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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76082 of 2024

WITH

Service Tax Miscellaneous Application No. 75625 of 2024
(on behalf of Respondent No. 2/Applicant)

(Arising out of Order-in-Appeal No. 110-111/ST-Kol/ST/Kol-S/2023-24 dated 29.09.2023 passed by the Commissioner of C.G.S.T. and C.X., Kolkata Appeals-I Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

Commissioner of C.G.S.T. and Central Excise : **Appellant**
Kolkata South Commissionerate

VERSUS

M/s. Ktech Engineering Builders Co. Pvt. Ltd. : **Respondent No. 1**
HNO C 2488, Sushant Lok-1, Block C, Second Gurgaon,
Gurugram – 122 001 (Haryana)
[DG MAP, Commissionerate Road, Kolkata – 700 022]

Director General Married Accommodation Project (DG MAP) : **Respondent No. 2 (Applicant)**
E-in-C's Branch, Army Head Quarter,
Kashmir House, Rajaji Marg, New Delhi – 110 011

APPEARANCE:

Shri S.K. Dikshit, Authorized Representative,
For the Appellant / Revenue

Shri Ankit Kanodia and Smt. Megha Agarwal, both Advocates,
For the Respondent No. 1

Lt. Col. Kartik Kapoor, Project Manager, MAP,
For the Respondent No. 2 (Applicant)

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75734 / 2025

DATE OF HEARING / DECISION: 18.03.2025

ORDER: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order.

1.1. Director General Married Accommodation Project (DG MAP) has also filed an application for impleading as a respondent to the appeal filed by the Revenue, on the ground that the refund claim, which is the subject matter of this case, is accrued to them and not hearing them would be a prejudice to them and to the proper adjudication of the case.

1.2. We have heard the Ld. Counsel appearing for the applicant, namely, DG MAP, who is found to be a necessary party for fair adjudication of the case. Therefore, we allow the miscellaneous application filed by the applicant. DG MAP shall hereinafter be known as the "Respondent No. 2" in this matter.

2. The facts of the case are that the Respondent No. 1, namely, M/s. Ktech Engineering Builders Company Private Limited, were engaged in providing works contract service to the Government and Governmental authorities by way of construction, erection, commissioning, installation, completion fitting out, repair, maintenance, renovation or alteration of civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession, a residential complex predominantly meant for self-use or the use of the Governments/authorities employees or other persons as specified in the explanation 1 to clause (44) of Section 65B of the Finance Act, 1994.

2.1. The Respondent No. 1 had applied for refund of Service Tax of Rs.4,36,76,126/- on 26.09.2016 on account of retrospective exemption from payment of Service Tax being accorded by Section 102 of the Finance Act, 2016 with effect from 14.05.2016, wherein a special provision for exemption in certain cases relating to construction of Government buildings was notified.

3. The Respondent No. 1 was served a Show Cause Notice dated 26.12.2017 wherein the said respondent was inter alia asked to show cause as to why the refund claim of Service Tax should not be rejected.

3.1. The Respondent No. 1 contested the matter and provided relevant circulars and case-law in support of their claim of the refund being eligible and also provided affidavits to process the refund claim in the name of the respective department of the Military Engineer Services ('MES'), DG MAP.

3.2. The Respondent No. 1 stated that pursuant to a personal hearing, the Ld. Assistant Commissioner, Bhowanipur C.G.S.T. & C.X., Kolkata North Commissionerate passed the Order-in-Original dated 28.02.2018 wherein he had sanctioned the refund claim, but transferred the same to the Consumer Welfare Fund on the ground that the principle of unjust enrichment is applicable in the case.

3.3. The said order was challenged before the Ld. Commissioner (Appeals), C.G.S.T. & C.X., Kolkata, who vide Order-in-Appeal No. 116/Kol-South/2021 dated 10.09.2021 set aside the adjudication order and remanded the matter to the adjudicating authority with the direction to process the claim. It was also directed therein that DG MAP (MES) should also join as a party to the claim and the adjudicating authority should decide the matter without disturbing the findings and observations on allowing the refund claim.

3.4. The said order of the Ld. Commissioner (Appeals) was challenged before this Tribunal and this Tribunal dismissed the appeal filed by the Revenue vide order passed on 15.06.2022.

3.5. The said order of this Tribunal was also challenged before the Hon'ble High Court at Calcutta and the Hon'ble High Court has dismissed the appeal filed by the Revenue by way of Order dated 22.11.2022 thereby upholding the order of the Ld. Commissioner (Appeals) dated 10.09.2021.

4. Thereafter, in the remand proceedings, the ld. adjudicating authority, vide Order-in-Original (De-novo) dated 08.02.2022, sanctioned the refund claim and ordered for crediting the same to the Consumer Welfare Fund as, according to him, the Respondent No. 1 was not entitled to get the refund due to the bar of unjust enrichment in terms of Sl. No. (d) of proviso to Section 11B(2) of the Central Excise Act, 1944 and the Respondent No. 2 was also not entitled to get the refund for violation of the conditions prescribed under Section 102(3) of the Finance Act, 1994.

4.1. The said order was challenged by the respondents before the Ld. Commissioner (Appeals), who vide the impugned order dated 29.09.2023 has set aside the order passed by the ld. adjudicating authority.

5. Aggrieved from the said order, the Revenue is before us on the ground that the Respondent No. 1 is not entitled to claim refund of the Service Tax paid by them as they have collected the said Service Tax from DG MAP, who is the Respondent No. 2 herein, and the Respondent No. 2 is not entitled to the claim of refund since they have filed the refund claim with a delay, in violation of the conditions stipulated under Section 102(3) of the Finance Act, 1994.

6. On the other hand, the Ld. Counsel appearing on behalf of both the respondents reiterated the findings in the impugned order.

7. Heard the parties and considered their submissions.

8. On consideration of the submissions made by both the sides and upon hearing all the counsel, we find that in this case, it is a fact on record that DG MAP has paid the Service Tax and they are entitled to the claim of refund. However, the Revenue contends that the said refund claim filed by DG MAP, the Respondent No. 2, is barred by limitation in terms of the condition prescribed under Section 102(3) of the Finance Act, 1994.

8.1. We find that the said condition is not applicable in this case. The order of the Ld. Commissioner (Appeals) dated 10.09.2021, wherein DG MAP was directed to file the refund claim before the adjudicating authority within a period of one month, has attained finality as the said order has been affirmed by the Hon'ble Calcutta High Court. Accordingly, the refund claim has been filed by the Respondent No. 2 within one month, in compliance of the order of the Ld. Commissioner (Appeals) dated

10.09.2021. Therefore, we find that the refund claim filed by the Respondent No. 2 is not barred by limitation. In these circumstances, we do not find any infirmity in the impugned order.

8.2. Further, we also find that as the tax has been borne by the Respondent No. 2, the Respondent No. 2 is entitled to claim refund of the said Service Tax paid by them, which was not payable as per the retrospective amendment in the Finance Act by virtue of Section 102 of the Finance Act, 2016 during the impugned period.

9. In view of these findings, we pass the following order: -

(I) The Respondent No. 2 viz. DG MAP, is entitled to the claim of refund of Service Tax paid by them to the Respondent No. 1, which is not payable, and the same shall be sanctioned to the Respondent No. 2 within a period of one month from the date of receipt of this order.

(II) The appeal filed by the Revenue is disposed of on the above terms.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd