CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 51922 OF 2017

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-204-17-18 dated 19.09.2017 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

M/s Tirupati Tradewing Pvt. Ltd. **....Appellant**
Sector-5, B-5, Devendra Nagar
Raipur (RG)

VERSUS

Commissioner of Customs & Central Excise **...Respondent**
Central Excise Building
Dahamtari Road, Tikrapara
Raipur – 492 001 (CG)

APPEARANCE:

Smt. Nikita Jaju, Advocate for the Appellant
Shri Manoj Kumar, Authorized Representative of the Department

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

FINAL ORDER NO. 55789/2024

DATE OF HEARING/ DECISION: MAY 15, 2024

JUSTICE DILIP GUPTA :

M/s Tirupati Tradewing Pvt. Ltd.[1] has sought the quashing of the order dated September 19, 2017 passed by the Commissioner (Appeals). This order has set aside the order dated October 07, 2016 passed by the Assistant Commissioner sanctioning the refund of service tax of Rs. 4,47,203/- claimed by the appellant.

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1 the appellant

2 The appellant had claimed refund of service tax paid on 'works contract services' provided by the appellant to either a government local authority or a government authority which services were exempted from payment of service tax by virtue of Notification No. 25/2012-ST dated June 20, 2012 and the services provided during the period from 01.04.2015 to 29.02.2016 were exempted from service tax. In terms of section 102(1) of the Finance Act, the assessee was also entitled to refund of service tax paid on such services.

3. The Superintendent, to whom the refund claim was sent for verification, submitted a verification report dated September 15, 2016 which is reproduced below:

> "(a) The Service provided by the party has been exempted under Notification No. 25/2012-ST dated 20.06.2012 as amended by Notification No. 09/2016-ST dated 01.03.2016. The services provided during the period from 01.04.2015 to 29.02.2016 under such contract are exempted from service tax. In terms of proposed Section 102(1) of the Finance Act, 1994, the services provided during the period from 1.04.2015 to 29.02.2016 under such contracts shall also be exempted from service tax. In terms of Section 102(1) if any Assessee has already paid service tax in respect of above services provided for the period 01.04.2015 to 29.02.2016, then it shall be entitled to refund of service tax paid on the said services in accordance with the law subject to the satisfaction of principal of unjust enrichment.
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> (b) Credit of Input Service of Rs.17040/- on services cannot be allowed as per Rule 2(e) of Cenvat Credit Rules, 2004.
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> (c) **The Party has filed the claim within limit i.e. 6 months from the date of enactment of the Finance Bill, 2016 i.e. from 14.05.2016.**
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> (d) **The Party has deposited the amount of Rs.254662/- vide challan No. 00673 dated**

08.07.2015 and amount of Rs.192541/- vide challan no. 00905 dated 09.10.2015. The aforesaid Challan has been verified from the NSDL site and found correct and are available on the site.

(e) **The said amount has been shown in the ST-3 Return from the period 04/2015 to 09/2015.**

(f) As per available records no Arrears is pending on the party.

(g) **The Assessee has been asked to submit the Contract copy vide letter No. ST/Refund/Tirupati/TPL/ R- III/RPR/177/2016-17/1792-93 dated 09.08.2016. The party has submitted the above said documents on 15.09.2016. On verification of the relevant documents it has been found that the Assessee has not received Service Tax.**"

(emphasis supplied)

4. However, a show cause notice dated September 30, 2016 was issued to the appellant proposing to deny the refund. The appellant filed a detailed reply to the show cause notice and explained why the refund was admissible to the appellant.

5. The adjudicating authority, after examining the provisions of section 102 of the Finance Act, 1994[2] which provided that notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from April 01, 2015 and ending with February 29, 2016 in respect of the taxable services provided to the government local authority or a government authority by way of construction, erection, commissioning of a residential complex under the contract entered into before March 01, 2015 and on which proper stamp duty had been paid before that date observed that services had been

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2 the Finance Act

provided by the appellant under a contract/agreement executed before March 01, 2015 as was evident from the copy of the agreements enclosed with the refund application which had also been verified by the Range Superintendent, allowed the refund to the extent of Rs. 4,47,203/-.

