IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 1576 of 2011

[Arising out of Order-in-Appeal No 309(DKV)/ST/JPR-I/2011 dated 20.7.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

M/s. Puri Brothers **Appellants**

Vs.

Commissioner of Central Excise Jaipur I **Respondent**

Appearance:
Shri Vijay Kumar, Advocate for the Appellants
Shri G R Singh, DR for the Respondent

<u>CORAM</u>:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 28.08.2017

FINAL ORDER NO. 56313/2017

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein the refund claim has been rejected as time barred. The facts of the case are that the appellant was engaged in the activity of Commercial and industrial construction service and registered with the department, paying service tax. During the period 26.12.05 to 23.10.06, the appellant paid the service tax. Later on, Show cause notice was issued to the appellant, On 19.2.2008, on the premise that as the appellant has claimed 67% abatement as per notification No. 15/2004 and 1/2006, which is not available to the appellant, proceedings were initiated against the appellant. The matter was adjudicated and vide order dated 1.7.2009, it was held that the appellant is required to pay an amount of Service Tax of Rs. 4,53,642/- whereas the appellant has paid Rs.6,98,230/-. But it was also held that the appellant is not entitled for refund of excess amount of Rs.2,44,588/-. The said rejection of refund claim was challenged before the learned Commissioner (Appeals). Vide order dated 1.4.2010, the Commissioner (Appeals) directed the appellant to file the refund claim before appropriate authority who will decide the merits and limitation. Pursuant to the said order, on 24.5.2010 the appellant filed the refund claim before adjudicating authority and on 31.8.2010, refund claim was sanctioned after examining the issue of limitation as well as bar of unjust enrichment. The said order was challenged before the learned Commissioner (Appeals) who set aside the order of sanctioning of refund claim of the appellant. Aggrieved from the said order, appellant is before me.

2. Learned Counsel for the appellant submits that in this case refund claim has been rejected by the learned Commissioner (Appeals) in the impugned order on the ground of limitation, wherein it was held that appellant is required to file the refund claim within one year from the date of payment of service tax. Whereas the appellant has paid the Service tax on 23.10.06 where as the refund claim has been filed on

24.5.2010. Therefore, refund claim is not maintainable. In the impugned order, it is observed that as appellant has not produced any document and failed to pass bar of unjust enrichment, refund claim is to be rejected. It is the submission of the learned Counsel that as per the order of adjudication dated 1.7.2009, the appellant was held entitled to refund claim, therefore they have filed the claim on 24.5.10. Therefore, refund claim is within time. Further, he submitted that the adjudicating authority has examined the issue and found that as the main contractor has not paid the Service Tax amount which was paid by the appellant, Therefore, the appellant have passed the bar of unjust enrichment. Same has not been considered by Commissioner (Appeal). Therefore, the impugned order is to be set aside.

3. On the other hand, learned DR Shri G R Singh, appearing for the department reiterated the findings of the impugned order.

4. Heard both the sides and considered the submissions.

5. On careful consideration of the submissions of both sides, I find that the there are two major issues which emerge in the impugned order :

1. Whether the appeal is barred by limitation or not.
2. Whether the appellant has been able to pass bar of unjust enrichment.

Issue 1

I find that as per adjudication order dated 1.7.2009, the appellant was held entitled for refund claim and within one year of the said order i.e. on 24.5.2010, the appellant has filed the refund claim, Therefore, I hold that appellant has filed the refund claim within one year from the date of adjudication . Therefore, refund claim filed by the appellant is within time.

Issue No. 2

The adjudicating authority in the adjudication order has held that as the main contractor has not paid the Service Tax amount for which the appellant has filed the refund claim, therefore, bar of unjust enrichment has been passed. In the impugned order the learned Commissioner (Appeals) has not controverted the observation made by the adjudicating authority in the adjudication order. Therefore, it is held that appellant has passed the bar of unjust enrichment, I hold that the appellant is entitled to refund claim which is already been sanctioned by the adjudicating authority. Therefore. by setting aside the impugned order, I confirm the order of adjudicating authority.

6. With these observations. appeal is allowed.

(pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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