

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Service Tax Appeal No. 85334 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-165-15-16 dated 27.11.2015 passed by the Commissioner of Service Tax-I (Appeals), Pune)

M/s. Satyasai Human Resource Solutions

Appellant

Shop No. 18, Nyati Estate,
Mohammadwadi, Hadapsar,
Pune 411 060.

Vs.

Commissioner of Service Tax-I, Pune

Respondent

ICE House, 41/A, Sassoon Road,
Pune 411 001.

Appearance:

Shri Makarand Joshi, Advocate, for the Appellant

Shri Prabhakar Sharma, Superintendent, Authorised Representative for
the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 10.05.2023

Date of Decision: 08.06.2023

FINAL ORDER No. 85929/2023

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is registered with Service Tax Department. They were providing services to educational institutions. On 27.08.2013, appellant filed one application for refund of service tax of Rs.5,94,919/- with the jurisdictional Assistant Commissioner, claiming that they were providing services which were no more taxable as per exemption Notification No.25/2012-ST dated 20.06.2012 and therefore the said amount deposited by them with the exchequer on 05.10.2012 may be refunded. Along with the said application they filed copy of the challan through which service tax was deposited, quarterly return for the period ending September 2012. Through order-in-original dated 24.04.2015, the original authority held that the appellant was not eligible for the said exemption and the refund was hit by doctrine of unjust

enrichment. Aggrieved by the said order, appellant preferred appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) upheld the order-in-original and rejected the appeal. Aggrieved by the said order-in-appeal, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. He has submitted that in terms of serial No.9 of Notification No. 25/2012-ST dated 20.06.2012, all services provided to educational institutions were exempted. On 05.10.2012, appellant paid Rs.5,94,919/- towards service tax through challan and subsequently filed the said refund claim. He further stated that the said amount of refund mentioned was having a mistake and the correct amount of refund that should have been claimed by them was Rs.5,34,693/-. He has submitted that on 30.04.2013, they had filed statutory ST-3 return for the period from July 2012 to September 2012 and claimed in the same return that they had paid Rs.5,34,693/- under sub-rule (1A) of Rule 6 of Service Tax Rules in Part-C of the said return claiming the said amount was paid as advance. He has also submitted that through the said return under column B1.9, they claimed Rs.43,26,000/- as the amount charged for exempted services. Further, they have claimed serial No.9 of Notification No.25/2012-ST under column A11.2 of the said return. He further stated that initially the invoices were issued charging service tax, but subsequently revised invoices were issued claiming exemption from payment of service tax. Through debit and credit notes, the account adjustments were also made. As a result, no service tax was collected from the service recipient. He has further relied on this Tribunal's decision in the case of Accounts Hub Pvt. Ltd. decided through final order No. A/85378/2023 dated 13.03.2023 and submitted that this Tribunal has held that service tax paid under the provisions of sub-rule (1A) of Rule 6 of Service Tax Rules, 1994 would be at par with the amounts lying in account current which is popularly known as PLA and can be withdrawn by the depositor any time.

3. Heard the learned AR who has stated that though the services were exempted, the service tax component was

recovered by the appellant and therefore, as provided under Section 73A of Finance Act, 1994, the appellant has to deposit the said amount with the exchequer. He has further submitted that service tax was not paid as advance payment and also stated that debit/credit notes were issued subsequent to the filing of application for refund. He has further submitted that doctrine of unjust enrichment is attracted in the present case.

4. We have carefully gone through the record of the case and submissions made. The original authority has denied the appellant the exemption claimed, by the order through which application for refund was decided. The learned AR has claimed that the amount deposited by the appellant was not advance. We, therefore, decided to examine the issue through the documentary evidence of ST-3 return. ST-3 return was filed by the appellant on 30.04.2013. At column A 11.2, appellant claimed the said exemption through the said return. Appellant has also claimed exemption from service tax for an amount of Rs.43,26,000/-, in column B1.9 and in Part-C, appellant has claimed Rs.5,34,693/- to have been paid in advance under sub-rule (1A) of the said Rule 6. Therefore we wanted to examine whether there is any material on record to establish that Revenue had raised any objection to the said claim made by the appellant through the said ST-3 return. We did not find any counter from Revenue either through filing cross objections or through filing synopsis by the Authorised Representative or any submissions of the Authorised Representative stating that the said ST-3 return was not accepted by Revenue. We therefore hold that the said amount of Rs.5,34,693/- was paid as advance under sub-rule (1A) of Rule 6 of Service Tax Rules and therefore by applying the precedent decision of this Tribunal in the case of Accounts Hub Pvt. Ltd. decided through final order No. A/85378/2023 dated 13.03.2023, we hold that the appellant was eligible for the said refund. We also observe that since the amount sought for refund was advance paid as per the said sub-rule, the question of unjust enrichment does not arise. We therefore allow the appeal after setting aside the impugned order and direct the original authority to issue the refund cheque

to the appellant within a period of four weeks from the date of service of copy of this order on him.

5. In above terms, appeal is allowed.

(Order pronounced in the open court on 08.06.2023)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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