CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 51487 Of 2018

[Arising out of Order-in-Appeal No. 76/CKJ/ST/UDR/2018 dated 21.02.2018 passed by the Commissioner (Appeals) of CGST, Udaipur]

Sandeep Builders **: Appellant**
PN 845, Juni Bagar, Maha Mandir
Dist. Jodhpur

Vs

Commissioner of Central GST & Central Excise-Jodhpur **: Respondent**
G-105, New Industrial Area, Basni
Near Diesel Shed, Jodhpur-342003

APPEARANCE:
Present for the Appellant : Shri Om. Prakash Aggarwal, Consultant

Present for the Respondent: Shri Shashank Yadav, Authorised Representative

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50727/2026

Date of Hearing:19.03.2026

Date of Decision:16.04.2026

HEMAMBIKA R. PRIYA

The present appeal has been filed to assail the impugned Order-in-Appeal No. 76/CKJ/ST/UDR/2018 dated 21.02.2018 wherein the Commissioner (Appeals) rejected the appeal of M/s Sandeep Builders by upholding the Order-in-Original.

2. The brief facts of the case are that the M/s Sandeep Builders, Jodhpur[1]filed a refund claim for Rs. 15,17,965/-on 07.10.2014 on the

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1 The appellant

ground that construction of all types of roads was not taxable up to 30.06.2012, in view of the exclusion from the category of commercial and industrial construction service'. Such roads, beingpublic roads, with effect from 01.07.2012, public roads were exempted vide Sr.No. 13(a) of Notification no. 25/2012-ST dated 20.06.2012. The Department held the view that the said grounds were not legally tenable and the services provided by the appellant was covered under the category of "Works Contract Services".The construction of residential houses was covered under the category of "Construction Services" which are taxable. Accordingly, a Show Cause Notice dated 23.12.2014 for rejection of the refund claim was issuedby the Department. The said show cause notice was adjudicated vide Order-in-Original No. 01/2015 dated 06.01.2015 by the Adjudicating Authority who rejected the entire refund claim. Being aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who upheld the Order-in-Original and rejected the refund claim. Aggrieved by the said order, the appellant has filed the present appeal.

3. Learned consultant for the appellant submitted that the appellant is pressing for the refund of Rs. 8,67,703/- + Rs. 11,246/- relating to construction of Road and interlocking/chequered tiles as per work orders. Therefore, the appellant was agitating for a refund of Rs. 8,78,949/- out of the total refund claim of Rs. 15,17,965/-. He submitted that construction of road work at EWS 600 (G+3) Dwarka Puri Scheme as per work order no. 1618 dated 15.11.2011 was exempt from tax as the roads were for general public, which was

exempt vide notification no. 25/2012-ST dated 20.06.2012. Learned consultant contended that these submissions would be equally applicable in respect of roads constructed as per work order no. 52 dated 15.04.2013 as this road was also constructed in colonies developed by Rajasthan Housing Board.

3.1 Learned consultant further submitted that the refund was not hit by unjust enrichment. As per work orders, service tax was to be borne by the appellant. Further, as per work orders, Rajasthan Housing Board had also deducted the service tax payable by them under reverse charge mechanism from the bills raised by the appellant. Hence, the appellant had only borne the incidence of tax. In support of his submissions, learned consultant relied on the following judgements:-

(i) Commissioner of Central Excise, Service Tax vs. Indian Farmers Fertilizers Cooperation Limited[2]

(ii) P. S. Builders, Jodhpur & Ors. vs. Commissioner of Central Excise, Jodhpur[3]

Learned consultant submitted that Commissioner (Appeals) had also observed that Rajasthan Housing Boardmay have availed Cenvat credit of service tax but this ground was not taken in the show cause notice as well as in the adjudication orders. Therefore, he contended that the impugned Order-in-Appeal had gone beyond the scope of notice and the Order-in-Original. He prayed that the appeal may be allowed.

4. Learned Authorized Representative for the Department submitted that in the impugned order had rightly upheld the Order-in-

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2 2014 (35) STR 492 (All.)
3 Final Order No. 50859-50862 of 2023 decided on 04.07.2023

Original No. 01/2015 dated 06.01.2015 vide which the Adjudicating Authority has rejected the refund claim filed by the Appellant. The Appellant, during the course of adjudication proceedings as well as before the Commissioner (Appeals), had not provided the complete set of contract/agreements with G-Schedule, Tax Payment Particulars, ST-3 Returns which were essential documents for processing refund claims. As per para 6.3 of the impugned order, the appellant had not passed the test of unjust enrichment for claiming refund of service tax because it was evident from the facts of the case that the amount quoted by the appellant to the service recipient (Rajasthan Housing Board) was inclusive of service tax. Hence, the appellant had charged the component of the service tax amount from the service receiver. In support of his submissions, learned Authorized Representative relied upon the following decisions:-

(i) ITC Ltd. vs. Commissioner of Central Excise, Kolkata-IV[4]

(ii) BT (INDIA) Private Limited versus Union of India[5]

(iii) Jagdambha Phosphates versus Commissioner of CGST, Udaipur[6]

5. We have heard the Learned Consultant for the appellant and the Learned Authorized Representative for the Department and perused the case records.

6. We observe that during the course of adjudication proceedings as well as in the appeal, the appellant had not provided the complete set

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4 2019 (368) E.L.T. 216 (S.C.)
5 (2023) 13 Centax 89 (Del.)
6 (2024) 25 Centax 421 (Tri.-Del.)

of contract with G-Schedule, Tax Payment Particulars, ST-3 Returns etc. No such documents have been provided before this Bench nor has any leave been taken of the Bench to submit the relevant documents before the Tribunal.

6.1 We note that the impugned order has observed that as per the terms of the contract, the appellant had filed a response to the tender floated by Rajasthan Housing Board, wherein, the costing & taxes leviable thereon is included. Rajasthan Housing Board awarded the contract in favour of the appellant for a gross amount inclusive of all taxes, and the contract specifically mentions that the service tax shall be borne by the contractor/firm. Thereafter, the order goes on to note that, as per payment sheet, in accordance with the notification no. 30/20121-ST dated 30.06.2012, 50% amount of tax on aforesaid services was deducted by Rajasthan Housing Board from the amount payable to the appellant. Remaining 50% of tax liability was paid by the appellant and totally, they had paid service tax of Rs.11,246/- (Rs. 5584/+Rs. 56621-)which was not leviable on these services. Since, the amount quoted by the appellant was inclusive of service tax, hence, the appellant had passed on the component of the service tax amount to the service receiver viz., Rajasthan Housing Board. Once it is evident that the appellant had passed on the burden of tax, the principle of unjust enrichment would come to play. The doctrine of unjust enrichment is a fundamental principle in tax jurisprudence, ensuring that a taxpayer does not unduly benefit from a refund at the

expense of the exchequer. It is settled law that every refund claim has to be vetted through the lens of unjust enrichment, before its sanction. We draw support from the Supreme Court's judgment in **Sahakari Khand Udyog Mandal Ltd vs Commissioner of Central Excise**[7] observed as follows:-

> "We are not impressed by that argument also. In our view, the submission is not well founded and cannot be accepted.Stated simply, `Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. `Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.The doctrine of `unjust enrichment', therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of `unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity.
> The juristic basis of the obligation is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or the doctrine of restitution.
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> In the leading case of Fibrosa v. Fairbairn, [1942] 2 All ER 122, Lord Wright stated the principle thus :
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> > "....(A)ny civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution."
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> Lord Denning also stated in Nelson v. Larholt, [1947] 2 All ER 751;
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> > "It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to convass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally

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7 [(2005) 181 ELT 328(SC)]

> within the important category of cases where the court orders restitution if the justice of the case so requires."

The above principle has been accepted in India. This Court in several cases has applied the doctrine of unjust enrichment.In Orient Paper Mills Ltd. v. State of Orissa, [1962] 1 SCR 549, this Court did not grant refund to a dealer since he had already passed on the burden to the purchaser. It was observed that it was open to the Legislature to make a provision that an amount of illegal tax paid by the persons could be claimed only by them and not by the dealer and such restriction on the right of the dealer to obtain refund could lawfully be imposed in the interests of general public.

In Mulamchand v. State of M.P., AIR (1968) SC 1218, a contract was entered into between the plaintiff and the Government for removal of forest produce. The plaintiff deposited an amount of Rs. 10,000 and collected forest produce. It was, however, turned out that the provisions of Article 299 of the Constitution were not complied with and the contract was void. The plaintiff claimed refund of Rs. 10,000.

Applying the provision of Section 70 of the Contract Act, 1872 and referring to Fibrosa and Nelson, this Court said:

> "....It is well established that a person who seeks restitution has a duty to account to the defendant for what he has received in the accounting by the plaintiff is a condition of restitution from the defendant".

In M/s. Amar Nath Om Prakash and Ors. v. State of Punjab and Ors., [1985] 1 SCC 345 : [1985] 2 SCR 72, Section 23A of the Punjab Agricultural Produce Markets Act, 1961 enabled the market committees to retain the fee levied and collected by them from licensees in excess of the leviable amount if the burden of such fee was passed on by the licensees to purchasers. The validity of the said provision was challenged and refund was claimed. The Court, however, relying on Orient Paper Mills held that consumer public who had borne the ultimate burden were the persons really entitled to refund and since the market committees represented their interests, they were entitled to retain the amount and the licensees who had levied and collected the amount from consumers could not claim the benefit.The Court said;

> "The primary purpose of Section 23-A is seen on the face of it; it prevents the refund of license fee by the market committee to dealers, who have already passed on the burden of such fee to the next purchaser of the agricultural produce and who want to unjustly enrich themselves by

> obtaining the refund from the market committee, Section 23-A, in truth, recognizes the consumer-public who have borne the ultimate burden as the persons who have really paid the amount and so entitled to refund of any excess fee collected and therefore directs the market committee representing their interest to retain the amount. It has to be in this form because it would, in practice, be a difficult and futile exercise to attempt to trace the individual purchasers and consumers who ultimately bore the burden. It is really a law returning to the public what it has taken from the public, by enabling the committee to utilize the amount for the performance of services required of it under the Act. Instead of allowing middlemen to profiteer by ill-gotten gains, the Legislature has devised a procedure to undo the wrong item that has been done by the excessive levy by allowing the committees to retain the amount to be utilized hereafter for the benefit of the very persons for whose benefit the marketing legislation was enacted."

This Court held that the provision gave to the public through market committees what they had taken from the public and due to it. It rendered unto Caesar what was Caeser's.

The law laid down in Orient Paper Mills Ltd. and Amar Nath Om Prakash was quoted with approval by this Court in Mafatlal Industries Ltd.

In M/s. Shiv Shankar Dal Mills v. State of Haryana, [1980] 2 SCC 437, market fee was collected under a provision which was struck down by this Court in an earlier case. A prayer was, therefore, made by the traders to refund the amount collected from them. This Court held that though collection of market fee from the traders was illegal but traders could demand only such amount that had not passed on to the customers. For that view, the Court referred to Articles 38 and 39 of the Constitution as also discretionary nature of the power under Article 226 of the Constitution. Following Nawabganj Sugar Mills Co. Ltd. v. Union of India, [1976] 1 SCC 120 : [1976] 1 SCR 803, the Court devised a scheme providing for refund of amounts to those from whom illegal collections had been made by traders.

In Mafatlal Industries Ltd. also, this Court held that refund of tax/duty wrongfully paid can be claimed on the basis of doctrine of equity and a person demanding such restitution must plead and prove that he had paid such tax/duty and had suffered loss/injury. The burden is on the petitioner to prove that the tax/duty paid by him is not passed on to customers or third party and that he is entitled to restitution….”

6.2 As the appellant has not been able to establish that the incidence has not been passed on to Rajasthan Housing Board, we hold that the impugned order was correct in holding that the refund, even if admissible is hit by unjust enrichment. It has been submitted before us that the Rajasthan Housing Board had deducted the tax from their payments to the appellant, but no evidence has been led to substantiate the claim. Hence, we hold that the refund claim is barred by unjust enrichment.

6.3 We further observe that the appellant had also claimed the refund for service tax paid under "Works Contract Services" in respect of services provided by them to Rajasthan Housing Board under certain contracts. The impugned order has rejected the claim stating that that the copies of "G Schedule" of the following contracts have not been submitted:

Work Order No. & date	**Scope of work as per contract**	**Amount of service tax paid claim**			**Period**
1617/15.11.2011	Development work of Dwarkapuri Flats	15334	15550	30884	Oct. To Dec. 12
380/05.07.13	Development work of shopping centre in Sector 8 near community centre KBS, Jodhpur	304066	304066	608132	April to Sep. 2013
52/15.4.13	Construction of WBM Road and interlocking/chequered tile work at LIG & MIG Flats at Sector 1, KBS, Jodhpur	436678	431025	867703	Oct. 2013 to March 2014
2774/07.03.13	Development work of shopping centre in Sector 4, KBS, Jodhpur				
2034/22.03.2013	Development work in Sector 08-KBS, Jodhpur				
055/15.04.2013	Construction of common wall, main				

	gate etc				
Total		756078	750641	1506719	

6.4. As per the aforesaid contracts, we note that the appellant has provided the services of construction as well as development work and the nature of work reveals that the development, construction and interlocking of tiles work involves the use of material and as well as services for completion of the work in respect of moveable or immoveable property. Moreover, Works Contract Services at applicable rate is charged on the value of services of aforesaid contract and transfer of property in goods is also involved in the execution of the contract. Thus, the said activity is appropriately covered under the definition of "Works Contract" as defined under Section 65B(54) of Finance Act 1994. Consequently, we hold that the appellant has correctly paid services during the period. Consequently, they are not eligible for refund.

7. In this context, we draw support from this Tribunal's decision in **M/s Jagdamba Phosphates** versus **Commissioner of CGST, Udaipur**[8] which held that the refund proceedings being in the nature of execution proceedings cannot be used to modify assessment orders that have attained facility.

> "7. The settled legal position is that the refund proceedings are in the nature of execution proceedings and cannot be used to-modify the assessment already made. Just as in an execution proceeding the decree cannot be modified, in a refund proceeding, the assessment cannot be modified as held by the Supreme Court in ITC Limited. The relevant portions of this Judgement are as follows:

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8 (2024) 25 Centax 421 (Tri.-Del.)

"43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be pasted under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra)

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Reassessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India - 2009 (240) E.L.T. 490 (Bom.) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra).

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47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act. …..”

8. In BT (India) Pvt. Ltd, the Delhi High Court held that ITC Ltd would apply to service tax refunds also. The relevant portions of this judgement are below:

“… 57. It becomes pertinent to note that both the Customs as well as the Excise Acts follow an identical procedure of self assessment. While Section 17 of the Customs Act enables an importer or an exporter, as the case may be, to self-assess and pay the duty leviable on goods, the said provision further empowers the proper officer to verify the self assessed return that may be submitted. In terms of Section 17(4) of the said enactment, if the proper officer on verification, examination or testing of the goods comes to the conclusion that the self assessment is incorrect, it becomes entitled to reassess the duty leviable on goods. It is in extension of the aforesaid power that sub-section (5) of Section 17 speaks of reassessment and the obligation of the proper officer to pass a speaking order in support of the exercise of reassessment. 58. Section 27 enables a person to claim refund of duty or interest which may have been either paid or borne by it. Section 27(2) of the Customs Act, in terms identical to Section 11B (2) of the Excise Act, speaks of refunds being effected upon the proper officer being satisfied that the whole or any part of the duty paid is refundable. Section 27(2) is thus a provision which is pari materia with Section 11B (2) of the Excise Act. 59. The Supreme Court in ITC Limited, notwithstanding Section 27(2) employing the expression “satisfied” held that unless a self assessed return is revised or doubted in exercise of powers of reassessment, best judgment assessment or where it be alleged that duty had been short levied, short paid or erroneously refunded, those powers would not be available to be exercised at the stage of considering an application for refund. Having noticed the statutory position which prevails, we turn then to the decisions which would have a bearing on the question which stands posited. ……

63. Their Lordships in ITC Limited categorically held that notwithstanding a self-assessed Bill of Entry having been merely endorsed by the competent authority, the

same would nonetheless amount to an „assessment“. It was in that backdrop that it was held that once a self assessed return had been duly accepted, the same could not be modified or varied by an authority while considering an application for refund.

64. It becomes pertinent to note that the appellant before the Supreme Court in that case, had sought to press the claim for refund asserting that it had due to inadvertence failed to submit a self assessment return taking into consideration an exemption notification. It was this claim which came to be ultimately negatived by the Supreme Court and which held that a claim for refund cannot be entertained unless the order of assessment, and which would include a self-assessment return, is modified in accordance with the procedure prescribed in the statute. In our considered opinion, it is these principles enunciated in Flock (India), Priya Blue Industries and ITC Limited, which compel and convince us to observe that the impugned order is clearly rendered unsustainable.

65. Undisputedly, the petitioner had submitted self assessment returns proceeding on the basis that the output services rendered by it would qualify as an "export of service“ and thus it being not exigible to service tax. The aforesaid self-assessment returns remained untouched and had not been questioned by the respondents either in terms of Sections 72 or 73 of the Act. The application for refund of CENVAT credit was founded on the petitioner assessing that it was not liable to pay service tax on services so exported. The accumulation of CENVAT credit came about in light of the various input services received by the petitioner and it having availed credit of service tax paid thereon in terms of Rule 3 of the CCR Rules. It was in respect of the accumulated CENVAT credit that the application for refund came to be made.

66. In our considered view, unless the self-assessed return, as submitted had been questioned, re-opened or re-assessed and the assertion of the petitioner of the services rendered by it qualifying as an "export of service" questioned or negatived in accordance with the procedure prescribed under the Act, its claim for refund could not have been negated. As was observed by the Supreme Court in ITC Limited, a self-assessed return also amounts to an „assessment“ and unless it is varied or modified in accordance with the procedure prescribed under the relevant statute, the same cannot possibly be questioned in refund proceedings. As the Supreme Court had held in the decisions aforenoted, the authority while considering an application for grant of refund neither sits in appeal nor is it entitled to review an assessment deemed to have been made. In fact, the Supreme Court in ITC Limited had described refund proceedings to be akin to execution proceedings. ....”

9. This case is identical to BT (India) Pvt. Ltd. inasmuch as the question is whether refund of service tax paid can be sanctioned or

> denied so as to modify the self-assessments already made and it has been answered in the negative by the Delhi High Court. The only difference between this case and that of BT (India) Pvt. Ltd. is that the assessee would have been entitled to refund and in this case, the appellant would not be entitled to refund if the refund is processed as per the assessments. But that is immaterial.
> 10. In view of the judgment of the Supreme Court in ITC Ltd and the judgment of the Delhi High Court in BT (India) Pvt. Ltd., it is held that since the appellant had not assailed the self-assessments and as per the assessments the appellant is not entitled to any refund, the appellant would not be entitled to refund and it has been correctly rejected.
> 11. The impugned order is, therefore, upheld and the appeal is dismissed."

7. In view of the above discussions, we find no infirmity in the impugned order. The appeal is accordingly rejected.

(Order pronounced in the Open Court on 16.04.2026)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.