CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Service Tax Cross Application No. 50316 of 2017
in
Service Tax Appeal No. 50297 of 2017

(Arising out of Order-in-Original No. BHO-EXCUS-002-APP-249/16-17 dated 22.11.2016 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur.)

Commissioner of Central Excise and Service Tax, Raipur ....**Appellant**
Central Excise Building, Dhamtari Road,
Tikrapara-Raipur, Chhatisgarh-492001

Versus

M/s South Eastern Coalfields Ltd ....**Respondent**
Chhote Atarmunda, Raigarh-C.G.

APPEARANCE:

Shri Harshvardhan, Authorized Representative for the Department
Mr. Rajeev Agarwal, Advocate for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R PRIYA, MEMBER (TECHNICAL)

Date of Hearing/ Decision: March 02, 2023

FINAL ORDER NO. 50322/2023

JUSTICE DILIP GUPTA

The order dated 22.11.2016 passed by the Commissioner (Appeals) to the extent it sets aside the order rejecting the refund application filed by M/s South Eastern Coalfields Ltd.[1] on account of unjust enrichment, has been assailed in this appeal.

2. The respondent has also filed Cross-Objections against that part of the order passed by the Commissioner (Appeals) that remands the matter to the Adjudicating Authority to verify the challans submitted by the respondent after providing an opportunity.

---
[1] the Respondent

2. It transpires from the records that in regard to the service tax demand under the category of 'goods transport agency" services under the reverse charge mechanism for the period 2005-06, the Tribunal in its decision dated 26.08.2016 held that as no consignment note was issued by the transporter, service tax could not have been charged from the respondent under the reverse charge mechanism. It is stated that the department had filed an appeal before the Supreme Court, but it was later dismissed as withdrawn.

3. In view of the aforesaid decision of the Tribunal, the respondent submitted an application for refund of Rs. 2,04,17,301/- for the period October, 2005 to February, 2011. In response to the show cause notice issued by the department, a reply was filed by the respondent with regard to the allegation relating unjust enrichment. The respondent also furnished a certificate issued by the Chartered Accountant to substantiate that the incidence of tax was borne by the respondent and it had not been passed on to any other person. Copies of the CENVAT credit registers were also submitted for the period 2011-12 and 2012-13. The refund application was rejected by an order dated 03.02.2016, against which an appeal was preferred before the Commissioner (Appeals). The Commissioner (Appeals), in the order dated 22.11.2016, held that the refund claim was not barred by time and unjust enrichment was not applicable. However, the matter was remanded to the Adjudicating Authority to verify the challans.

4. Shri Harshvardhan, learned authorised representative appearing for the department submitted that the finding recorded by the

Commissioner (Appeals) that the burden of tax has not been passed is not correct.

5. Shri Rajeev Agarwal, learned counsel appearing for the respondent, however, supported the order passed by the Commissioner (Appeals) and submitted that as the service tax was paid by respondent on a reverse charge mechanism, the question of passing the burden of the tax would not arise and in any case, the Commissioner (Appeals) committed no error in relying upon the Certificate issued by the Chartered Accountant. Learned counsel for the respondent also submitted that as all the challans had been submitted to the Commissioner (Appeals), there was no reason for the Commissioner (Appeals) to remand the matter to the Adjudicating Authority.

6. We have considered the submissions advanced by the learned authorised representative appearing for the department and the learned counsel appearing for the respondent.

7. The first issue that requires adjudication is as to whether the Commissioner (Appeals) was justified in recording a finding that the principal of unjust enrichment would not be applicable to the facts and circumstances of the present case.

8. It is not disputed that service tax was paid by the respondent on a reverse charge mechanism. In such a situation, it is difficult to comprehend as to how the burden of service tax could have been passed on to any other person.

9. What is also important to note in the present case is that the Chartered Accountant had given a certificate dated 24.07.2015 after examining the books of accounts of the respondent and the relevant records maintained for service tax purpose, including the challans, GST returns maintained during the period from October 01, 2005 to February, 2011. Based on the aforesaid examination, the learned Chartered Accountant certified that-

> "(i) The Company has deposited Service Tax (incl. cess) amounting to Rs. 2,03,61,523/- (Two Crores Three Lakhs Sixty One Thousand Five Hundred Twenty Three Only) and interest amounting to Rs. 55,778/- (Fifty Five Thousand Seven Hundred Seventy Eight Only) total Rs. 2,04,17,301 (Two Crores Four Lakhs Seventeen Thousand Three Hundred One Only) pertaining to the period upto February 2011 (service tax pertaining to February 2011 within March 2011) under the head Transport of Goods by Road (GTA) Service as a recipient of <u>transportation services</u> from the various transporters.
>
> (ii) The Company has not taken CENVAT Credit of the aforesaid service tax amount of Rs. 2,03,61,523/- since no corresponding output central excise or service tax was payable by the Company upto February 2011.
>
> (iii) The burden of the aforesaid amount of Rs. 2,03,61,523/- has been borne by the company and has not been passed on to any other person in any manner.
>
> The above statement is true and correct to the best of our knowledge and belief and the same is based on the basis of Books of Accounts produced before us and information and explanation given to us."

10. No good reason has been given by the Adjudicating Authority to reject the aforesaid certificate of the Chartered Accountant. The Commissioner (Appeals) has relied upon the Certificate, as no evidence had been led by the department to substantiate that it was not correct.

9. In this view of the matter, there is no error in the finding recorded by the Commissioner (Appeals) that the principal of unjust enrichment would not be applicable in the present case.

10. The second issue that would arise for consideration in this appeal is as to whether the Commissioner (Appeals) was justified in

remanding the matter to the Adjudicating Authority for verification of the challans submitted by the respondent.

11. It is not disputed that the respondent had submitted the challans but as they had not been examined by the Adjudicating Authority for the reason that the refund application itself had been rejected, it would be appropriate that the Adjudicating Authority, in the first instance, examines the challans. The Commissioner (Appeals) was, therefore, justified in remanding the matter to the Adjudicating Authority for this specific purpose. We make it clear that the Adjudicating Authority, on remand, will only verify the challans. As the matter is old and any delay may further burden the department with interest, the Adjudicating Authority shall make all endeavors to verify the challans at an early date, and preferably within a period of two months from the date a copy of the order passed today is produced before the Adjudicating Authority by either of the parties.

11. The appeal filed by the department is dismissed with the aforesaid observations. The Cross Objections filed by the respondent are dismissed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)

Sb