

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH**

**SERVICE TAX APPEAL NO. 50923 OF 2021**

(Arising out of Order-in-Appeal No. 150(SM)ST/JPR/2021 dated 18.03.2021 passed by the Commissioner (Appeals) Central Goods & Service Tax, Jaipur)

**M/s Anurag Enterprises**

**...Appellant**

VERSUS

**Commissioner, Central GST,  
Jaipur – I.**

**...Respondent**

**APPEARANCE**

Shri Rajesh Chhibber advocate for the appellant.  
Shri Ravi Kapoor, Authorized Representative for the Department

**CORAM:**

**HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 15.07.2022  
Date of Decision: 21.07.2022**

**FINAL ORDER NO. 50629/2022**

**JUSTICE DILIP GUPTA:**

The order dated 18.03.2021 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax <sup>1</sup> rejecting the appeal filed by M/s Anurag Enterprises, Ghaziabad<sup>2</sup> has been assailed in this appeal. Before the Commissioner (Appeals), the order dated 31.01.2020 passed by the Deputy Commissioner rejecting the refund claim filed by the appellant under section 11B of the Central Excise Act 1944 made applicable to service tax matters by section 83 of the Finance Act 1994, had been assailed.

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1. the Commissioner (Appeals)  
2. the appellant

2. The appellant had provided works contracts services to National Building Construction Corporation<sup>3</sup> in terms of a contract that was entered prior to 01.04.2015 when there was no levy of service tax on such services under an exemption notification. However, w.e.f. 01.04.2015 the said exemption was withdrawn as a result of which the services rendered after 01.04.2015 became leviable to service tax. The service tax liability was to be divided equally between the appellant and NBCC. The appellant believed that it was not liable to pay service tax even after withdrawal of the exemption notification and, therefore, did not pay service tax to the extent it was liable to pay. However, NBCC made the payment of 50% portion of service tax, but deducted it from the payments due to the appellant and deposited the same with the jurisdictional authorities.

3. Thereafter, by a notification dated 01.03.2016, the Government restored the exemption earlier granted to services where contracts were entered prior to 01.04.2015, as a result of which the service tax deposited by NBCC became refundable. It needs to be noted that while restoring the exemption, necessary amendment was also made in the Finance Bill 2016 declaring that service tax paid during the interregnum period was liable to be refunded, provided the claim was filed within six months from the date on which the Finance Bill received the assent of the President. NBCC thereafter issued a general circular dated 03.11.2016 advising all the service providers to file their refund claims.

4. As the appellant was registered at Ghaziabad, it filed a consolidated refund claim in respect of various works done for NBCC at different locations. The refund claim was rejected by the Assistant

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**3. NBCC**

Commissioner and this order was upheld in the first appeal. The appellant filed an appeal before this Tribunal, which while allowing the appeal, directed the Assistant Commissioner to process the refund claims of the appellant at the respective jurisdictional authorities. The refund claim was accordingly sent to the service tax department at Greater Noida, Delhi and Jaipur. In the present case, we are concerned with the refund claim sent to the Jaipur service tax department.

5. The department issued a show cause notice proposing to reject the refund claim. The appellant filed a reply but the Assistant Commissioner rejected the refund claim. The appeal filed by the appellant before the first appellate authority was also rejected. The appellate authority held that as the appellant had not paid any tax it could not claim refund and that there were no documents to support the fact that NBCC had not passed the burden of tax to any other person. It is this order dated 18.03.2021 that has been assailed in this appeal.

6. Shri Rajesh Chhibber, learned counsel for the appellant submitted that in view of the order passed by the Tribunal, the refund claim of the appellant were sent to the service tax department at Greater Noida, Delhi and Jaipur and while the refund claims by the service tax department at Greater Noida and Delhi have been allowed, the service tax department at Jaipur has rejected the refund claim for arbitrary reasons.

7. Shri Ravi Kapoor, learned authorized representative appearing for the department supported the impugned order and submitted that it does not call for any interference in this appeal.

8. It is an admitted fact that after the exemption notification was withdrawn on 01.04.2015, NBCC had paid its share of the service tax and deducted it while making payments to the appellant. Subsequently on 01.03.2016 the government restored the exemption where contracts were entered prior to 01.04.2015 as a result of which the tax deposited by NBCC, which had been deducted from the payments made to the appellant, became refundable. Initially the claim filed by NBCC was rejected for the reason that it had not borne the burden and the claim filed by the appellant has been rejected for the reason that only NBCC could have claimed refund and also on an account of unjust enrichment.

9. The appellant had produced certificates of the chartered accountant certifying the fact that it was claiming the said amount in their balance sheet as receivable. This apart, the departments at Greater Noida and Delhi have sanctioned the refund observing that the appellant had borne the incidence of tax as NBCC had deducted it from the payments made to the appellant. The alleged ground of unjust enrichment is, therefore, misconceived. There is no factual distinction between the refund claimed at Jaipur Commissionerate and between the Greater Noida and Delhi Commissionerates when the refund claims have been allowed.

10. The finding recorded in the impugned order while rejecting the refund claim filed by the appellant that only NBCC could have claimed refund is also erroneous for the reason that earlier the claim filed by the NBCC had been rejected for the reason that it had not borne the incidence of tax.

11. The appellant is, therefore, clearly entitled to refund of the service tax which was deducted from the payments made by NBCC to the appellant.

12. The impugned order dated 31.01.2020 is, accordingly, set aside with a direction to the authority to refund the amount claimed by the appellant with interest at the applicable rate.

(Order Pronounced on **21.07.2022**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**

JB