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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH

Service Tax Appeal No. 51055 of 2021 [SM]

[Arising out of Order-in-Appeal Order-in-Appeal No. 215 (SM)/ST/JPR/2021 dated 25th June, 2021 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur].

M/s.Rambagh Palace Hotel Pvt. Ltd. **...Appellant**
Bhawani Singh Road,
Jaipur – 302005 (Rajasthjan)

VERSUS

Commissioner, Central Excise &
CGST, Jaipur-I **...Respondent**
NCRB, Statue Circle,
Jaipur – 302005.

APPEARANCE:

Mr. Sanjiv Agarwal & Ms. Neha, Chartered Accountants for the Appellant
Mr.Mahesh Bhardwaj, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION:01/02/2022

FINAL ORDER No. 50144/2022

RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No. 215/2021 dated 25th June, 2021. The facts relevant for the impugned appeal are as follows:-

That M/s. Rambagh Palace Hotel Pvt. Ltd. i.e. the appellant are engaged in providing different services relating to hotel business. For the purpose they were also serving liquor to their

guests in the hotel under the license which was issued to them by the State Government. The Department during the audit conducted on 15.11.2017 observed that the appellant had not paid Service Tax of Rs.234750/- on an amount of Rs.15,65,000/- paid to the Rajasthan State Excise Department during 2017-18, for the said license. Agreeing to the said finding the appellant deposited the aforesaid amount of Service Tax alongwith the interest of Rs.27,012/- on 18.11.2017. However, vide the Finance Act, 2019 Clause 116 was introduced by virtue of which retrospective exemption was granted from levy of service tax on grant of liquor license. The clause 116 is made applicable for the period from 01.04.2016 to 30.06.2017. The amounts of service tax paid during this period were allowed to be refunded within six months from enactment of Finance Act, 2019.

2. Pursuant to the said amendment, the appellant filed the refund claim of the amount of Rs.2,34,750/- on 05.11.2019. Department, however, formed an opinion that the appellant is not entitled for the said refund. Accordingly, Show Cause Notice No.22 dated 05.05.2020 was issued to the appellant, proposing the rejection of the said aforesaid refund. The said proposal was accepted by the Original Adjudicating Authority vide order No.26/2019 dated 27.12.2019. The said order was however, reviewed by the Department vide Order dated 24th March, 2020. Pursuant thereof an appeal was preferred by the Department before Commissioner (Appeals) and the impugned order under

challenge was passed rejecting the claim of the appellant. Being aggrieved the appellant is before this Tribunal.

3. I have heard Shri Sanjiv Agarwal, ld. Counsel for the appellant and Shri Mahesh Bhardwaj, ld. D.R. for the Revenue.

4. It is submitted on behalf of the appellant that the Order under challenge is an order passed by the quasi-judicial authority. The same cannot be reviewed. Ld. Counsel has relied upon the case law in the case of **Topcem India vs. Union of India reported in 2021 (376) ELT 573**. It is further submitted that the refund has been rejected on the ground that the amount would have been recovered by the appellant from their customers. The observation is alleged to have been absolutely wrong. It is submitted that the payment of Service Tax was made in the year 2017. However, the amendment with retrospective effect, came into existence in 2019 within 6 months thereof the refund in question was filed. Hence there arises no question of recovering the amount in question from the customers. It is further submitted that another ground of rejection is of showing the said amount in profit and loss account is also not sustainable because since the payment was made by the appellant the same has rightly been reflected as the expense in PLA account. The said mention cannot *suomoto* be considered as the proof of passing on of the burden of the said amount to the customers. It is submitted that decision of **Hon'ble Apex Court in the case of Maffatlal Industries reported in 1997 (89) ELT 247** is also

not applicable to the present case, though has been relied upon by the Commissioner (Appeals), for the simple reason that the refund in the present case was filed after an amendment in the Finance Act two years later the impugned payment of Service Tax by the appellant. With these submissions the order under challenge is alleged to be wrong and accordingly, is prayed to be set aside and appeal is prayed to be allowed.

