IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 77471 of 2019

(Arising out of Order-in-Appeal No. 221/JSR/2019 dated 11.03.2019 passed by Commissioner of CGST & Central Excise, Jamshedpur)

M/s A. S. Construction,
(Flat No. A/407, Shivji Singh Complex,
Rajiv Path, Dimna Road,
Mango, Jamshedpur-831010)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Jamshepur,
(Outer Circle Road, Bistupur, Jamshedpur-831001)

.. ...**Respondent**

APPERANCE :
None, for the Appellant
Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

FINAL ORDER No.76012/2026

DATE OF HEARING : 04.08.2026
DATE OF DECISION : 04.08.2026

PER R. Muralidhar :

No one has appeared on behalf of the appellant. In the interest of justice, the appeal itself was taken up for disposal with the help of the Learned AR. On going through the appeal papers, it is seen that the appellant was issued a Show Cause Notice on 15.10.2014 demanding Service Tax under the category of manpower supplies to the extent of Rs.26,71,009/-. The judicating authority has confirmed the entire demand of Rs.26,71,009/- alongwith the interest and penalty, OIO dated 30.11.2015. The appellant filed their appeal before the Commissioner (Appeals). Vide OIA dated 15.06.2016, the Commissioner (Appeals) has remanded the matter to the adjudicating authority. This remand order OIA directed the adjudicating authority to consider all the submissions including the exemption available under notification number 30/2012-ST dated 26.12.2012 claimed by the appellant. Vide OIO dated 28.12.2016, the adjudicating authority has arrived at the confirmed demand amount of Rs. 3,93,025/-.

2. After this, the appellant has filed their refund application on 6.1.2017 stating that they are eligible to get the refund of the balance amount. Vide OIO dated 4.5.2018, the adjudicating authority has rejected the refund claim of Rs.4,22,710/- on the ground that the appellant has paid the Service Tax during the period 2012-13 and hence the refund claim has been filed more than about four years after this date. Therefore, he has held that the refund claim is time barred. He has also held that the appellant has not satisfied the criteria of unjust entrenchment. Being aggrieved, the appellant has filed an appeal before the Commissioner (Appeals), who has upheld the order passed by the adjudicating authority. Therefore, the appellant has filed this appeal before the Tribunal.

3. On going through the appeal papers, I find that the refund has got quantified only after the *denovo* OIO was passed on 28.12.2016. The appellant has filed the refund claim immediately within about one month of this OIO on 6.1.2017. Both the adjudicating authority and the lower authority are in error in holding that the refund has been filed after a lapse of about four years. Instead of taking the OIO dated 28.12.2016 as the date on which the appellant's refund amount gets quantified, they have taken the actual date of payment of the GAR 7 Challan to hold that the refund claim is time barred. This is wholly erroneous and hence is not legally sustainable. I hold that the refund claim has been filed within the time limit of one year from the date of finalizing of the quantification of refund on 28.12.2016.

4. The Appellant has also enclosed the Chartered Accountant's Certificate to show that the excess payment of Service Tax made by them has not been claimed by them from their principal contractor Larsen and Toubro.

5. After considering the above factual details, I find that ends of justice will be met in case the matter is remitted to the adjudicating authority. Since I have already found that there is no delay in filing the refund claim, the adjudicating authority should only go through the provisions of unjust enrichment and the documentary evidence to be filed by the appellant to prove that unjust enrichment has not taken place. The adjudicating authority should pass a considered decision after verifying all the documentary evidence, including the veracity of the CA's Certificate,

6. The Adjudicating authority is directed to complete the process within 3 months from the date of receipt of this Order.

7. The appeal stands disposed off as per the above terms.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Tushar Kr.