CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Service Tax Appeal No. 86809 of 2015

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-0064-15-16 dated 09.07.2015 passed by Commissioner of Service Tax (Appeals), Pune)

M/s. Kirloskar Electric Company Ltd. .....**Appellant**
Gat No. 309/1, 319/2, 317, 318,
Village: Kondhapuri, Nagar Road,
Tal: Shirur, Pune-412209

VERSUS

Commissioner of Service Tax-I, Pune .....**Respondent**
I.C.E. House 41/A, Sasson Road,
Pune-411001

Appearance:

Shri Sachin Chitnis, Advocate for the Appellant
Shri S.K. Hattangadi, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87015/2021

Date of Hearing: 31.08.2021
Date of Decision: 25.10.2021

Per : DR. SUVENDU KUMAR PATI

Denial of refund claim of Rs.7,65,445/- by the Commissioner of Service Tax (Appeals), Pune in Order No. PUN-SVTAX-000-APP-0064-15-16 dated 09.07.2015 on the ground that refund is barred by limitation and appellant had not satisfied the test of unjust enrichment is assailed in this appeal.

2. Facts of the case, in a nut shell, is that appellant's sister concern M/s. Kirloskar Power Equipments Pvt. Ltd., that was engaged in providing consultancy engineering service namely, 'Scientific & Technical Consultancy Service', before it got merged with the

appellant had paid service tax on 28.03.2006 on reverse charge mechanism against services availed from overseas European company. The respondent-department raised demand for payment of interest of Rs.22,166/- on the services tax component of Rs. 7,65,445/- and issued show cause that was adjudicated against the appellant who went on appeal before the Commissioner (Appeals), Central Excise, Pune-III. The Commissioner (Appeals) had set aside the interest demanded through show cause and confirmed through adjudication in its order dated 31st October, 2012 holding that no service tax was leviable on the said service prior to 18.04.2006. Appellant sought for refund of the said service Tax of Rs.7,65,445/- on 14.10.202013 through refund application that was again adjudicated by Deputy Commissioner vide Order-in-Original dated 24.11.2014. It was held as time barred claim since paid in 2006 though he gave a finding that there was no unjust enrichment. In an appeal filed against such order before the Commissioner (Appeals), he had not only confirmed the order passed by Deputy Commissioner that refund application was time barred but also had opened that appellant failed to satisfy the test of unjust enrichment as required under Section 11B of the Central Excise Act. The legality of the said order is under challenge before this Tribunal.

3. In his memo of appeal and during the course of hearing of the appeal learned Counsel for the appellant Mr. Sachin Chitnis submitted that the refund claim was filed on 14.10.2013 within the period of one year from the date of order passed by the appellate authority i.e. the Commissioner (Appeals) on 21.10.2012 and it was beyond the scope of Commissioner (Appeals) to go into the aspect of unjust enrichment that was held by the adjudicating authority in favour of the appellant and neither the said aspect of the order nor part refund of Rs.1,14,044/- that was paid as penalty after the O.I.O. dated 20.04.2012 confirming penalty under Section 78 and 77 were passed had been challenged by the respondent-department. In placing reliance on the case laws reported in 2018 (9) G.S.T.L. 8 (Bom.) in the case of M/s. Parijat Construction along with KVR Construction-

2012 (26) STR 195 (Kar), Hindustan Cocoa Products-1994 (74) ELT 525 (Bom.), 3E Infotech – 2018 (18) G.S.T.L. 410 (Mad.), Geojit BNP Paribas Financial Services – 2015 (39) STR 706 (Ker.), he also argued that service tax since was paid on account of mistake of fact and not on account of mistake of law, the same is held to be refundable in the decisions referred above for which the appellant’s appeal to allow refund to it is required to be disposed of favourably by set aside the order passed by the Commissioner (Appeals).

4. In response to such submissions, learned AR for the respondent-department Mr. S.K. Hattangadi supported the reasoning and rationality of the order passed by the Commissioner (Appeals) and with reference to the judicial decisions reported in 2014 (34) S.T.R. 562 (Bom.) in the case of Andrew Telecom (I) Pvt. Ltd. and orders passed by CESTAT’s Larger Bench in the case of Veer Overseas Ltd. reported in 2018 (15) G.S.T.L. 59 (Tri.-LB), he argued that statutory limit cannot be extended by any authority as has been held by the apex court in the case of Mafatlal Industries Ltd. and that relying on the clarification issued by the respondent-department no refund claim should have been allowed for which he sought no interference in the order passed by the Commissioner (Appeals).

5. Heard from both the sides at length and perused the case record vis-à-vis relevant provisions of law and relied upon case laws. Admittedly Section 11B of the Central Excise Act, 1944 provides for a limitation period of one year from the “relevant date” for filing of a refund application and also provides provision for establishment of the fact that tax has to be paid by the claimant as well as incidence of such tax has not been passed on to any other person by the claimant. However, going by the explanation that is appended to 11B which has defined “relevant date”, to my considered view, appellant’s case has been covered under Section 11B (5) e(c). It reads:

“In case where the duty becomes refundable <u>“as a consequence of judgment, decree, order or direction of appellate authority,</u>

Appellate Tribunal or any court, the date of such judgment, decree, order or direction (underlined to emphasize).

Therefore, the relevant date, in case of an order passed by appellate authority, would be the date of passing of such order which in the instant case was 31.10.2012. Refund application, if any, is filed before 30.10.2013 should have been considered as filed within one year of the relevant date. This has been ignored by the adjudicating authority and the Commissioner (Appeals) in the case of appellant who filed the refund application on 14.10.2013 which is almost 16 days before completion of one year of the order passed by the appellate authority.

5.1 Doubt may arise at this point as to what kind of order would make the appellant entitled to claim a refund? Admittedly, in the instant case there is no direction for payment of refund except a finding that the said amount of Rs.7,65,445/-, as a component of tax under Reverse Charge Mechanism, was not payable. Learned Commissioner (Appeals) in the first round of litigation in his order dated 31.10.2012 had formulated the issue at para 9 of his order, the first para of which is required to be produced here for a better clarity.

Whether service tax is payable by the recipient (importer) of 'Scientific and Technical Consultancy Service' on reciept of such service from abroad during the period November 2005 to July 2006. Then he noted his findings at para 12 the relevant portion of which reads:

"In view of the above mentioned settled legal position it is clear that no service tax is leviable in respect of Scientific and Technical Consultancy Services received from abroad by the appellant prior to 18.04.2006"

and accordingly, he confirmed payment that was effected between 18.04.2006 and July 2006 as duly paid service tax under Reverse Charge Mechanism. Explanation of relevant date at 11 B (ec) clearly indicates that if duty becomes refundable 'as a consequence of order/judgment', then the period of one year is to be calculated from the date of the order/judgment. Therefore, without prejudice to the submissions made for and against the issue, it can invariably lead a rational human being to a conclusion that there is no requirement of an express direction for refund of service tax paid that was not payable if as a consequence of judgment or decree such duty becomes refundable. The stipulation contained in Mafatlal Industries Ltd. judgment that if duty is declared as illegal, unconstitutional in respect of any other person say in respect of 'Y' then 'X' cannot claim after passes of long years though he had fought a legal battle up to a certain stage and subsequently abandoned it (para-22 of the Mafatlal Industries Ltd. judgment). However, in the instant case it is in respect of appellant itself the said order that duties was not leviable has been passed that arose as a consequence against demand of interest on the said component of duty that was paid by the appellant, may be under mistake of fact. Hence the order:

The Order

The appeal is allowed and the order passed by the learned Commissioner (Appeals) in Order-in-Appeal No. PUN-SVTAX-000-APP-0064-15-16 dated 09.07.2015 is hereby set aside. Appellant is entitled to get refund of Rs.7,65,445/- with applicable interest as per Section 11BB of the Central Excise Act effective after three months of filing of its original refund application dated 14.10.2013 and the respondent-department is directed to pay the same within 3 months of communication of this order.

(Order pronounced in the open court on 25.10.2021)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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