5. To rebut these submissions, ld. DR has laid emphasis upon the findings in para 8.2, 8.3 and para 9 of the order in appeal where the Commissioner (Appeals) while relying upon **Maffatlal Industries (supra)** has held that treatment of the amounts in question in the books of accounts of the appellant can result in passing on the incidence on the duty. Thus, there is no infirmity in the order. The refund claim is rightly held to have been hit by the clause of unjust enrichment and thus has rightly been held credited to the consumer welfare fund. Appeal is accordingly, prayed to be dismissed.

6. After hearing the rival contentions, I observe and hold as follows:-

The moot controversy to be adjudicated in the present matter appears to be as to:

> "Whether the present is the case of unjust enrichment so as to decline the sanction of refund of duty paid by the appellant under reverse charge mechanism, in the given circumstances of the subsequent amendment in the law."

The following are the admitted facts relevant to adjudicate the above question:-

(i) The appellant had paid the licenses fee of Rs.15,65,000/- to the State Government of Rajasthan for obtaining a liquor license on 23.02.2017 for the Financial Year 2017-18.

(ii) The appellant was liable under reverse charge mechanism to pay the Service Tax which was not paid by the appellant at the appropriate time i.e. during 2017-18.

(iii) Immediately after it was pointed out by the audit team of the Revenue while auditing for period April 2016 to June, 2017 on 15.11.2017 that the appellant deposited the amount of his service tax liability under RCM i.e. Rs.234750/- within 3 days of the same being pointed out i.e. on 18.11.2017. Not only this, the amount of interest of Rs.27,012/- was also paid on the same day.

(iv) The payment of service tax was held to not to be the liability of the appellant any more in terms of the amendment introduced by Finance Act, 2019 provided that the levy pertains to the period from 01.04.2016 to 30th June, 2017.

(v) The refund claim to which appellant become entitled pursuant to the introduction of retrospective

amendment was filed within the stipulated time period of 6 months of coming into effect the Finance Act of 2019.

(vi) Lastly, apparently and admittedly, present is not the case of alleged duty evasion. Rather the payment of service tax for the Financial Year 2017-18 admittedly was made by the appellant though subsequently, but with respect to the liability that accrued during the period mentioned in clause 116 of Finance Act, 2019 which came into effect from 01.08.2019.

7. The clause 116 of Finance Act, 2019 reads as follows:-

"Special provision for retrospective exemption from service tax on service by way of grant of liquor license.

116. (1) Notwithstanding anything contained in section 66B of Chapter V of the Finance Act, 1994 as it stood prior to its omission vide section 173 of the Central Goods and Service Tax Act, 2017 with effect from the 1st day of July, 2017 (hereinafter referred to as the said Chapter), no service tax shall be levied or collected in respect of taxable service provided or agreed to be provided by the State Government by way of grant of liquor licence, against consideration in the form of license fee or application fee, by whatever name called, during the period commencing from the 1st day of April, 2016 and ending with the 30th day of June, 2017 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected. But which would not have been so collected, had sub-section (1) been in force at all material times:

Provided that an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance (No.2) Bill, 2019 receives the assent of the President."

8. These admitted facts when read with the aforesaid provision are sufficient for me to hold that there is utmost compliance of all statutory provisions on part of the appellant. There appears no evasion of duty. Question of *malafide* intent on part of the appellant, in the given circumstances, also does not appear. More so, Department did not issue any Show Cause Notice at the relevant time proposing imposition of penalty or for proposing the duty demand against the appellant. The impugned refund has also been filed in utmost compliance of the provisions of law i.e. the amendment by Finance Act, 2019. As such, I am of the opinion that refund was rightly sanctioned by the by the Original Adjudicating Authority.

