IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76012 of 2018

(Arising out of Order-in-Appeal No.387/S.Tax-I/Kol/2017 dated 22.12.2017 passed by Commissioner of CGST & CX (Appeal-I), Kolkata.)

M/s. Shree Mahabir Builders
(71, Gola Mahal, Sadar Bazar, Barrackpore, Kolkata-700120.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate

.....Respondent

(180, Rajdanga Main Road, Shanti Pally, Kolkata-700107.)

APPEARANCE

Shri Narayan Agarwal, Chartered Accountant for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75480/2021

DATE OF HEARING : 23 March 2021
DATE OF DECISION : 13 August 2021

P.K.CHOUDHARY :

The facts of the case in brief are that the Appellant is engaged in rendering of services in the nature of construction work to Garrison Engineer Barrackpore, Military Engineering Services (MES), Ministry of Defence, Government of India and Garrison Engineer (Central) Kolkata. The services provided by the Appellant to the MES were fully exempted from payment of Service Tax up to March, 2015. However, w.e.f. 01.04.2015, the exemption was withdrawn and service became taxable vide Notification No.6/2015-ST dated 01.03.2015. Following the Notification, the Appellant started collecting Service Tax from MES w.e.f. April 2015 and deposited the same to the credit of Central Government. The Appellant deposited Rs.2,22,215/- upto to September 2015 and Rs.7,00,510/- from October 2015 to March 2016.

Subsequently in the Budget 2016, notified vide Notification No.9/2016-ST dated 01.03.2016, the exemption for the contracts entered prior to 01.03.2015 was restored and vide Section 102 of the Finance Act, 1994 (as amended by Finance Act, 2016), the Central Government allowed the refund of Service Tax, if already paid, to be claimed within six months from the date of enactment of the Finance Act, 2016, i.e. 14.05.2016. MES requested the Appellant to refund the amount of Service Tax collected from them in view of the aforesaid exemption. Accordingly, the Appellant filed a refund claim in the prescribed Form-R submitting all the relevant documents on 15.11.2016 in accordance with the provisions of Notification No.9/2016-ST (supra) read with Section 102(3) of the Finance Act, 1994 (amended by Finance Act, 2016). Total amount of refund claim was Rs.9,22,715/- Subsequently, a Show Cause Notice (SCN) dated 15.12.2016 was issued proposing to reject the refund claim for non-compliance of conditions and non-observance of procedures. The learned Deputy Commissioner of Service Tax vide Order-in-Original dated 31.01.2017 rejected the refund claim declaring it as inadmissible in terms of the provisions as laid down in Notification No.9/2016-ST (supra), as amended vide Finance Act, 2016. On appeal, the learned Commissioner(Appeals) upheld the Order-in-Original and rejected the appeal. Hence the present appeal before the Tribunal.

2. Heard both sides through video conferencing and perused the appeal records.

3. As per Chapter 5 of the Finance Act, 1994 as amended by Finance Act, 2016 vide Section 102(3), an application for the claim of refund of Service Tax shall be made within a period of 6(six) months from the date on which the Finance Bill 2016 receives the assent of the President. The Finance Bill 2016 received the assent of the President on 14.05.2016. Therefore, the appellant was required to file the claim for refund by 14.11.2016, whereas the appellant filed the said claim on 15.11.2016, i.e. delayed by 1(one) day.

4. The appellant has submitted that they were not aware of the said Notification which was brought to their notice by the buyer, which in this case is the Ministry of Defence, Govt. of India. Since the appellant came to know of the Notification late, there was a delay in filing the claim albeit by 1(one) day.

5. I find that it is not in dispute that the appellant had paid tax, which by virtue of the Notification was refundable to the appellant. Further, in the present case, the incidence of tax has been passed on to the buyer, i.e. Ministry of Defence. Therefore on account of the delayed filing of the refund claim by the appellant, the ultimate sufferer is going to be the Ministry of Defence, Govt. of India.

6. I further find that the Notification as notified by the Finance Act, 2016 was brought into force to restore the benefit of exemption and to refund the tax paid by the assesses. Therefore, the intention of the legislature was not to deprive the *bona fide* assessee, who has discharged tax diligently. Further, in the present facts and circumstances, I am of the considered view that it would not be just to penalize the Ministry of Defence for want of due care on the part of the Appellant.

7. Therefore, in the peculiar facts and circumstances of the present case, I am of the considered view that the delay of 1(one) day in filing the refund claim be condoned and the refund claim of the appellant be considered on merits. The appellant is directed to remit forthwith the refund amount to the Ministry of Defence, in the event that such refund is found to be eligible on merits and is granted to the appellant.

There being no other dispute, in view of the above discussions, the impugned order is set aside. The appeal filed by the appellant is thus allowed in the above terms.

(Pronounced in the open Court on 13 August 2021.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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