IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:29.01.2018

Service Tax Appeal No.51700/2017

[Arising out of Order-in-Appeal No.311(SM)ST/JPR/2017 dated 01.08.2017 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur]

M/s.Kiran Enterprises Appellants

Vs.

CCE, Jaipur Respondent

Appearance:

Rep. by Shri Kumar Vikram, Advocate for the appellant.
Rep. by Shri K. Podar, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)

Final Order No.50631/2018

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 1.8.2017 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jaipur.

2. The brief facts of the case are that the appellant is engaged in providing "Management, maintenance and repair services" defined under provisions of Finance Act, 1994. During the period April, 2010 to March, 2012, the appellant had paid service tax on the said services provided to various service recipients. The appellant's contention was that as per Section 98 of the Finance Act, 2012, no service tax was payable on management, maintenance and repair service.

Accordingly, the appellant had filed the refund claim application before the jurisdictional Service Tax Authorities, claiming refund of Rs.15,25,472/- paid by it inadvertently. The refund application was rejected by the Original Authority vide order dated 15.03.2013. On appeal, the ld. Commissioner (Appeals) vide the impugned order has upheld rejection of refund application by the Original Authority. Both the authorities below have held that incidence of service tax paid by the appellant has been passed on to the recipient of service and thus, the refund amount deserves to be credited to the Consumer Welfare Fund. In arriving at such conclusion, the impugned order has recorded the facts that the appellant did not produce the complete agreement for proper scrutiny.

3. Ld. Advocate appearing for the appellant submits that the details of contract executed between the appellant and the service receiver were provided before both the Authorities Below. He further submits that the condition of the contract clearly show that incidence of service tax has not been passed on by the appellant to the service receiver and the same has been borne by the appellant. Thus, he submits that instead of rejecting the refund claim, the same should have been granted in favour of the appellant. He has relied on this Tribunal's decision in the case of **M/s.Ramky Infrastructure Ltd. – 2017-TIOL-1782-CESTAT-KOL** to state that even if, the rates are inclusive of all taxes, the doctrine of unjust enrichment will not be applicable, if the claimant shows that the incidence of duty/taxes have not been passed on to the service receiver or any other person.

4. On the other hand, ld. DR for the Revenue reiterates the findings recorded in the impugned order. He further submits that since schedule and specification

annexed to the agreement clearly provides that contract's value is inclusive of service tax and all other taxes as applicable, it is to be construed that the service tax has been claimed by the appellant and paid by the contractor. Thus, the doctrine of unjust enrichment is applicable for such refund claim. Accordingly, it is contended on behalf of the Revenue that rejection of refund application by both the authorities below are in conformity with the statutory provisions.

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

6. On perusal of the case records, I find that the appellant has not produced the complete contracts entered into between it and the service receivers. The said fact has also been endorsed by the Commissioner (Appeals) vide paragraph 2 in the impugned order, wherein he has stated that the appellant did not submit the requisite documents. Since for ascertaining the fact of applicability of the doctrine of unjust enrichment, the documents are required to be scrutinized in proper perspective , I am of the view that the impugned order passed by the Commissioner (Appeals) in rejecting the refund application of the appellant is in consonance with the statutory provisions. However, considering the fact that the appellant, at this stage, submits that they had demonstrated that the incidence of service tax has not been passed on to the service receiver and the same has been borne by them, I am of the view that in the interest of justice, the matter can be go back to the Original Authority for verification of the contracts to be produced by the appellant.

7. Accordingly, after setting aside the impugned order, I remand the matter back to the Original Authority for verification of the details of the contracts to be produced by the appellant. The Original Authority should also examine the

applicability of the decision of this Tribunal in the case **M/s.Ramky Infrastructure Ltd. (supra)** to the facts and circumstances of the case and should decide whether the ratio decided therein should be applicable to the present case for sanction of the refund amount to the appellant. In the result, the appeal is allowed by way of remand.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

ckp.