CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 52439 of 2018

[Arising out of Order-in-Original/Appeal No. 2018/Central Tax/Appl-II/Delhi/2018 dated 30.05.2018 passed by the Commissioner of CGST (Appeals-Ii), Delhi]

M/s. Ahluwalia Construction Group **...Appellant**
M-1 Saket,
New Delhi

VERSUS

Commissioner of CGST – Delhi South **...Respondent**
UG Floor, EIL Annexe Building,
Bhikaji Cama Place,
New Delhi - 110066

APPEARANCE:
Ms. Sukriti Das and Shri Dhruv Anand, Advocates for the Appellant
Shri Kuldeep Rawat, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 21.07.2025
DATE OF DECISION: **03.11.2025**

FINAL ORDER NO. 51656/2025

DR. RACHNA GUPTA

Present appeal is filed to assail Order-in-Appeal No. 218/2018 dated 30.05.2018 vide which an appeal filed by the Revenue against sanctioning of the refund claim filed by the appellant, was allowed. The facts in brief relevant for the purpose are as follows:

1.1 The appellant is registered under service tax for providing Works Contract Services. During the Financial Year 2012-13 the appellant constructed the hostel building for Jamia Hamdard University, New Delhi. The service tax under the category of commercial or industrial construction services was deposited by the appellant. However, it was later informed by the university that the construction activity undertaken for educational institute is exempted from levy of service tax via a Notification No. 12/2012. Realizing the mistake, the appellant filed a refund claim for Rs.66,44,351/- on 29.03.2013. The said refund claim stands finally rejected for an amount of Rs.10,90,413/- on the grounds of unjust enrichment. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Ms. Sukriti Das and Shri Dhruv Anand, learned Advocates for the appellant and Shri Kuldeep Rawat, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the present is the second round of litigation. The refund claim of 29.03.2013 was first adjudicated vide Order-in-Original No. 140/2014 dated 30.05.2014 vide which the entire amount of claim was rejected. The appeal against the said order was allowed by setting aside the aforesaid Order-in-Original dated 30.05.2014 vide Order-in-Appeal No. 85/2015 dated 15.12.2015. The department had not filed any appeal against the said order. Hence, the Order-in-Appeal dated 15.12.2015 attained finality. But the department instead of disbursing the sanctioned amount of refund passed another Order-in-Original No. 07/2017-18 dated 26.09.2017 ordering disbursement of the amount of Rs.55,53,938/- out of the total claimed amount of Rs.66,44,351/-. However rejected the claim for an amount of Rs.9,13,379/- as time barred and Rs.1,77,034/- was rejected on the ground of unjust enrichment resulting into rejection of the claim for an total amount of

Rs.10,90,413/-. The said Order-in-Original dated 26.09.2017 got reviewed by the Principal Commissioner of CGST vide dated 22.12.2017 observing that the entire amount of Rs.10,90,413/- was liable to be transferred to consumer welfare fund being hit by the unjust enrichment and that it was wrongly presumed by the said Assistant Commissioner that the time barred amount is the same amount on which the doctrine of unjust enrichment was applicable. The appellant was held entitled for disbursement of the claim amount to the extent of Rs.46,40,559/- instead of Rs.55,53,938/- as was already disbursed. Accordingly, the order dated 22.12.2017 directed for recovery of the amount of Rs.9,13,413/- from the appellant.

3.1 Pursuant to the said order an appeal was filed by the department against the Order-in-Original dated 26.09.2017 which was decided vide the impugned Order-in-Appeal confirming that the amount of Rs.9,13,413/- is recoverable from the appellant in addition to time barred amount of the refund claim.

3.2 It is finally submitted that once the order of Commissioner (Appeals) dated 15.12.2015 had attained finality, the department has committed an error while passing subsequent Order-in-Original dated 26.09.2017. The appellant had not come in appeal vis-à-vis findings of first Order-in-Original dated 30.05.2014 with respect to the amount of Rs.9,13,379/-. In view of the said order to already have attained finality the impugned Order-in-Appeal subsequent thereto is an illegal order and hence is liable to be set aside. Learned counsel has relied upon the following decisions:

(i) Commissioner of CGST, New Delhi Vs. Santee Exim Pvt. Ltd. reported as 2019 (370) ELT 1664 (Tri.-Del.)

