CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85481 of 2017

(Arising out of Order-in-Original No. 11/ST/NGP-II/2016/C dated 28.10.2016 passed by the Commissioner of Central Excise & Customs, Nagpur)

M/s Krishna Consultants .... Appellant
Plot No. 10/2, IT Park, Behind Infotech Tower,
Parsodi, Nagpur – 440 022

Versus

Commissioner of Central Excise & CGST, Nagpur .... Respondent
Telangkhedi Road, Civil Lines, Post Box No. 81,
Nagpur – 440 001

WITH

Service Tax Appeal No. 85859 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/362/18-19/2529 dated 28.12.2018 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur)

M/s Krishna Consultants .... Appellant
Plot No. 10/2, IT Park, Behind Infotech Tower,
Parsodi, Nagpur – 440 022

Versus

Commissioner of Central Excise & CGST, Nagpur .... Respondent
Telangkhedi Road, Civil Lines, Post Box No. 81,
Nagpur – 440 001

AND

Service Tax Appeal No. 85058 of 2020

(Arising out of Order-in-Original No. NGP/EXCUS/000/APPL/104/19-29 dated 16.10.2019 passed by the Commissioner of Central Excise & Customs, Nagpur)

M/s Krishna Consultants .... Appellant
Plot No. 10/2, IT Park, Behind Infotech Tower,
Parsodi, Nagpur – 440 022

Versus

Commissioner of Central Excise & CGST, Nagpur .... Respondent
Telangkhedi Road, Civil Lines, Post Box No. 81,
Nagpur – 440 001

AND

Service Tax Appeal No. 85061 of 2020

(Arising out of Order-in-Original No. NGP/EXCUS/000/APPL/104/19-29 dated 16.10.2019 passed by the Commissioner of Central Excise & Customs, Nagpur)

M/s Krishna Consultants .... Appellant
Plot No. 10/2, IT Park, Behind Infotech Tower,
Parsodi, Nagpur – 440 022

Versus

Commissioner of Central Excise & CGST, Nagpur .... Respondent
Telangkhedi Road, Civil Lines, Post Box No. 81,
Nagpur – 440 001

Appearance:

Shri Vinay Jain a/w Ankit Barwe, Advocates for the Appellants

Shri Adeeb Pathan, Authorized Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87531-87534/2024

Date of Hearing: 07.10.2024

Date of Decision: 07.10.2024

Per: S.K. Mohanty

Heard both sides and examined the case records.

2. The appellants are engaged in providing guidance to prospective students, who seek admissions in the Universities located outside India. The appellants do no collect any consideration from the prospective students. They had entered into contracts with the Universities located abroad and arrangements were made, in the way that when students guided by the appellants secure admission in the Universities in the foreign country and pay fees for the courses for which they secured admission, a part of such fee is paid to the appellants as commission, by those universities. In appeal No. ST/85058 and 85061/2020, the appellants had paid the Service Tax under protest and in respect of appeal No. ST/85481/2017 and ST/85859/2019, for non-payment of Service Tax for provision of such service, the Department had confirmed the Service Tax demand on the appellants.

3. The appellants have contended that for the earlier period from 04.05.2013 to 07.03.2014, this Tribunal vide Final Order No. A/86769/2023 dated 11.10.2023 has appreciated the fact that the appellants did not provide any service to the prospective students in India and such services have been provided to the universities located in foreign countries, who are paying consideration for such provision of service to the appellants. With the said observations, the Tribunal in the Order dated 11.10.2023 has remanded the matter back to the original authority, for verification of the copies of FIRCs, through which the payments were received by them. Thus, it was contended by the appellants that since the issue arising out of the present dispute is identical to the earlier case i.e. 'export of service' by the appellants, no Service Tax shall be levied on such activities.

4. We find that for the provision of the self-same service by the appellants, the Tribunal vide Final Order dated 11.10.2023 has allowed the appeal in favour of the appellant and remanded the matter back to the original authority for the limited purpose of verification of the invoices and the copy of FIRCs in support of the submissions that the services were exported by them.

5. Further, we find that in respect of Appeal No. ST/85859/2019, the learned Commissioner (Appeals) has dismissed the appeal filed by the appellant only on the ground of non-compliance of the requirements of pre-deposit in terms of Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. In this context, the appellants have pleaded that they had deposited an amount of Rs.62,22,239/- at the time of investigation of the matter and the amount so paid should be considered as sufficient compliance for entertaining the appeal by the learned Commissioner (Appeals). We find that the learned Commissioner (Appeals) has not disputed the fact that the appellants have deposited the amount at the time of investigation of the matter and since, such amount is more than the requisite amount to be pre-deposited in terms of Section 35F *ibid*, we are of the view that such deposit should be considered as sufficient compliance for the purpose of hearing and disposal of the appeal. Since the issue involved in said appeal lies in a narrow compass and is also covered

by the earlier order passed by the Tribunal, we are of the view that instead of remanding the matter back to the learned Commissioner (Appeals), we can decide the appeal and accordingly, the said appeal is taken up for hearing along with other appeals filed by the appellants.

6. It is an admitted fact on record that the appellants had filed the refund applications under Section 11B of the Central Excise Act, 1944 in respect of the Service Tax paid by them under protest. Since the Service Tax amount was paid under protest, the limitation period provided under Section 11B ibid shall not be applicable for consideration of the time bar aspect for filing the refund application. Thus, we are convinced with the submissions of the appellants that the refund application is not barred by limitation of time. However, considering the fact that for the earlier period, on the identical set of facts, the Tribunal has remanded the matter back to the original authority for the purpose of verification of the invoices and the copy of FIRCs, we are of the view that the appeal No. ST/85058 and 85061/2020 should be allowed by way of remand to the original authority.

7. In view of the foregoing discussions, the appeals filed by the appellants are disposed of in the following manner:

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7.1 In respect of the appeal Nos. ST/85481/2017 and ST/85859/2019, we find that the service tax demand was fastened on the appellants, holding that they have provided the taxable service. However, on reading of the order dated 11.10.2023 of the Tribunal, it transpires that no services were provided by the appellants to the aspiring students in India and the payments received by them were from the overseas entities/universities, which can be considered as export of service. Since, export of service does not attract payment of service tax, the impugned orders passed in the said appeals are not sustainable and accordingly, are set aside and the appeals are allowed in favour of the appellants.

7.2 With regard to the other two appeals being No. ST/85058/2020 and 85061/2020, the appeals are allowed by way of remand to the adjudicating authority, for the limited purpose of verification of material evidences to substantiate the claim of the appellants that the services in question, were exported by them and to such extent, they had received the consideration in convertible foreign currency(ies).

8. The appeals are disposed of in the above terms.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha