CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/122/2012-ST [DB]

[Arising out of Order-in-Appeal No. 245/ST/D-II/2011 dated 01.07.2011 passed by the Commissioner (Appeals), Delhi.]

M/s. ITC Ltd. …Appellant

Vs.

C.S.T.- Delhi … Respondent

Appearance:
Mr. Ravinder Narain, & Ms. Mallika Joshi (Advocates) for the Appellant
Mr. Sanjay Jain, DR for the Respondent

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

Date of Hearing.30.11.2017
Date of Decision._21.02.2018

Final Order No. 50716/2018

Per S.K. Mohanty:

Brief facts of the case are that the appellant was registered with the Service Tax Department for providing taxable service under the category of Management Consultant Service. During the disputed period i.e. April 2004 to September 2004 the appellant had provided such services to M/s ITC Ltd and M/s. Ansal Hotels Ltd. and deposited an amount of Rs. 88,54,473/- towards Service Tax into the Central Government Account. Both the said service receivers were amalgamated with the appellant company w.e.f 01.04.2004. The scheme of amalgamation was approved in February 2005. As a result of amalgamation the appellant filed refund claim of Rs. 88, 54, 473/- on the ground that the amalgamation was effective form 01.04.2004. The refund application filed by the appellant was disposed of by the Original Authority vide order dated 17.03.2009, in sanctioning the refund amount and crediting the same to the Consumer Welfare Fund. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 01.10.2011 has upheld the order of adjudicating authority. Hence, the appellant has filed this appeal before the Tribunal.

2. The ld. Advocate appearing for the appellant submitted that service receivers M/s. ITC Ltd. & Ansal Hotels Ltd. since have amalgamated with the appellant company w.e.f 01.04.2004, those entities cannot be termed as separate person for the purpose of payment of Service Tax by the appellant. Thus, he submitted that in absence any tax liability, the doctrine of unjust enrichment is not applicable and instead of crediting the refund amount to be Consumer Welfare Fund, the same should be refunded to the appellant. To support his stand that the appellant should be entitled for refund, the ld. Advocate has relied on the decision of this Tribunal in the case of, *Business Overseas Corporation Vs. CC [import & General] New Delhi-205 [317] ELT 637 [Tri. –Del.], Tirumala Bearings P. Ltd. Vs. CCE [Appeals] Visakapatanm- 2016 [335] ELT 145 [Tri.-Bang] & Commissioner*

of Central Excise, Bhopal Vs. Birla Ericssion Optical Ltd. 2012 [286] ELT 600[Tri.-Del.].

3. On the other hand, the ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. We find that in this case the refund amount was credited to the Consumer Welfare Fund, on the ground that the appellant has charged such amount in question to the profit and loss Account. Since, the amount paid towards Service Tax was debited as expense in the books of accounts, a clear inference has to be drawn that the appellant had collected the same either directly or indirectly from its customers. Further, we also find that the Service Tax amount in question had not been shown as "claims receivable" in the balance sheet for the relevant period keeping even the possible realization of disputed amount from Department. Thus, the onus lies with the appellant to prove that it had suffered the incidence of duty and not passed on to any other person has not been satisfactorily discharged. The decisions of this Tribunal relied upon by the appellant are distinguishable from the facts of the present case inasmuch as in that case the issue was not with regard to the showing of Service Tax element as expense in the profit and loss account. In the present case, we note that it is not open to the appellant to submit contrary to fact as per accounting done by them in their statutory books.

6. Therefore, we do not find any infirmity in the impugned order passed by the ld. Commissioner Appeals. Accordingly, we dismiss the appeal filed by the appellant.

(Pronounced in the open court on ___21.02.2018)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi