Virajit Pvt Limited Vs Commissioner Of Central Tax Visakhapatnam - GST

Court: Customs, Excise And Service Tax Appellate Hyderabad

Date of Decision: Sept. 3, 2021

Acts Referred: Finance Act, 1994 â€" Chapter 5

Hon'ble Judges: Rachna Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

1. The appellant in the present case is engaged in providing services under the category of Renting of Immovable Property, Works Contract services,

Manpower supply services and Legal consultancy services and has also been registered with the department. The appellant had paid an amount of

Rs.9,16,735/- in the assessee code bearing No.AAACV8705ASD001 (herein after referred to as Ã¢â‚¬ËœD001Ã¢â‚¬â„¢) instead of actually registered code

bearing No.AAACV8705ASD002 (herein after referred to as Ã¢â‚¬ËœD002Ã¢â‚¬â„¢). The moment the mistake was pointed out, the appellant deposited the

amount of Rs.9,16,735/- in account number D002. Thereafter, appellant has prayed for the refund of the amount as was earlier got deposited in

account number D001. However, vide Show Cause Notice No.18/2017 dated 31.10.2017, the refund was proposed to be rejected. The said proposal

has been confirmed initially vide Order-in-Original No.23/2017-18 dated 30.11.2017. The appeal thereof has been rejected vide Order No.054-055-19-

20 dated 29.06.2019. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Raja Praveen, CA for the appellant and Shri Hanuma Prasad, departmental representative.

3. It is submitted on behalf of the appellant that impugned tax liability has been discharged by the appellant twice. He had paid the requested amount

of Rs.9,16,735/- initially in the inactive account and subsequently, in the active account. The payment resultantly was made twice to the department

against the same liability. It is submitted that the amount as was paid in the inactive account, therefore, needs to be refunded to the appellant. The

refund claim was rightly raised, however, has wrongly been rejected. It is also submitted that the jurisdictional range officer verification report has also

been on record supporting appellantÃ¢â‚¬â„¢s case. The adjudicating authorities below have absolutely ignored the said report. The order against the

apparent evidence is therefore liable to be set aside.

4. Learned counsel has also impressed upon the certificate issued by their Chartered Accountant certifying that the appellant had not collected twice

the amount of service tax which was leviable under Chapter 5 of the Finance Act, 1944 during the financial year 2015-16 and 2016-17. It has also

been certified that the company did not avail due benefit/ unjust enrichment by applying this refund for the said period. Learned counsel has

accordingly prayed for the order under challenge to be set aside and appeal to be allowed.

5. While rebutting these submissions, learned departmental representative has made emphasis on Paragraph 7 of the Show Cause Notice submitting

that the payment in account no. D001 has been made by the appellant in October, 2017. The refund claim was still preferred in September, 2017. The

said substantial time taken is sufficient to disentitle the appellant to claim the refund. It is also submitted that the CA certificate as has been impressed

upon by the learned counsel for the appellant has for the first time being produced before this Tribunal. None of the adjudicating authorities below

were ever informed about the said certificate. Learned departmental representative has objected the production of the said additional document at the

stage of adjudication before this Tribunal. Learned departmental representative has relied upon the decision of this Tribunal in the case of Bhola

Plastic Industries Pvt Ltd vs CCE, Delhi [2011 (269) ELT 411 (Tri-Delhi)] and also relied upon the decision of HonÃ¢â‚¬â„¢ble Apex Court in the case of

Jain Exports Pvt Ltd vs UOI [1993 (66) ELT 537 (SC)] wherein it has been held that the request for production of additional evidence at belated stage

is not acceptable. It is also submitted that there has been no other evidence produced by the appellant either in the form of invoice or books of

accounts/ledgers which would have helped the adjudicating authority below to appreciate that the payment made in the both accounts is with respect

to the same invoices/ transactions and there is no additional liability of the appellant. No infirmity in the order under challenge is accordingly impressed

upon and appeal accordingly is prayed to be dismissed.

6. While rebutting, learned counsel for the appellant has impressed upon that irrespective that the refund claim was filed in September, 2017 but the

fact remains is that it was filed within one year from date of making the payment by the appellant in the account No.D001. It is also impressed upon

that account D001 since been an inactive account which was initially applied for registration in 2014 but except the generation of said account number

the registration could not be completed. It was on subsequent application for registration that actually account No.D002 got opened. All invoices have

been received and all transactions have been made from account No.D002. There is no single invoice ever received by the appellant in account

No.D001. Hence, there was no opportunity with the appellant to produce any such document with respect to the account No.D001. Order is reiterated

to have failed to appreciate the relevant fact that department has received the payment twice for the same transaction. Order is accordingly prayed to

be set aside.

7. After hearing rival contentions and perusing the record including the order under challenge, it is observed that there is no dispute about the fact that

account No. D001 was never a registered account allotted to the appellant for discharging his service tax liability as the registration process for the

said account, admittedly could not get completed. There is also no dispute for account No.D002 to have been the active and valid account in the name

of appellant facilitating him to discharge his liability towards the taxable services being rendered by him. It is also observed from the record that the

impugned refund claim was forwarded to the jurisdictional range officer calling for a verification report. The report dated 22.09.2017 had been

submitted stating that:

(i) The account No.D001 has been verified to have been inactive.

(ii) The payment of Rs.9,16,735/- had been made vide four separate challans in account No.D001.

(iii) The same amount has subsequently been paid by appellant in account no.D002.

(iv) The refund claim filed on 05.09.2017 is not hit by unjust enrichment clause.

(v) It was also verified that there are no recoverable arrears pending in respect of the appellant.

(vi) And that claim has duly been supported by the documents confirming their payments; as such the claim was reported to be in order.

8. I further observe that there has been another report sought from range officers, Siripuram range, dated 18.10.2017. The said report verified that:

(1) The appellant had never operated or rendered any service on the STC account No.D001 as no registration certificate was ever issued for the said

account.

(2) The appellant already had an Order-in-Original No.05/2015 dated 14.05.2015 passed by the Assistant Commissioner of Service Tax division,

Visakhapatnam where the appellant were granted refund in the similar situation.

9. I also observe that both these reports were prior in time than the impugned show cause notice dated 31.10.2017. I am of the opinion that show

cause notice in fact should not have been issued. Post show cause notice also department has not come up with the case that there were two separate

liabilities of the appellant and as such appellant was liable to pay the amount of Rs.9,16,735/- twice irrespective of one payment of this amount is

inactive account No.D001 but that was the liability of the appellant. On the contrary, the verification report of the department itself, is falsifying the

said case and is supporting the appellantÃ¢â‚¬â„¢s contention that the same liability has been discharged twice by the appellant once inadvertently in the

inactive account, subsequently, in the active account. In the given circumstances, specially, in view of the said report, I hold that no other evidence

was required to be produced by the appellant. Otherwise also it is a settled law that onus always rests upon the department to prove the allegations

raised in the show cause notice.

10. The appellant at the time of arguments has laid emphasis on CA certificate corroborating the appellantÃ¢â‚¬â„¢s contention. No doubt the said

certificate was not produced before the adjudicating authorities below but as already observed above, there were two verification reports by the range

officers including that of the jurisdictional range officer supporting the fact that there is no possibility of any invoice or any return pertaining to the

account No.D001, the account being inactive for being never registered in the name of the appellant. There is no denial to the case law relied upon by

the learned departmental representative, however, the said case law is not applicable to the present case because even if the CA certificate is not

taken into consideration being the additional evidence produced at a belated stage, the departmentÃ¢â‚¬â„¢s own verification reports and admission for

account No.D001 to be inactive and invalid account support the appellantÃ¢â‚¬â„¢s contention. It is apparent that learned Commissioner (Appeals) has

ignored the verification done by the department itself which proves that there is no such liability towards the appellant for the impugned period which

require deposit of Rs.9,16,735/- twice. Thus I hold that refund was rightly been filed.

11. From Paragraph 7 of show cause notice, as impressed upon by the learned departmental representative it is very much apparent that irrespective

of the noticed delay in filing the refund, the refund filing is very much within one year of date of payment in the said inactive account. Hence, the

refund claim also cannot be rejected even while invoking the bar of limitation.

12. Seen from any angle and in light of above discussion, the order under challenge is held to be not sustainable, accordingly, is hereby set aside.

Consequent thereto the appeal in hand is hereby allowed.