

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Service Tax Appeal No. 52955 of 2016

(Arising out of Order-in-Appeal No. 291-293/AK/ST/JPR/2016 dated 28.07.2016 passed by the Commissioner of Central Excise, Jodhpur)

**M/s Quality Builders & Contractor ...
Jodhpur**

Appellant

VERSUS

Commissioner of Central Excise, Jaipur-II

Respondent

Appearance

Shri O.P. Agarwal, Chartered Accountant – for the Appellant.

Dr. Radhe Tallo, Authorized Representative – for the Respondent.

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING : 27/04/2023

DATE OF DECISION : 12/05/2023

Final Order No. 50647/2023

Hemambika R. Priya

The appellant has filed this appeal against the order in appeal dated 28.07.2016 passed by the Commissioner (Appeals) upholding the rejection of the refund claim by the original authority.

2. M/s Quality Builders & Contractor, Jodhpur (hereinafter referred to as 'the appellant') applied for refund of service tax of Rs. 1,88,463/- on 02.06.2014 paid on services provided by them on the grounds that excess tax was deposited by them.

3. The appellant was issued on show cause notice dated 20.08.2014 for rejecting the refund on merits. The adjudicating authority has vide order-in-original No. 18/2014-R (ST) dated 01.09.2014 rejected the refund claim for Rs. 1,88,463/-. Being aggrieved with above order in original, the appellant filed an appeal before the Commissioner (Appeals), Customs and Central Excise, Jaipur who vide his order in appeal No. 291-293/AK/ST/JPR/2016 dated 28.07.2016 rejected the appeal.

4. Aggrieved with above order in appeal rejecting the refund claim for Rs. 1,88,463/-, the appellant filed the instant appeal.

5. The learned counsel appearing for the appellant submitted that they had constructed multi stories buildings as per work orders (No. 100 dated 20.04.2022) given by Rajasthan Housing Board, which is taxable service under the category of 'works contract service'. The total amount received against such construction during the period from 01.10.2012 to 31.12.2012 was Rs. 86,63,344/- which is as per Form No. 16A and is inclusive of VAT of Rs. 1,29,970/-. The work involves both goods and services as is evident from copies of work orders and is covered under works contract services and is liable to service tax @ 4.94%. Further, such works contracts are also covered under reverse charge mechanism as per Notification No. 30/2012-ST dated 20.06.2012 (effective from 01.07.2012) according to which Rajasthan Housing Board was liable to deposit 50% of the tax payable i.e. 2.472% (tax payable is 4.944%) on such services and that the appellant were liable to deposit the remaining 50% i.e. 2.472%. However,

the appellant deposited the entire tax payable @ 4.944% instead of 2.472% and RHB has also deducted 2.472%.

6. The excess tax deposited by the appellant computed is as under:

(a)	Total amount received by the appellant during 01.10.2012 to 31.12.2012	86,63,344/-
(b)	Less: VAT included in above amount	1,29,970/-
(c)	Balance Cum tax value	85,33,374/-
(d)	Gross Taxable Value after deducting tax @ 4.944%	81,31,360/-
(e)	Service Tax leviable @ 4.944%	4,02,014/-
(f)	Service Tax payable 50% of tax leviable	2,01,008/-
(g)	Service Tax deposited:-	
	(i) Challan dated 17.06.2013 (3,78,127/-+7,563+3,781/-)	3,89,471/-
(h)	Excess tax deposited	1,88,463/-

7. In view of above, the appellant applied for refund of Rs. 5,46,865/- on 29.05.2014 and submitted copy of work order, TDS certificate, VAT-41, certificate of deduction of service tax by RHB, and the copy of challan evidencing deposit of above tax. The learned counsel stated that the factum of excess deposit of as well as receipt of gross value against services during the above period is not in dispute.

8. As far as non-filing of ST-3 return for the period from 01.10.2012 to 31.03.2013 is concerned, learned counsel submitted

that they have filed the return electronically through ACES on 20.10.2013. However, the same was rejected by the System. The copy of such ST-3 return downloaded through the System was submitted along with the refund application. The submission of ST-3 return through ACES on 20.10.2013 cannot be disputed and the figures of value of gross receipts, tax payable and tax deposited as shown in this ST-3 return tallied with the refund application. Other details viz., name and address of the appellant, deposition of tax etc. also tallies. Learned counsel further added that they had not provided any other services during the period other than above and have also not received any other amount. The return being online, submission would not bear signature. As regards the difference in registration number, as observed in impugned order, learned counsel submitted that the appellant was providing services only from one premises situated at Plot No. 2/1301, Kudi Bhagtasani Housing Board, Jodhpur and all work orders, VAT-41 and TDS certificates issued are at this address only. The appellant was registered with the Service Tax department vide registration No. AHMPE2813RST001, but the ACES System had automatically surrendered the registration. Consequently, they were unable to submit the return online. In order to submit the ST-3 return online through ACES, the appellant once again applied for registration and were assigned the registration no. AHMPE2813RST002 for the same address. Therefore, in the refund application also, both the service tax registration numbers as AHMPE2813RST001/002 were indicated.

9. Learned authorized representative for the revenue reiterated the findings of the impugned order

10. We have heard the learned counsel for the appellant and the authorized representative.

11. We find that this is a case of refund of excess duty paid by the appellant while providing works contract services to the Rajasthan Housing Board at various locations. We note that in the impugned order, the Commissioner (Appeals) has upheld the rejection of the refund claim by the original adjudicating authority on the ground that the amount claimed as refund is not substantiated. Further, he also held that the said refund claim was hit by the clause of unjust enrichment.

12. We have perused the copy of work order number 100 dt. 20.04.2011, Form 16A/26AS, VAT-41 and the certificate given by the Rajasthan Housing Board. It is clear that the receipt of Rs. 86, 63, 344/- comprises of three entries given in Form 16A/26AS, VAT-41 and the certificate. We note that all the entries match date wise. From VAT – 41. It is clear that the amount received during the refund period was against agreement number 172 which is mentioned on the backside of the work order number 100. We also note that the nature of work indicated in the Work order tallies with VAT-41. It is also clear that the appellants have not provided any other services during the refund period as is evident from the Form 16A/26AS which reflects only three entries for the quarter ending 31.12.2012. As far as the authenticity of these ST-3 returns filed for the period 01.10.2012 to 31.03.2013 is concerned, the

appellant has submitted that they had filed the returns electronically through ACES on 20.10.2013, which was rejected. A copy of the ST3 returns downloaded from the system was submitted along with the refund claim. It is seen that the figures of gross receipt, tax payable and tax deposited as shown in the ST3 returns tallies with the refund application, along with all other details. We also note that the difference in the registration number of the appellant has been explained satisfactorily by the learned counsel.

13. As regards the contention that the refund is hit by unjust enrichment, we find that Rajasthan Housing Board has also deducted the service tax payable by them by reverse charge mechanism in the bills raised by the appellant. Therefore, it is the appellant who has borne the incidence of tax and refund cannot be denied to any person who has borne the incidence of tax. Therefore, there is no unjust enrichment in this case.

14. In view of the above, we set aside the impugned order and allow the refund with consequential relief, if any.

(Pronounced in open Court on **12.05.2023**)

(Justice Dilip Gupta)
President

(Hemambika R. Priya)
Member (Technical)

RM