CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 51704 of 2018-SM

(Arising out of order-in-appeal No. 123/CKJ/ST/UDR/2018 dated 21.03.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service tax, Udaipur).

Talanpur Ramsabha Bhawan **Appellant**
Khawaspura, Pipar City
Jodhpur, Rajasthan.

VERSUS

Commissioner of Central Goods and Service Tax, Customs & Central Excise **Respondent**
G-105, New Industrial Area
Opp. Diesel Shed, Basni
Jodhpur.

APPEARANCE:

Shri O. P. Agarwal, C.A. for the appellant
Shri K. Poddar, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51220/2019

DATE OF HEARING: 10.07.2019
DATE OF DECISION: 10.07.2019

ANIL CHOUDHARY:

The issue in this appeal is whether the appellant is entitled to refund of service tax paid. The appellant being a trust recognised under the provisions of Section 12(A)/ 12AA of the Income Tax Act.

2. Heard the parties.

3. Brief facts of the case are that the appellant applied for refund of service tax of Rs. 4,07,514/- paid on services provided by 'M/s Balaji Construction Company' on the grounds that these services were not taxable because the appellant is a 'Charitable Trust' registered under Section 12A/12AA of the Income Tax Act, 1961. They submitted a copy of Certificate issued under Section 12AA of the Income Tax Act, 1961 (earlier Section 12A(a)]. The trust is running a 'Satsang Bhawan' which is meant predominantly for religious use by general public. They are also registered vide Registration No. AAATT3056FSD001 for discharging their service tax liability under reverse charge mechanism, on works contract services availed of by them. Such works contract is related to construction of building for religious use by general public. The service provider issued the invoices and charged service tax therein. They paid the service tax and value of services to the service provider. As per invoices issued by the service providers, they had charged 50% of the tax payable in their invoices and as per invoices, remaining 50% tax was to be paid by the appellant being service receiver, under reverse charge mechanism. Accordingly, they deposited remaining 50% tax amounting Rs. 2,03,757/- vide challan dated 24.12.2014.

Subsequently, they came to know that services provided by the service provider in question was exempt from whole of the tax leviable thereon, vide S. No. 13(c) of Notification No. 25/2012-ST dated 20.06.2012. Therefore, they filed the refund claim for Rs.4,07,514/- for whole tax, as paid by them as well as the service provider.

4. Accordingly, appellant applied for refund of service tax by application dated 01.06.2015. The ground taken for refund in the application is that the appellant have got a building constructed for charitable purposes and they being Charitable Trust recognized under the provisions of the Income Tax Act, which entitles to exemption from service tax under clause 13(c) of Notification No.25/2012-ST dated 20.06.2012 which provides for exemption as follows:

> "13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
> (a) ....
> (b) ....
> (c) A building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;"

5. Pursuant to show cause notice the adjudicating authority denied the refund observing that the Certificate of Registration dated 08.12.1998 under Section 12A(a) of the Income Tax Act, 1961 appears to be an acknowledgement of the application for registration, and is not a certificate of registration as referred to under Section 12AA of the Income Tax Act as mentioned in para 13 of the exemption notification. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who vide impugned order has been pleased to reject the appeal upholding the finding of the adjudicating authority. Being aggrieved, the appellant is before this Tribunal.

6. Learned Counsel for the appellant have taken me through the copies of registration certificate dated 08.12.1998 which states that in pursuance of registration application under Section 12A(a) of the

Income Tax Act, in the prescribed form, filed on 16.11.1998 the registration is granted by entry at S.No. 107/10/98-99, in the register of application under Section 12A(a), maintained in the office of Commissioner of Income Tax, Jodhpur. Such certificate had been communicated to the appellant vide communication No. CIT/ JU/ Judicial.II /12A(a)/3369 by the Income Tax officer, Judicial-II, office of the Commissioner of Income Tax at Jodhpur. Learned Counsel further states that under Section 12AA of the Income Tax Act, in clause B(1), that the Commissioner after receipt of the application for registration, after satisfying himself about the object of the trust and genuineness of its activities, he shall pass an order in writing registering the trust or institution and a copy of such order shall be sent to the applicant. Accordingly, on harmonious reading of Section 12A/12AA, it is evident that the Commissioner have registered the appellant under Section 12A(a) at Sl. No. 107/10/98-99, in the register maintained for grant of application under Section 12A(a)/12AA in his office. Accordingly, he prays for allowing the appeal.

7. Learned Authorised Representative have relied on the impugned order.

8. Having considered the rival contentions, I am satisfied that the appellant is in possession of the certificate of registration under Section 12A(a) read with Section 12AA of the Income Tax Act. The certificate is granted under Section 12A and the procedure for grant of certificate is given in Section 12AA of the Income Tax Act. Further,

it is evident from the certificate of registration dated 08.12.1998, that the appellant is having the status of being registered under the provisions of Section 12AA of the Income Tax Act. Further, the appellant has also led evidence that they are continuing the status as the Charitable Trust/Organisation, as they have been granted exemption in their assessments for the financial years 2014-15 and 2015-16 by the Income Tax authorities which is applicable to Charitable Trust registered under Section 12AA, as is evident from the intimation under Section 143(1) of the Income Tax Act issued by the Income Tax Department. Accordingly, I allow the appeal and set aside the impugned order. The appellant is entitled to refund with interest as per Rules.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant