IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76650 of 2018
& Cross Objection No.77240 of 2018

(Arising out of Order-in-Appeal No.101/SLG-ST/2018 dated 21.02.2018 passed by Commissioner (Appeals) of CGST & Excise, Siliguri)

M/s Pecon Computech Pvt. Ltd.
PNB Building, Hill Chart Road, Siliguri-734001

Appellant

VERSUS

Commissioner of CGST & Excise, Siliguri
CR Building, Hakimpara, Haren Mukherjee Road, Siliguri-734001

Respondent

APPERANCE :

Shri S.K.Goel, Advocate for the Appellant
Shri A.Roy, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO...75558/2023

DATE OF HEARING : 06.06.2023
DATE OF DECISION : 06.06.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order where the ld.Adjudicating Authority has rejected their refund claim.

2. The facts of the case are that the show-cause notice dated 05.09.2008 was issued to the appellant to demand Service Tax amounting to Rs.1,53,031/-. The adjudication took place and the demand of service tax was confirmed by the order dated 15.01.2009. the said order was challenged before the ld.Commissioner (Appeals) and the ld.Commissioner (Appeals) vide its order dated 29.01.2010 dropped the proceedings against the appellant. The said order was challenged before this Tribunal by the Revenue, but the said appeal was

withdrawn on 27.02.2016 under National Litigation Policy. As during the pendency of the appeal before this Tribunal, the appellant paid the disputed amount of service tax. Thereafter, the appellant filed refund claim on 28.02.2016 as there was no demand sustainable against the appellant. Thereafter, a show-cause notice was issued to the appellant for rejection of their refund claim dated 26.12.2016 as the refund claim is filed beyond the period of limitation and fails to pass the bar of unjust enrichment. Thereafter, the refund claim was rejected and on appeal, the adjudication order was confirmed and the refund claim was rejected. Against the said order, the appellant is before me.

3. The ld.Counsel for the appellant, submits that they have made the said payment for which they have sought refund on 20.06.2011 when the appeal filed by the Revenue was pending before this Tribunal. Later on, when this Tribunal decided the appeal under National Litigation Policy in their favour, they have claimed refund claim. Therefore, the question of time of refund does not arise. Moreover, they have made payment for the period from 10.09.2004 to 15.06.2005 on 26.02.2011 at the time when the appeal was pending before this Tribunal. In that circumstances, the bar of unjust enrichment does not arise.

4. On the other hand, the dl.A.R. for the Revenue, opposes the above contentions made by the ld.Counsel for the appellant and submits that the appellant has paid amount for which they sought refund without protest after decision on merit by the Hon'ble Apex Court against the appellant and the appeal was pending before the Tribunal filed by the Revenue. Therefore, they are not entitled to claim the

refund as the demand of service tax is legally sustainable against the appellant.

5. Heard the parties and considered the submissions.

6. At the time when the ld.Commissioner (Appeals) passed the order for dropping the proceedings against the appellant, the decision of the Hon'ble Apex Court was not available. Therefore, the appellant was not liable to pay any service tax for the impugned period. Moreover, the appeal filed by the Revenue against the order of the ld.Commissioner (Appeals) has already been withdrawn under National Litigation Policy on 27.02.2016, thereafter, no demand is sustainable against the appellant and the amount paid by the appellant on 26.02.2011 is only a deposit. In view of this, no limitation is applicable. Further, no bar of unjust enrichment is applicable in the facts and circumstances of this case, as the appellant has also made the payment for the period from 10.09.2004 to 15.06.2005 on 26.02.2011.

7. In that circumstances, I hold that the appellant is entitled for refund claim and the decision in the case of Tiger Logistics (India) Ltd. : 2022 (63) GSTL 337 (Tri.-Del.) is not applicable to the facts and circumstances of the present case.

8. Accordingly, I do not find any merit in the impugned order and the same is set aside.

9. In the result, the appeal is allowed with consequential relief, if any. Cross objection also gets disposed off.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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