IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE, TRIBUNAL, EASTERN REGIONAL, BENCH: KOLKATA

Appeal No. ST/75036/2018

(Arising out of Order-in-Appeal No. 07/ST/RKL-GST/2017 dated 26.09.2017 passed by the Commissioner (Appeals), CGST, CX & Customs, Bhubaneswar.

M/s. Global Mintech Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise & Service Tax, Rourkela

Respondent (s)

Appearance:

Shri Karlik Kurmy & S. B. Sharma, Advocates for the Appellant (s)
Shri A. Roy, Suptd. (AR) for the Revenue (s)

CORAM:

Hon'ble Shri P. K. Choudhary, Member (Judicial)

Date of Hearing/Decision:- 09/04/2018

Order No...FO/A/76364/2018

Per Shri P. K. Choudhary :

This appeal has been filed by the Appellant against the impugned Order--in-Appeal No. 07/ST/RKL-GST/2017 dated 26.09.2017 passed by the Commissioner (Appeals), CGST, CX & Customs, Bhubaneswar.

2. Briefly stated the facts of the case are that the appellant undertook to provide service to M/s. Mahanadi Coalfields Limited (MCL) under NIT No. 376 during the period from 04.04.2006 to 03.04.2009. The appellant was not aware about the levy of Service Tax effective from 01.06.2007. Subsequently, when it came to their knowledge, they paid the tax by cash through Cenvat Credit Account and also submitted ST-3 Returns but M/s. MCL refused to reimburse the Service Tax levied with the bills. After negotiation with M/s. MCL, the appellant again paid the Service Tax. Thus,

the appellant discharged Service Tax liability twice in the same service and filed a refund claim.

3. The Adjudicating authority allowed the refund of Rs.18,36,219.00 towards the excess Service Tax paid vide challan dated 31.01.2012. The Revenue filed Appeal before the Commissioner (Appeals).

4. By the impugned Order, the Commissioner (Appeals) allowed the appeal filed by the Revenue. Hence, the appellant filed this appeal.

5. Heard both sides and perused the Appeal records.

6. I find that the Commissioner (Appeals) allowed the Revenue's appeal on the ground of unjust enrichment. On perusal of the Adjudication Order, I find that the appellant paid the tax twice on the same service. There is no dispute that their client paid taxes once. When this fact was not disputed, the denial of refund is unjustified. The Tribunal in the case of Commissioner of Central Excise Pune-I Vs. Volkswagen India Private Limited 2014 (312) E.L.T. 278 (Tri-Mum) observed that Excise duty paid second time by mistake on clearance of goods, question of unjust enrichment would not arise. The relevant portion of the said decision is reproduced below:

> *"We have carefully considered the submissions made by both the sides. The claim for refund would arise only when excess payment of duty is made. In the present case, refund of duty has arisen when the payment was made the second time when the goods were cleared from the depot. The liability to pay excise duty arises when the goods are cleared from the factory. The appellant discharged duty liability during June to August, 2011 when the goods were cleared from the factory and that is the legal discharge of duty. The subsequent payment, made erroneously, is not a payment of duty and the obligation to pay duty has already been*

fulfilled. Therefore, it is the second payment which needs to be considered for refund which the appellate authority has rightly considered. The argument of the Revenue that in respect of the second payment, the appellant has issued excise invoices to the customer and, therefore, the duty incidence has been passed on is not acceptable for the following reason: It is not the case of the Revenue that the appellant has passed on the duty incidence twice to the customers. No customer will pay duty twice for the same set of goods. Therefore, the question of unjust enrichment would not arise at all. On a similar matter, in the case of Cipla Ltd. v. Commissioner of Central Excise - 2013 (295) E.L.T. 696, this Tribunal had occasion to consider refund of duty when duty was paid twice and in that case, the refund was allowed holding that the question of unjust enrichment will not apply when duty is paid twice but recovered only once from the customer."

7. In view of the above discussions and following the decision of the Tribunal, the appeal filed by the appellant is allowed.

(Operative part of the Order already pronounced in the court.)

(P. K. CHOUDHARI)
MEMBER (JUDICIAL)

Pooja.