

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II**

Service Tax Appeal No. 51654 of 2022

(Arising out of Order-in-Appeal No. JAI-EXCUS-000-APP-116(CRM)-ST-JPR-2022 dated 31.03.2022 passed by the Commissioner (Appeals), Central Excise And Central Goods And Service Tax, Jaipur.)

**M/s Ratnawat Infra Construction
Company LLP**

Manokamna, First Floor,
48 Sahkar Marg, Golimar Gardern,
Lalkothi, Jaipur

Appellant

VERSUS

**Commissioner, Central Excise &
CGST-Jaipur I**

NCR Building, Statue Circle,
C-Scheme, Jaipur
Rajasthan-302005

Respondent

APPEARANCE:

Mr. Mohit Gohlyan, Advocate for the Appellant

Mr. Gopi Raman, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50111 / 2023

Date of Hearing: 06.02.2023

Date of Decision: 06.02.2023

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved is whether the refund claim of service tax filed by the appellant, developer of residential flats, on cancellation of booking, have been rightly rejected.

3. Brief facts are that the appellant is engaged in construction of residential complex among others and were registered with the service tax department. The appellant had entered into 'Agreement

of Sale' of flats during the service tax regime prior to 30.06.2017 and had received advance payment from the proposed buyers for flats in their project namely 'Pinnacle'. The project got delayed and prior to getting of occupancy certificate in the year 2021, the booking were cancelled in respect of 7 flats on 30.12.2019. The flats were booked earlier on 15.11.2016 were cancelled under a 'Cancellation Agreement' between the parties. On cancellation, the appellant issued credit note to the buyer of the flat and also adjusted the amount of credit note' in the ledger account of the buyer. Pursuant to adjustment, the amount of deposit alongwith service tax received from the buyer of the flat, was refunded with respect to all the seven flats. Amounts were refunded through the bank transfer, which is duly mentioned in the ledger of the buyer's account and also evident from the copy of bank statement, wherein the amounts refunded are debited in the account of the appellant on 17.07.2020. Thus admittedly, there is no dispute with regard to the aforementioned basic facts. Learned Counsel for the appellant mentions that some of the invoices which were raised after 30.06.2017 during GST regime, those have been reversed and they have taken input tax credit of the tax paid during GST regime, for which, no objection has been raised by revenue. So far the service tax paid pursuant to raising of invoice, prior to 30.06.2017, the appellant have demonstrated that such service tax was shown as tax liability in the return for the period April to June 2017, and such tax stood properly paid, as reflected in the return. Further, Rule 6(3) of Service Tax Rules provides that a service provider haave issued invoice and/or received any payment against any service which is

not provided, whatsoever the reason may be, then the service provider can take credit of such excess service tax paid by him. However, due to change of regime from service tax to GST, on the event of cancellation of the proposed service in September 2019, the appellant could not take credit of service tax. Accordingly, in view of the Transitional provisions under Section 142 of their CGST Act, the appellant applied for refund of the service tax so paid, on the cancellation (booked prior to 30.06.2017).

4. The refund claim which was filed on 30.09.2020, was adjudicated vide OIO dated 01.12.2020 and the same was rejected on contest on the ground of limitation as well as unjust enrichment. Being aggrieved the appellant carried the matter in appeal before the learned Commissioner (Appeals), who vide impugned O-I-A was pleased to observe that the refund claim is filed on 30.09.2020, whereas the demand letter/invoice was raised by the appellant on the buyer being dated 25.06.2017, the refund is time barred. He further agreed with the Adjudicating Authority holding that the unjust enrichment bar by appellant have also not been satisfied. The bar of unjust enrichment is attracted as they have raised the invoice on the buyer of the flat, and the presumption of law under Section 12B of Central Excise Act is that the tax charged in invoice is deemed to have been passed onto the buyer.

5. Being aggrieved, the appellant is before this Tribunal. Learned Counsel for the appellant Mr. Mohit Gohlyan, inter alia demonstrates from the copy of various documents annexed to the appeal memo like-copy of invoice, booking agreement for the flat, cancellation agreement, credit note, ledger account and copy of bank statement,

wherein it is evident that appellant have refunded the amount received from the buyer of the flat pursuant to cancellation alongwith the amount of service tax. He also urges that the amount of service tax remained as a deposit with the department and accordingly, there is no time limit, as such amount became refundable pursuant to cancellation of booking. Further, the CBIC vide Circular No. 151/2000-2012-ST dated 10.02.2012 have considered the issue of booking of flats/units which is subsequently cancelled, prior to completion of the project and/or taking the delivery and it has been clarified as follows:

“in this model, after 01/07/2010, investment amount shall be treated as consideration paid in advance for the construction service to be provided by the builder/developer to the investor and the said amount would be subject to service tax. If the investor decides to exit from the project at a later date, either before or after the issuance of completion certificate, the builder/developer would be entitled to take credit under Rule 6(3) of the Service Tax Rules, 1994 (to the extent he has refunded the original amount). If the builder/developer resells the flat before the issuance of completion certificate, again tax liability would arise”

6. It is further urged that such situation which arises in this particular type of business of developing real estate, the Board have considered and have clarified that the developer/builder is entitled to service tax credit on cancellation of bookings, wherein the builder have refunded the amount of booking including service tax to the buyer of the flat. He also urges that retention of the amount of service tax without there being liability to tax, under the facts and circumstances, is also hit by Article 265 of the Constitution of India.
7. Learned AR for revenue relies on the impugned order.

8. Having considered the rival contentions, I find that there is no dispute on facts with regard to booking and cancellation and the refund made by the appellant to the buyer including the amount of service tax. Further, I hold that the appellant is entitled to refund, in view of the Cenvat credit no longer available, in spite of being entitled to the same under Rule (6)(3) of Service Tax Rules, the appellant is entitled to refund of such amount u/s 142(3) of CGST Act. I further find that as admittedly the appellant have refunded the booking amount including service tax, the appellant have satisfied the bar of unjust enrichment.

9. In view of my aforementioned findings and observations, I hold that the appellant is entitled to refund of the amount of Rs. 12,74,883/-. Accordingly, the appeal is allowed. The Adjudicating Authority is directed to grant the refund of the said amount alongwith interest as per rules within 45 days from receipt/service of this order. Appeal allowed.

(order dictated in the open Court)

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Anil Choudhary
Member(Judicial)