IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1st DAY OF JUNE, 2022

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

C.E.A No.2 OF 2021

BETWEEN :

TPI ADVISORY SERVICES INDIA
PRIVATE LIMITED
NO. 25, 4TH FLOOR
SHANKARNARAYANA BUILDING I
M.G.ROAD, BANGALORE – 560 001
(REPRESENTED BY
MR. NANDAGOPAL VISHWAKUMAR,
DIRECTOR). ...APPELLANT

(BY SHRI. K.S. RAVI SHANKAR, SENIOR ADVOCATE FOR
SHRI. N ANAND, ADVOCATE)

AND :

THE COMMISSIONER OF CENTRAL TAX
BANGALORE NORTH COMMISSIONERATE
HMT BHAVAN, BELLARY ROAD
BANGALORE – 560 070. ...RESPONDENT

(BY SHRI. JEEVAN J NEERALAGI, AGA)

. . . .

THIS CEA IS FILED UNDER SEC.35G OF THE CENTRAL EXCISE ACT, R/W SECTION 83 OF THE FINANCE ACT, 1994, ARISING OUT OF ORDER DATED 27/01/2020 PASSED IN FINAL ORDER NO.20067/2020, PRAYING TO ALLOW THE APPEAL OF THE APPELLANT; HOLD AND

DECIDE THE QUESTIONS OF LAW INVOLVED IN THE CASE IN FAVOUR OF THE APPELLANT AND ETC.

THIS CEA, COMING ON FOR *FINAL HEARING*, THIS DAY, ***P.S.DINESH KUMAR J,*** DELIVERED THE FOLLOWING:-

JUDGMENT

This appeal is admitted to consider the following substantial questions of law:

a) *"Whether in the facts and circumstances of the case, the Tribunal was justified in dismissing the appeal of the Appellant thereby upholding rejection of refund claim of the service tax paid by the Appellant despite the fact that they had also paid Goods and Service Tax (GST) on the very same transaction which had resulted in payment of tax twice-over in respect of the very same transaction?*

b) *Whether in the facts and circumstances of the case, the Tribunal was right in law in rejecting the claim for refund of service tax when it was an undisputed fact that the service tax invoices were subsequently cancelled by issuing credit notes to the customers which had the effect that payment of service tax on such cancelled invoices were not required as per law and hence there was no liability to pay service tax on cancelled tax invoices?*

c) *Whether the Order of the Hon'ble Tribunal is in accordance with the provisions of Rule 6(3) of the Service Tax Rules, 1994 when the parties renegotiated*

the invoices issued under the Finance Act, 1994 and the Appellant had issued a credit note which annulled/cancelled the invoices issued and the denial of refund of the stated amount would be in violation of the Statutory Provisions?

d) Whether by operation of Section 142(3) of the CGST Act, 2017 the amount of tax paid under Finance Act, 1994 due to renegotiation of invoice with the service receiver and having given a credit note of the payment made, the tax so paid should have to be refunded to the appellant?"

2. Heard Shri. K.S. Ravi Shankar, learned Senior Advocate for the appellant and Shri. Jeevan J. Neeralagi, learned Standing Counsel for the Revenue.

3. Brief facts of the case are, appellant runs a Business Management and Consultancy Service. During the course of its business, it had raised four Invoices dated 17.04.2017, 16.06.2017 and 30.06.2017 for the period from April to June, 2017 for payment of Service Tax of Rs.17,84,952/- against WNS Global Services Private Limited, Tech Mahindra, USA & Morgan Stanley Advantage Services Pvt. Ltd. After raising the Invoices, the said amount was paid

by the appellant to the Government. The GST Act came into effect from July 1, 2017. The clients in whose names the Invoices were raised had expressed reservation to make the payment in view of the transition from service tax to GST. The appellant accordingly issued credit notes to those customers and raised fresh Invoices under the provisions of GST, on 30.09.2017, 08.11.2017 and 31.12.2017 for a sum of Rs.21,41,944/- and paid the said amount. Thereafter, appellant filed an application seeking refund of the service tax of Rs.17,84,952/-. A show cause notice was issued calling upon the appellant as to why the refund claim should not be rejected. Appellant submitted its explanation leading to Order-in-Original dated 10.01.2019 rejecting the said claim. The appeal filed thereon before the Commissioner of Central Tax (Appeals-II) also stood rejected vide order dated 16.07.2019. A further appeal filed before the CESTAT[1], was also dismissed on 27.01.2020. Hence, this appeal.

4. Shri. K.S. Ravi Shankar, learned Senior Advocate submitted that:

[1] Customs, Excise and Service Tax Appellate Tribunal

- the Revenue does not dispute that appellant has deposited the service tax of Rs.17,84,932/-;
- the Commissioner of Central Tax (Appeals-II) has recorded in para 10 of his order that appellant was not liable to pay the GST;
- the CESTAT has rejected the appeal by a cryptic conclusion that the case law cited by the appellant are not applicable to the facts of the case without recording any reasons as to why they are not applicable;
- that in *Madras Port Trust Vs. Hymanshu International*[2]*,* it is held that the Government and Public Authorities would adopt practice of not relying upon technical pleas;
- In *Total Environment Woodwork P. Ltd., Vs. C.C.E., C. & S.T., Bangalore-I*[3], it is held that when the duty was paid twice, once through CENVAT credit and in cash for the second time, re-credit has to be given.

5. Though these authorities were cited before the CESTAT, the same has not been considered. He further

[2] (1979)4 E.L.T.(J396)(S.C.)
[3] 2017(357)E.L.T. 1215(Tri. – Bang.)

submitted that in M/s.*Shiv Shanker Dal Mills etc. etc. Vs. State of Haryana and others*[4] was also cited. With these submissions, he prayed for allowing this appeal.

6. Shri. Jeevan J.Neeralagi, learned Advocate argued opposing the appeal.

7. We have carefully considered rival contentions and perused the records.

8. It is not in dispute that the appellant has paid Rs.17,84,952/- as service tax and subsequently GST of Rs.21,41,944/-. The Commissioner of Central Tax (Appeals-II) has recorded in para 10 of his order that the appellant was not liable to pay the GST. Yet rejected the appeal. The CESTAT, in its order, has reproduced para 10 of the order passed by the Commissioner of Central Tax (Appeals-II) and concluded its judgment by recording thus:

> *"7. Further, I find that the case laws relied upon by the appellant cited supra are not applicable in the facts and circumstances of the present case and are distinguishable. In view of my discussion above, I am of the considered view that*

[4] AIR 1980 SC 1037

there is no infirmity in the impugned order which is upheld by dismissing the appeal of the appellant."

9. We have carefully considered the authorities citied by Shri. Ravishankar in *Shiv Shankar Dal Mills.* The Hon'ble Supreme Court of India speaking through Justice Krishna Iyer has held thus:

"This big bunch of writ petitions shows how litigation has a habit of proliferation in our processual system since cases are considered in isolation, not in their comprehensive implications and docket management is an art awaiting its Indian dawn. The facts, being admitted, obviate debate. All these appellants and writ petitioners had paid market fees at the increased rate of 3 per cent (raised from the original 2 per cent) under Haryana Act 22 of 1977. Many dealers challenged the levies as unconstitutional, and this Court, in a series of appeals (CAs Nos. 1083 of 1977 etc.) [Kewal Kishan Puri v. State of Punjab, (1980) 1 SCC 416] ruled that the excess of 1 per cent over the original rate of 2 per cent was ultra vires. This cast a consequential liability on the Market Committees to refund the illegal portion. They were not so ordered probably because they could not straightway be quantified. The petitioners who had, under mistake, paid larger sums which, after the decision of this Court holding the levy illegal, have become refundable, demand a direction to that effect to the Market Committees concerned. There cannot be any dispute about the obligation or the amounts since the Market Committees have accounts of collections and are willing to disgorge the excess sums Indeed, if they file suits within the limitation period, decrees must surely follow. What the period of limitation is and whether Article 226 will

apply are moot as is evident from the High Courts judgment, but we are not called upon to pronounce on either point in the view we take. Where public bodies, under colour of public laws, recover people's moneys, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of "alternative remedy", since the root principle of law married to justice, is ubi jus ibi remedium.

(Emphasis Supplied)

10. In *Madras Port Trust*, it is held that it is high time that the Government and Public Authorities have got the practice of not relying upon technical pleas. It was also argued by Shri. Ravi Shankar that when the CESTAT has been following *Total Environment*, but yet in the instant case has denied the relief.

11. In view of the undisputed facts that the appellant has paid the service tax and also the GST; and the Commissioner of Central Excise has held that appellant was not liable to pay GST, rejection of applications for refund is untenable. Having paid the service tax in the year 2017 and

having submitted its application, the appellant is awaiting the refund from March 2018 till date.

12. In view of the above, the following:

ORDER

(a) Appeal is ***allowed***.

(b) The substantial questions of law are answered in favour of the assessee and against the Revenue.

(c) Respondents are directed to refund Rs.17,84,952/- with statutory interest payable under Section 11BB of the Central Excise Act, 1944 within three months from the date of receipt of a copy of this order.

Sd/-
JUDGE

Sd/-
JUDGE

SPS