

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

PRINCIPAL BENCH COURT NO.III

Service Tax Appeal No. 50007 of 2022

[Arising out of Order-in-Appeal No. 49 (SM) ST/JPR/2021 dated 28.01.2021 passed by the Commissioner (Appeals) CGST & Central Excise, Jaipur]

M/s Rajasthan Financial Corporation

Appellant

Udyog Bhawan,
Tilak Marg, C Scheme
Jaipur-302005

Versus

Commissioner of CGST, Jaipur

Respondent

Appearance

Shri S C Kamra, Advocate for the appellant

Shri Ishwar Charan, Authorised Representative for the Respondent

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Date of hearing/Decision: 11.04.2022

FINAL ORDER NO. 50323/2022

Ashok Jindal:

1. The appellant is in appeal against the impugned order wherein the refund claim of penalty paid by the appellant has been rejected by the authorities below on the grounds of unjust enrichment.
2. The facts of the case are that initially the proceedings were initiated against the appellant for payment of service tax under the category of "Banking and Financial Institution Services" and a show cause notice were issued to the appellant. On adjudication of the same, the demand of service tax was

confirmed along with interest and equivalent penalty was also imposed. For the subsequent period also, the proceedings were initiated against the appellant and demand of service tax was confirmed along with interest and penalty was also imposed. They paid the penalty amount and challenged the order before the Id. Commissioner (Appeals), who dropped the penalty imposed on the appellant by giving the benefit of Section 80 of the Finance Act, 1994. For rest of the demand, the appellant filed the appeal before this tribunal and the matter is still pending. With regard to penalty dropped by the learned Commissioner (Appeals), the Revenue approached this Tribunal and this Tribunal vide its Final Order No. 52123-52124 of 2021 dated 24.12.2021 dismissed the appeal filed by the Revenue by upholding the order of dropping the penalty against the appellant. After dropping of penalty by the learned Commissioner (Appeals), the appellant filed refund claim of refund of penalty deposited by them for filing the appeal before higher forum. The refund claim of penalty deposited by the appellant was rejected initially on the ground that they have paid the penalty under wrong head and they have failed to pass the bar of unjust enrichment. The said order was challenged before the Commissioner (Appeals), who gave the benefit of payment of penalty under wrong head holding that this is only procedural lapse on the part of the appellant but he hold that the appellant has failed to pass the bar of unjust enrichment. Against the said order, the appellant is before me.

3. The learned Counsel for the appellant submits that for refund of penalty there is no such provision under law wherein the appellant is required to pass the bar of unjust enrichment. The said view has been taken by this Tribunal in the following cases:

- (i) **Commissioner of Customs (Import), Mumbai vs. Be Office Automation Pvt Ltd. 2016 (334) ELT 158 (Tri-Mum).**
- (ii) **Anand Silk Mills vs. Commissioner of Customs (Import) Nhava Sheva-2010-TIOL-570-CESTAT-MUM**
- (iii) **Ratan Udyog vs. Commissioner of Cus. (Acc & Export), Mumbai-2014 (313) ELT 764 (Tri-Mum)**

Following the order of the Hon'ble High Court of Mumbai in **United Spirits Ld. Vs. Commissioner of Customs (Import), Mumbai-2009(240) ELT 513 (Bom)**. Therefore, he prayed that the impugned order qua rejecting the refund claim on the account of unjust enrichment is to be set aside.

- 4. On the other hand, the learned authorised representative for the Department supporting the impugned order.
- 5. Heard the parties and considered the submissions.
- 6. On consideration of the submissions made by both sides and examining the impugned order, I find that the learned Commissioner (Appeals) had failed to appreciate the facts of the

case as it is a case of refund of penalty paid by the appellant where he has considered that it is a case of refund of duty. As facts of the case are crystal clear that it is a case of refund of penalty and for refund of penalty there is no such provisions in law where the appellant is required to establish that they have to pass the bar of unjust enrichment. In such circumstances, following the decisions of the Tribunal in the case of **Be Office Automation Pvt Ltd., Anand Silk Mills vs. Commissioner of Customs (Import) Nhava Sheva, Ratan Udyog vs. Commissioner of Cus. (Acc & Export), Mumbai**, I hold that bar of unjust enrichment is not applicable to the facts of the case.

7. Therefore, I set aside the impugned order qua rejecting the refund claim on the ground that appellant has failed to pass the bar of unjust enrichment.
8. In view of this, I allow the appeal with consequential relief.

(Dictated and pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)