(ii) Commissioner of Central Excise (Appeals), Bangalore Vs. KVR Construction reported as 2012 (26) STR 195 (Kar.) affirmed by the Hon'ble Supreme Court in Commissioner Vs. KVR Construction reported as 2018 (14) GSTL J70 (SC).

With these submissions, the order under challenge/impugned order in appeal is prayed to be set aside and the appeal is prayed to be allowed.

4. Learned Departmental Representative while rebutting these submissions has mentioned that in the impugned order there is no finding vis-à-vis the plea of unjust enrichment and the time bar issue based whereupon the first Order-in-Original dated 30.05.2014 and even the subsequent Order-in-Original dated 26.09.2017 was passed. However, the refund claim of Rs.55,53,398/- along with the interest stands already sanctioned and disbursed to the appellant. Since there is no infirmity in the impugned Order-in-Appeal vis-à-vis amount of Rs.10,90,413/- to be rejected being hit by unjust enrichment instead of it merely being Rs.1,77,034/-, the amount of Rs.9,13,379/- is rightly held recoverable from the appellant. Appeal is accordingly prayed to be dismissed.

5. Having heard both the sides and perusing the records, it is observed and held as follows:

5.1 The appellant had constructed a hostel for Jamia Hamdard University an educational institute. The activity of construction of complex/Works Contract services for any educational institute are exempted under Mega Exemption Notification No. 12/2012 dated 20.06.2012. However the appellant being ignorant of said exemption was collecting service tax from Jamia Hamdard University during the Financial year 2013-14 and had also deposited the same to the service tax department. After realizing the said mistake that the impugned refund claim was filed.

5.2 The order of Commissioner (Appeals) at first round of litigation had accepted that the activity of appellant was not taxable. Resultantly, the amount of tax deposited by the appellant comes out of the scope of being called as tax. The Order-in-Appeal dated 15.12.2015 has held that the hostel constructed for Jamia Hamdard University by the appellant is solely for educational purpose and not for the purpose of the profit. Issuance of invoice indicating the service tax is denied to be the basis for charging service tax. Commissioner (Appeals) held that the appellant was not liable to pay tax, the activity being exempted from service tax. Apparently and admittedly no appeal was filed by the department against this order. The order stands to have attained finality. Accordingly, there was no need for any subsequent order as that of 26.09.2017.

5.3 Though learned Departmental Representative has impressed upon that Commissioner (Appeals) in order dated 15.12.2015 has been silent about the issues of unjust enrichment and the time bar issue. But the remedy available to the department was of filing an appeal against the said order of Commissioner (Appeals) (Order-in-

Appeal dated 15.12.2015). Once that appeal was not filed and the said order became final, the Assistant Commissioner had committed the blatant error while passing the order dated 26.09.2017 reviewing and modifying the order passed by Commissioner (Appeals) (Order-in-Appeal dated 15.12.2015). For want of any provision empowering Assistant Commissioner to pass the order dated 26.09.2017 the order becomes a nullity. Any proceeding arising out of the said order can have no significance.

5.4 Further it is observed that the appellant has already accepted the order rejecting refund claim of Rs.9,13,379/- on time bar issue and ordering transfer of amount of Rs.1,77,034/- to consumer welfare on the ground of unjust enrichment. Resultantly, any further recovery for an amount of Rs.9,13,379/- from the sanctioned amount of Rs.55,53,938/- has no legs to stand upon. This Tribunal in the case of **Santex Exim Pvt. Ltd. (supra)** has already held that once the order for granting refund of duty has attained finality any subsequent show cause notice proposing contrary to the said decision is not sustainable. I draw my support from the decision of Hon'ble Supreme Court in the case of **Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. reported as 2000 (120) ELT 285 (SC)**. I do not find any reason to differ from the findings of the said decision.

6. In view of the entire above discussion, the impugned order is held to be the outcome of the proceedings not permissible under the law. Accordingly, is hereby set aside. Order-in-Appeal dated 15.12.2015 is held to be the final order. Pursuant whereto, the

refund amount stands already sanctioned. With these observations, the order under challenge is hereby set aside. Consequent thereto, the appeal is allowed.

[Order pronounced in the open court on **03.11.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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