6. An appeal was filed by the Department against the aforesaid order of the adjudicating authority and the Commissioner (Appeals) by order dated September 19, 2017 allowed the appeal and set aside the order passed by the Assistant Commissioner. The reasons assigned by the Commissioner (Appeals) in the order are as follows:

> "(VI) Keeping the above legal provisions in view, I find that in the instant case the respondent had provided the services relating to construction of Government Building under the Agreement No. 84/DL of 2014-15 dated 10.3.2015, Agreement No. 85/DL of 2014-15 dated 10.3.2015, Agreement No. 86/DL of 2014-15 dated 10.3.2015, Agreement No. 87/DL of 2014-15 dated 10.3.2015 and Agreement No. 88/DL of 2014-15 dated 10.3.2015. A plain reading of the provisions contained in **Section 102 of the Finance Act, 1994 makes it crystal clear that the exemption under consideration is subject to the condition that such work is done under a contract entered into prior to the 1st day of March 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date. In the subject case however, the Agreement No.** 84/DL of 2014-15, 85/DL of 2014-15, 86/DL of 2014-15. 87/DL of 2014-15 and 88/DL of 2014-15 **were entered into after the 1st day of March 2015 thus contravening the basic condition required for availment of exemption.**"
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> **(emphasis supplied)**

7. Smt. Nikita Jaju, learned counsel for the appellant submitted that the Commissioner (Appeals) committed an error in holding that the

agreements were executed after March 01, 2015. Learned counsel pointed out that the Commissioner (Appeals) instead of taking note of the date on which the contracts were entered into considered the dates on which the work orders were subsequently issued in favour of the appellant on the basis of the contracts. Learned counsel pointed out that the Assistant Commissioner had examined all the contracts, as is clear from the order, and had recorded a categorical finding that the contracts were entered into before March 01, 2015.

8. Shri Manoj Kumar, learned authorized representative appearing for the Department, however, supported the impugned order and contended that when the contracts were executed after March 01, 2015, the appellant would not be entitled to refund in terms of section 102 of the Finance Act.

9. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

10. The only issue that is required to be examined in this appeal is whether the contracts, on the basis of which the appellant rendered services, were executed prior to March 01, 2015 or not. The appellant has provided details of the contracts and the date of the work orders and the same are as follows:

Sr. No.	**Job assigned under Agreement/Contract/ Work Order**	**Letter of Intent No. & Date**	**Contract No. & Date**	**Work Order No. & Date**
1.	Construction of Government Ramkrishna Paramhansh Middle School (Type A+2) at Gogaon.	505/SAC/14-15 dated 23.01.2015	218/SAC/14-15 dated 09.01.2015	10.03.2015
2.	Construction of 50 seated Hostel Building including water supply & sanitary fitting at Simga.	5911 dated 26.11.2014	6205/T0117/SAC/2014-15 dated 06.12.2014	10.03.2015

3.	Construction of Higher Secondary School at Village- Beldar Seoni, Block Tilda.	19807 dated 26.11.2014	1315/40-522(A)/SA. 13 dated 20.02.2015	88/DL of 2014-15 dated 10.03.2015
4.	Construction of Higher Secondary School at Village- Khouna Block, Tilda.	19808 dated 26.11.2014.	1311/40-525(A)/SA.13 dated 20.02.2015	85/DL of 2014-15 dated 10.03.2015
5.	Construction of Higher Secondary School at Village Bengoli.	19811 dated 02.04.2012.	1307/40-526/SA/1307 dated 20.02.2015	84/DL of 2014-15 dated 10.03.2015

11. It would be seen from the aforesaid Table that all the contracts were executed before March 01, 2015. The Assistant Commissioner recorded a categorical finding of fact, after examination of all the contracts, that they had been executed before March 01, 2015. It also transpires from the aforesaid chart that the agreements were executed prior to March 01, 2015 and the work orders were subsequently issued to the appellant on March 10, 2015. It also needs to be noted that the appellant had filed the refund claim within six months from the date of enactment of the Finance Bill i.e. May 14, 2016 along with copies of the contracts.

12. What is relevant for the purpose of section 102 of the Finance Act is the date on which the contracts were executed and not the date of the work orders. The Commissioner (Appeals) has considered the date of the work orders as the relevant date and, therefore, recorded a finding in the impugned order that the appellant would not be entitled to refund since the contracts under consideration were executed after March 01, 2015. The factual position that emerges is that the contracts were actually executed prior to March 01, 2015 which is also a categorical finding

recorded by the Assistant Commissioner after examination of the agreements.

13. In this view of the matter, the order dated September 19, 2017 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Dictated & pronounced in open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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