IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING/DECISION : 13/04/2017.

Service Tax Appeal No. 1067 of 2011

[Arising out of the Order-in-Appeal No. 09(DKV)/ST/JPR-I/2011 dated 20/01/2011 passed by The Commissioner, Central Excise Commissionerate, Jaipur.]

M/s Hari Narayan Khandelwal — Appellant

Versus

CCE, Jaipur – I — Respondent

Appearance

Ms. Rinki Arora, Advocate – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53625/2017 Dated : 13/04/2017

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 20/01/2011 passed by the Commissioner, Central Excise, Jaipur. Rejection of refund claim filed by the appellant under the taxable category of construction of complex service is the subject matter of present dispute. The refund application was rejected on the ground that pursuant to the work order issued by Rajasthan Housing Board, Jaipur, the appellant had constructed more than 12 units and accordingly, the service tax liability was correctly discharged under such category of service as defined in Section 65 (91a) of the Finance Act, 1994.

2. The learned Advocate appearing for the appellant submits that out of the refund claim of Rs. 1,81,584/-, the appellant is not contesting the refund claim of Rs. 59,368/-. With regard to the balance amount, the submissions of the learned Advocate are that the construction activities undertaken by the appellant pursuant to the work order No. 148/78, relate to construction of 12 numbers of MIG flats, and thus, such construction is not falling under the scope and purview of construction of complex service. She also submits that the work order No. 136/78 referred to in the impugned order is not proper in as much as no such work order was issued by Rajasthan Housing Board, Jaipur in favour of the appellant. Thus, the learned Advocate submits that since the appellant had constructed only 12 number of houses, it is not liable to pay service tax under construction of complex service. Accordingly, the amount already paid inadvertently should be eligible for refund.

3. On the other hand, the learned AR appearing for the respondent reiterates the findings recorded in the impugned order.

4. Heard both the sides and perused the case records.

5. The statement submitted by the appellant during the course of hearing, shows that it had constructed 12 numbers of

MIG flats for Rajasthan Housing Board, Jaipur. Since, the number of residential flats were not in excess of 12 in numbers, the appellant was not liable to pay service tax under construction of complex service. However, on perusal of the case records, we find that the statement submitted by the appellant now, were not produced before the lower Authorities. Therefore, we are of the view that the matter should go back to the Original Authority for verification of the documents in order to arrive at the conclusion with regard to the number of residential units constructed by it. Further, while undertaking the denovo adjudication, the Original Authority should also verify the unjust enrichment aspect.

6. Therefore, after setting aside the impugned order, we remand the matter to the Original Authority for deciding the issues in line with our above observations. Thus, the appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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