

CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Service Tax Appeal No.ST/53539/2015-ST (SM)
Service Tax Cross No.ST/Cross/50190/2016-CU [SM]

[Arising out of Order-in-Appeal No.233-235(SLM)ST/JPR/2015 dated 30.06.2015 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

For approval and signature:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

C.C.E. & ST, Jodpur

...Appellant

Vs.

G.S. Bansal & Company

... Respondent

Present for the Appellant : Shri.M.R. Sharma, D.R.

Present for the Respondent: Shri.Arun Goyal, Advocate

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 28.07.2016

FINAL ORDER NO. __56390/2016__

PER: S.K. MOHANTY

Brief facts of the case are that during the disputed period, the respondent had mistakenly paid service tax on the taxable service, which was exempted from payment of service

tax in terms of Notification No.25/2012-ST dated 20.06.2012. Realizing such mistake, the appellant had filed the refund applications before the jurisdictional service tax authorities, which were disallowed mainly on the ground that in terms of Notification No.30/2012-ST dated 09.07.2012, the respondent in the capacity of service provider, had deposited 50% of the tax liability and the balance 50% was paid by the service recipient M/s. RSWC. Thus, the respondent is not entitled to claim refund of the portion of service tax paid by the service recipient. The other ground assigned for rejection of the refund application is the bar of unjust enrichment. In appeal against the adjudication order dated 10.10.2014, the Id. Commissioner (Appeals) vide the impugned order dated 30.06.2015 has allowed the appeals in favour of the respondent by setting aside the adjudication orders. Feeling aggrieved with the impugned order, the Revenue has filed the present appeal before the Tribunal.

2. Heard the Id. Counsel for both sides and perused the records.

3. The Revenue's contention in this appeal is that since the service receiver M/s. RSWC Ltd. had discharged the service tax liability of 50% under reverse charge mechanism, only the said receiver is entitled to claim the refund and not the respondent herein.

4. I find that the issue raised by the Revenue in this appeal has been adequately dealt with by the Id. Commissioner (Appeals) vide the impugned order, wherein by relying on the

decision of Tribunal in the case of Macnally Bharat Engineering Co. Ltd. Vs. CCE, Guntur reported in 2006 (194) ELT 318 (Tri.-Bang.), he has held that the person who was borne the duty burden can claim the refund. On examination of the records, the Id. Commissioner (Appeals) in the impugned order has also arrived at the conclusion that there is no third-party involved in this case and the 100% service tax liability towards the taxable service has been borne by the respondent, and therefore, the provisions of unjust enrichment will not be applicable.

5. In view of the fact that the Commissioner (Appeals) has recorded specific findings with regard to the issues involved in this appeal, I am of the view that the same needs no appellate intervention, since is in conformity with the statutory provisions. Therefore, I do not find any infirmity in the impugned order and accordingly, dismiss the appeal filed by the Revenue. The cross appeal stands disposed of.

[Dictated and Pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita