CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing: 23.08.2017

Appeal No. ST/1248, 1249/2011-ST[SM]
[Arising out of the Order-in-Appeal No. IND-I/147, 160/2011 dated 30.03.2011, passed by the Commissioner of Central Excise, Indore]

M/s. Rajratan Global Wires Ltd. … Appellant

Vs.

C.C.E. Indore ... Respondent

Appearance:
Present Shri Manish Saharan, Advocate for the appellant
Present Shri K. Poddar, DR for the respondent

Coram: Hon'ble Mr. Ashok Jindal, Judicial Member

FINAL ORDER No. 56354-56355/2017

Per Ashok Jindal:

The appellant is in appeal against the impugned orders wherein the refund claim has been rejected on the bar of unjust enrichment. The second appeal is against the protective show cause notice issued to the appellant for recovery of the refund claim sanctioned by the adjudicating authority.

2. The brief facts of the case are that during the period 2002-03 to December 2004 the appellant availed services of consulting engineer which is located outside India but did not pay any service tax on the reverse charges. The levy of service tax of consulting engineer came from 01.05.2005 and

on persuasion of the Department the appellant paid service tax on consulting engineering services for the impugned period in 2006 and availed Cenvat Credit thereof. Later on, on persuasion of the Department they reversed the Cevnat credit and filed the refund claim of the service tax paid by them. Initially the refund claim was sanctioned by the adjudicating authority but on appeal the Commissioner (A) rejected the refund claim. The matter was taken up before this Tribunal and the matter was remanded to the adjudicating authority to decide the issue as well taxability of service tax and bar of unjust enrichment has been passed by the appellant or not. In remand order, the adjudicating authority held that the appellant has failed to pass the bar of unjust enrichment. Therefore, refund was rejected.

3. After sanctioning the refund by the adjudicating authority, a protective show cause notice was issued to the appellant for recovery of erroneously refunded refund to the appellant. Hence these appeals are before me.

4. Heard both the sides.

5. The admitted facts are that during the period 2002-03 to December 2004, there was no levy of service tax on the consulting engineering services. It is also a fact that on persuasion by the department, the appellant paid the service tax in the year 2006, although goods were manufactured during the impugned period. Therefore, question of inclusion of service tax paid by the appellant on the services does not arise. Moreover, it is a fact that there was no service tax

payable prior to 01.01.2005 on consulting engineering services. Therefore, appellant was not required to pay service tax. Now the issue arise whether the appellant has passed the bar of unjust enrichment or not?

6. As service tax has been paid in 2006 which is much after the clearance of the goods, then question of inclusion of value of service tax in the assessable value of the goods cleared by the appellant does not arise. Therefore, the appellant has been able to pass the bar of unjust enrichment.

7. In these terms, appellant is entitled for the refund claim which has been granted by the adjudicating authority.

8. In these terms, I do not find any merit in the impugned orders. The same are set aside. Consequently, the refund claim filed by the appellant is allowed. In these terms, appeals are disposed of.

[Dictated and Pronounced in the open court]

(Ashok Jindal)
Judicial Member

Bhanu