 (SM)

[Arising out of Order-in-Appeal No.50(AK)ST/JPR/2017-18 dated 05.03.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jaipur.]

M/s. Rasam Engineering Co., **Appellant**
P.No.2, Everest Vihar, T.N. Mishri Marg,
Nirman Nagar, Jaipur
Rajasthan.,

VERSUS

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

APPEARANCE:

Shri Manish Jain, Advocate for the appellant.
Shri Pradeep Gupta, Departmental Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50280/2022

DATE OF HEARING:21.10.2021
DATE OF DECISION:25.03.2022

ANIL CHOUDHARY:

The issue relates to rejection of refund in part of Rs.11,32,049/-, the remaining part of Rs.14,31,206/- was found admissible on merits. But the Commissioner (Appeals) has directed that the appellant/assessee shall deposit the amount in the Government Treasury after receiving the same.

2. Brief facts of the case are that the above appellant, holder of Service Tax Registration No.AAOFR9732JSD001, is engaged in providing the

construction services including commercial/industrial buildings or civil structures, construction of residential complex service,, works contract service. The appellant had filed a refund claim of service tax amounting to Rs.34,23,741/-on 11.11.2016 (subsequently reduced to Rs.25,63,255/-) for the period 06.07.2015 to 25.04.2016 under section 102 of the Finance Act, 1994, in respect of service tax paid on the services provided to Military Engineering Services (MES) for the miscellaneous works at various stations of army, across the country. On Scrutiny of the documents submitted by the appellant, it was observed that :

(i) No document showing that service is related to construction, erection, commissioning and installation, completion, fitting out, repair, maintenance, renovation or alteration has been submitted.

(ii) Some contract(s) had been entered after 01.03.2015 for which service tax liability comes to Rs.11,32,049/-.

(iii) contract agreement have not been submitted.

(iv) No evidence for payment of stamp duty had been submitted.

(v) Running bills did not contain the details as prescribed under Rule 4 A of the Service Tax Rules, 1994.

(vi) As the rates quoted by them were inclusive of service tax, hence, unjust enrichment was applicable.

3. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), *inter alia,* on the following grounds:-

(1) That they had exclusively provided works contract service to MES i.e. construction, repair, renovation, etc. of civil structure as prescribed under exemption notification no.25/2012-ST.

(2) That acceptance of tender had been made after 1.3.2015, however, as per terms of contract, if tender received (bids opened) before 1.3.2015, then service tax would not be applicable. In our case, we had received the tender before 1.3.2015.

(3) That contract agreement could not be submitted as that they have to return all the classified documents to MES as per contract conditions.

(4) That Section 40 of Work of Defense Act, 1903, provides exemption from stamp duty and fees.

(5) That they had issued Running Bills in the set format of MES Department, which have been stamped, signed, dated and paid by the competent authority.

(6) That there is no unjust enrichment as MES had reimbursed service tax amount, now they are demanding service tax amount from us. They had given an affidavit for payment back to MES, if refunded by Service Tax Department.

4. Ld. Commissioner (Appeals) has held as follows:-

(i) The date of allotment is the relevant date of the contract, which is beyond 1.3.2015 and accordingly, held that refund of Rs.11,32,049/- is rightly rejected on this ground.

(ii) It was held that the appellant have provided services to the Government of India through Ministry of Defence and nature of service was related to construction, repair, renovation, etc. of civil structure, which is as per the provisions of Section 102 of the Finance Act, 2016,

(iii) It was held that there is no defect in the RAR Bills, in view of the provisions of Rule 4 A of the Service Tax Rules, 1994 as the same have been prepared as per the standard format prescribed by the MES Department.

(iv) As regards the unjust enrichment, it was held that admittedly the appellants have received the reimbursement of service tax from the MES Department. Further, as per the circular issued by the Director, Contracts of MES Headquarters, it has been decided either --

(a) The refund is directly credited to the account of GE/GE(1)/AGE(1) after the contractor gets refund processed; or

(b) If the refund is made to the contractor, they will deposit the amount in the Government Treasury within 7 days of receipt.

5. Thus, it was held that if the appellant /assessee on getting the refund, deposits with the Government Treasury, unjust enrichment will not be applicable. Accordingly, the Commissioner (Appeals) allowing the appeal in part, directed that the refund amount of Rs.14,31,206/-, which is found to

be admissible on merits, is required to be deposited in Government Treasury after receipt of the same from the Service Tax Department.

6. Being aggrieved, the appellant/assessee is before this Tribunal against rejection of refund for the amount of Rs.11,32,049/-, *inter alia,* on the ground that the Court Below has erred in rejecting the amount of refund. Admittedly, the tender process have been started and the appellant had submitted the bids prior to 1.3.2015. Further, stated that the financial bid was opened in almost all the cases prior to 1.3.2015. However, the work order was issued in the matter of all the five contracts, concerning this amount, after 1.3.2015. Thus, the appellant have fulfilled the requirements under Notification No.9/2016-ST dated 1.3.2016, which provides that the assessee shall be entitled to refund with respect to the contracts entered prior to 1.3.2015 as the benefit of refund was extended retrospectively.

7. Ld. Counsel further relies on the Division Bench decision in the case of **Shanti Construction Company Vs. CCE & ST, Rajkot - Final Order No.A/12244/2021 dated 18.06.2021 ,** wherein it has been held that the date of tender opening and the declaration of the successful bidder, is the date of contract, as no separate contract is entered into between the parties. The issue of work order is subsequent to the contract coming into the force.

8. Accordingly, ld. Counsel urges that out of the six work orders, in the matter of 4 tenders, the financial bids were opened prior to 1.3.2015 and the appellant was declared successful bidder. In view of the Division Bench decision in the case of **Shanti Construction Company (supra),** the appellant is entitled to exemption with respect to those 4 work orders /tenders, details of which are mentioned in the statement of facts in the

appeal memo. Accordingly, it is held that the appellant is entitled to proportionate refund with respect to the four contracts.

9. Ld. Departmental Representative relies on the impugned order.

10. Having considered the rival contentions, following the ruling of this Tribunal in the case of **Shanti Construction Company** (supra), I hold that the appellant is entitled to refund with respect to the service tax paid in respect of the four work orders, where the financial bids were opened prior to 1.3.2015. Accordingly, it is held that the appellant shall be entitled to proportionate refund with respect to the four contracts, where the financial bids were opened prior to 1.3.2015.

11. Accordingly, the impugned order is modified and it is held that the appellant shall be entitled to proportionate refund out of the amount of Rs.11,32,049/- relating to four works, where the financial bids was opened prior to 1.3.2015. The Adjudicating Authority is directed to work out the proportionate amount of refund and granted the same to the appellant within a period of 60 days from the date of receipt of this order along with interest under Section 11 BB of the Central Excise Act. Thus, the appeal is allowed in the aforementioned terms.

[Order pronounced on 25.03.2022]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.