9. Coming to the ground of rejection taken by Commissioner (Appeals) in the order under challenge i.e. on the ground of appellant being unjustly enriched, I observe that the impugned service tax liability got leviable upon the appellant in the year 2017, that too, under reverse charge mechanism. The said liability is against the amount of license fee being deposited by the appellant with the State Government of Rajasthan for getting a liquor license in favour of the appellant. The impugned refund would not have ever been applied had there not been an amendment in Finance Act, 2019, that too with the retrospective effect. The said amendment since came two years later, also the duty was not paid at the appropriate time but payments was made later after it was pointed by the audit team, that too, under

reverse charge mechanism. Hence, from no stretch of imagination, it can be presumed that the burden of said payment would have been passed on to the customers. Department has not produced any positive evidence to prove the same. Otherwise also the only reason for such presumption is that the aforesaid amount has been shown as an expense in profit and loss account by the appellant. To my opinion in the given circumstances since the payment was made under RCM there appears no error on part of appellant when the said payment is shown as expense in the profit and loss account.

10. Commissioner (A) has relied upon the decision of Hon'ble Apex Court in the case of **Maffatlal Industries** (supra), while confirming his opinion about the impugned amount to be an expense. No doubt in the said case Hon'ble Apex Court has held that any amount which was deposited during investigation and was shown as expenditure in profit and loss account the same has to be considered a Central Excise Duty and the principles of unjust enrichment shall apply for refund of such amount. To my opinion, the said decision is not applicable to the present case, for the reason that in **Maffatlal** case the amount was shown as expense in PLA with an object of claiming reduction under section 43 of Income Tax Act, 1961 which is not the fact for the present case. Secondly, present is the case of the payment of service tax under reverse charge mechanism as different from the fact of the **Maffatlal Industries** Supra case. Most importantly the peculiar distinguishing fact of the present case is that the service tax was

paid under the then prevalent law in the year 2017, but the refund was claimed under the amended law denying levy on liquor license fee that too with retrospective effect.

11. In the given circumstances, to my opinion, unless and until there is the evidence produced by the Deptt. to prove that the burden of the impugned amount stands passed on by the appellant to its customers, the applicability of principle of unjust enrichment cannot be presumed. Otherwise also the amended clause 116 of Finance Act, 2019 allows refund of amount of service tax on the liquor license fee paid during the period from 01.04.2016 to 30th June, 2017 without even whispering about the applicability of principle of unjust enrichment. Since the refund has been filed only due to the introduction of the said clause, the said principle otherwise also cannot be implied that too, for the purpose of rejecting the refund claim which is made permissible under the said clause due to the element of retrospectivity therein.

12. Finally, I observe that Commissioner (A) has failed to appreciate the Chartered Accountants Certificate dated 17.11.2019 as was issued by the statutory auditors of the appellant alongwith the relevant pages of the balance-sheet for the year 2016-17 and 2017-18. The said documents were appreciated by original adjudicating authority to have been shown the pre-paid expenses of Rs.1,29,17,302/- under the note No.20 of the audited balance sheet 2016.17 . The document were also

observed to have provided the bifurcation for an amount of Rs.15,65,000/- as bar license fees pre-payment "and Rs.39,74,331/- as rates and taxes for the year 2017-18" including therein Rs.1565000/-as liquor license fee in the balance sheet of 2017-18. These documents were held sufficient by the original adjudicating authority to prove that the appellant had not passed the burden of refund claim amount to the others. Hence, the claim was denied to be hit by clause of unjust enrichment.

13. In view of the entire above discussion, I do not find any infirmity in the aforesaid findings of original adjudicating authority. Appellate Authority/ Commissioner (A) has not given any finding which may falsify the findings of original adjudicating authority. Commissioner (Appeals) has been silent about CA certificate. Thus, I opine that Commissioner (Appeals) has committed an error by holding the refund to hit by unjust enrichment merely on presumptive basis. No relevant evidence at all been discussed by him while coming to the said conclusion. Rather, the relevant evidence as was considered by Original adjudicating authority has miserably been ignored by the Appellate Authority.

14. The entire above discussion is sufficient to hold that the question of adjudication as framed above stands decided in favour of the appellant. It is held that the refund in question does not get hit by the principle of unjust enrichment. With these findings, the order under challenge is hereby set aside. Resultant there to, the appeal stands allowed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita