IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75419 of 2014
Service Tax Appeal No.75420 of 2014

(Arising out of Order-in-Appeal No.55-56/ST/Kol/2013 dated 30.12.2013 passed by Commissioner of Service Tax, Kolkata)

M/s Electrosteel Castings Limited
G.K.Tower, Camac Street, Kolkata-700017

Appellant

VERSUS

Commissioner of Service Tax, Kolkata
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPERANCE :

Shri Arvind Baheti, Chartered Accountant for the Appellant
Shri S.S.Chattopadhayay, Authorized Representative for the Respondent

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

FINAL ORDER NO.76629-76630/2024

DATE OF HEARING : 31 .07.2024

DATE OF PRONOUNCEMENT : **09.08.2024**

Per Ashok Jindal :

Both the appeals filed by the appellant against the rejection of claim of refund of service tax paid by the appellant under the category 'works contract services' in respect of a composite contract involving the construction/laying down of drinking water supply pipeline awarded by Kerala Water Authority (KWA) for Thiruvananthapuram city region for the period 1st June, 2007 to 31st October, 2012.

2. The facts of the case are that the appellant is engaged in the manufacture of ductile iron pipes and pipe fittings. The appellant was also providing services in the nature of construction/laying down of pipelines for which it is duly registered with the service tax authorities. The Appellant was executing several composite projects for various local authorities and municipal corporations. Vide an agreement dated 03 October 2006 and a Letter of Acceptance dated 19 September 2006, the Appellant was awarded a contract by Kerala Water Authority (KWA) for the construction of distribution system for water supply for Thiruvananthapuram City. Prior to 01 June 2007, such services, although classifiable as Commercial or Industrial Construction Services (CICS), were not taxable as the same were non-commercial and non-industrial in nature and service tax was accordingly not charged on the invoices raised upon KWA before the period 01 June 2007. However, with effect from 01 June 2007, "works contract services" were covered as a taxable service under Section 65(105)(zzzza) of the Finance Act, 1994. The Appellant was of the opinion that the services provided by them were covered under "works contract services" as an EPC/turnkey project, started to raise invoices reflecting service tax and suo-moto depositing the same with the government exchequer. Meanwhile, the Appellant, through numerous correspondences, approached KWA for payment of service tax. Vide a communication dated 31 October 2011, M/sTokyo Engineering Consultants Limited informed the Appellant that laying of pipelines for drinking water supply project for state agencies do not fall under the expression of "commercial or industrial

construction" and as such no service tax was payable by them. Accordingly, service tax deposited by the Appellant with the government was never paid to the Appellant by KWA.

2.1 Under the receipt of the said communication from Tokyo Engineering, the Appellant filed two applications for refund of service tax deposited by the Appellant under Section 11B of the Central Excise Act, 1944 covering the periods 01 June 2007 to 30 September 2010 and 01 January 2011 to 31 October 2011 respectively.

2.2 The Adjudicating authority rejected the first refund claim as time bar and the second refund claim was rejected by observing that the appellant could not provide supporting documents for exemption of service tax on the "works contract services" provided by the appellant to KWA and has failed to establish that the refund claim was not hit by unjust enrichment.

2.3 The appellant filed appeals against the aforesaid order before the Ld.Commissioner (Appeals). The ld.Commissioner (Appeals) rejected the refund claim for both the periods holding that the service tax was correctly discharged by the appellant on the services rendered by them.

2.4 Aggrieved from the said order, the appellant is before us.

3. The ld.Counsel for the appellants, submits that the the service of laying of pipelines for government/government undertakings was covered under the exclusionary clause to CICS for the period prior to 01 June 2007 and thereafter, under Explanation (ii)(b) to the definition of "Works Contract Services" in view of the judgement of Hon'ble Larger

Bench in the case of Lanco Infratech Limited Vs. Commissioner of Customs, Central Excise & Service Tax, Hyderabad reported in 2015 (38) STR 709 (Tri.-LB), which has been followed by this Tribunal in the case of M/s Ramky Infrastructure Ltd. Vs. Commissioner of Central Excise & Service Tax, Jaipur I reported in 2017 (3) TMI 1661 (Tri.-New Delhi).

3.1 The ld.Consultant further submitted that as the service tax deposited by the appellants under bonafide mistake of law, therefore, the statutory time limit under Section 11B of the Central Excise Act, 1944, would not be applicable to the facts of this case. To support, he relied on the decision of the Telangana High Court in the case of M/s Credible Engineering Construction Projects Limited reported in 2024 (4) TMI 1041.

3.2 He further submitted that as the appellant has not received any service tax from the service recipient and the same has been communicated to them from Tokyo Engineering Consultants Company Limited , therefore, the appellant has passed the bar of unjust enrichment. Therefore, the refund claims are to be allowed.

3.3 On the contrary, the ld.A.R. for the Revenue, submitted that the refund claims are hit by bar of unjust enrichment as held by the Hon'ble Madhya Pradesh High Court in the case of MDP Infra (India) Pvt. Limited Vs. Commissioner of Customs, Central Excise & CGST reported in 2019 (29) GSTL 296 (M.P.). He further submits that the issue of taxability and unjust enrichment has not been dealt with by the

ld.Adjudicating Authority. Therefore, the matters are to be remanded back to the ld.Adjudicating Authority to consider the issue.

4. Heard both the parties and considered the submissions.

5. We find that the facts of this case are not in dispute that the appellants entered with an agreement with KWA for the construction of distribution system for water supply for Thiruvananthapuram City. It was awarded by KWA. The said services were not taxable under the category of CICS prior to 01.06.2007. From 01.06.2007, the appellant started paying service tax under "works contract service" and when the service recipient refused to pay service tax, contending that they are not liable to pay service tax, the appellant filed refund claims, therefore, from the above discussions, three issues arise to be decided by this Tribunal, which are as follows :

Issue No. (a)

Whether the activity undertaken by the appellants for construction of distribution system of water supply for KWA is a taxable service under "Work Contract Service" in terms of Section 65(105)(zzzza) of the Finance Act, 1994, or not ?

Issue No. (b)

Whether the refund claims filed by the appellant of service tax paid, which was not payable by the appellant is hit by the provisions of Section 11B of the Central Excise Act, 1944, or not ?

Issue No. (c)

Whether the refund claims filed by the appellant are hit by bar of unjust enrichment or not ?

Issue No. (a)

Whether the activity undertaken by the appellants for construction of distribution system of water supply for KWA is a taxable service under "Work Contract Service" in terms of Section 65(105)(zzzza) of the Finance Act, 1994, or not ?

6. We find that the said issue has been dealt with by the Larger Bench of this Tribunal in the case of Lanco Infratech Limited (supra), wherein this Tribunal has held as under :

> *"A) Whether laying of pipelines for lift irrigation systems, transmission and distribution of drinking water or sewerage, undertaken for Government/Government undertakings should be classified under ECIS as erection, commission or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise; or installation of plumbing, drain laying or other installations for transport of fluids, enumerated in Section 65(105)(zzd) and defined Section 65(39a), during 16-6-2005 to 31-5-2007; or must be classified under CICS, as amounting to construction of pipeline or conduit; and if classifiable under the later provision, whether the activity is not taxable since it is not used or to be used, engaged or to be engaged primarily for industry or commerce?*
>
> *(B) Whether construction of canals for irrigation purposes and laying of pipelines including as part of lift irrigation systems, undertaken for the Government/Government undertakings is liable to Service Tax under WCS as turnkey projects, including*

engineering, procurement and construction or commissioning projects under clause © of Explanation (ii) in the definition of WCS or is excluded from the ambit of WCS since it is in respect of a "Dam" and thus stands excluded from WCS, as defined?

© Whether, turnkey projects, including engineering, procurement and construction or commissioning (EPC) projects specified in clause © is merely an enumeration of the mode of execution of taxable services specified in clauses (a) to (d) or is a wholly distinct taxable service and is exigible to Service Tax as an independent species of works contract service?

(D) Whether, even if clause © in Explanation (ii) of WCS is considered a distinct and independent service, where construction of canals for irrigation purposes and laying of pipelines either as part of lift irrigation systems or for transport and distribution of water is undertaken for Government/Government undertakings, the same is more appropriately covered under clause (b) of WCS, i.e., construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, by applying principles of classification set out in Section 65A(2)(a) & (b) and thus fall outside the ambit of levy, since the activity is not primarily for the purpose of commerce or industry; or whether a contrary view that clause © being an independent entry, activities falling thereunder would be taxable even if the rendition of service thereby or thereunder, was not primarily for non-commercial or non-industrial purposes? and…….

©……."

And after considering all the arguments of the parties and come to the conclusion as under :

*"**21.** In the light of the foregoing analyses, we record our conclusions on the several issues framed, as follows :*

(a) ***Issue (A) :*** *Laying of pipelines/conduits for lift irrigation systems for transmission of water or for sewerage disposal, undertaken for Government/Government undertakings and involving associated activities like trenching, soil preparation and filling, supporting masonry work, jointing of pipes, electro-mechanical works or pumping stations and like activity, is classifiable only under Commercial or Industrial Construction Service (CICS) for the period up to 1-6-2007 and not under Erection, Commissioning or Installation Service (ECIS);*

(b) ***Issues (B), (C) and (D) :***

(i) Construction of canals for irrigation or water supply; construction or laying of pipelines/conduits for lift irrigation conceived and integrated into a dam project, must be classified as works contract "in respect of dam" and is thus excluded from the scope of "Works Contract Service" defined in Section 65(105)(zzzza) of the Act, in view of the exclusionary clause in the provision;

(ii) Turnkey/EPC project contracts, enumerated in clause ©, Explanation (ii) in Section 65(105)(zzzza) of the Act is a descriptive and ex abundant cautela drafting methodology. In the light of the decision in Alstom Projects India Ltd., fortified by the Special Bench decision (dated 19-3-2015) in Larsen & Toubro Ltd. reference, a turnkey/EPC contract is taxable prior to 1-6-2007 as well. On and since 1-6-2007, turnkey/EPC contracts must be classified on the basis of the essential character of the service provided thereby, with the aid of classification guidelines set out in Section 65A(2) of the Act. Consequently, a turnkey/EPC contract must be classified under any of the clauses (a) to (d), Explanation (ii), Section 65(105)(zzzza). The bundled bouquet of services provided as turnkey/EPC contract, classifiable as Commercial or Industrial Construction Service (CICS) prior to 1-6-

2007, would be classifiable under clause (b), Explanation (ii), Section 65(105)(zzzza) on and from 1-6-2007 and would not be exigible to Service Tax if the rendition of service thereby is primarily for non-commercial, non-industrial purpose, in view of the exclusionary clause in clause (b) of the definition of WCS.

> *This is the only possible and harmonious interpretation possible of the several clauses under Explanation (ii) of Section 65(105)(zzzza), a distinct taxable service defined with constituent elements thereof substantially drawn from elements of pre-existing taxable services like ECIS, CICS or COCS; and other services when bundled to amount to turnkey/EPC;*

(iii) Construction of canals/pipelines/conduits to support irrigation, water supply or for sewerage disposal, when provided to Government/Government undertakings would be for non-commercial, non-industrial purposes, even when executed under turnkey/EPC contractual mode and would fall within the ambit of clause (b), Explanation (ii) of Section 65(105)(zzzza); and would consequently not be exigible to Service Tax, in view of the exclusion enacted in clause (b); and

© ***Issue © :*** *Whereunder an agreement, whether termed as works contract, turnkey or EPC, the principal contractor, in terms of the agreement with the employer/contractee, assigns the works to a sub-contractor and the transfer of property in goods involved in the execution of such works passes on accretion to or incorporation into the works on the property belonging to the employer/contractee, the principal contractor cannot be considered to have provided the taxable (works contract) service enumerated and defined in Section 65(105)(zzzza) of the Act."*

The Larger Bench of this Tribunal held that the construction of canals/pipelines/conduits to support irrigation, water supply or for sewerage disposal, when provided to Government/Government undertakings would be for non-commercial, non-industrial purposes, even when executed under turnkey/EPC contractual mode and would fall within the ambit of clause (b), Explanation (ii) of Section 65(105)(zzzza); and would consequently not be exigible to Service Tax, in view of the exclusion enacted in clause (b).

7. Therefore, we hold that the appellant is not liable to pay service tax for the activity undertaken by them for laying down the pipelines for Government/Government Undertakings for supply of water from KWA in Thiruvananthapuram City. In view of the this , we find that the appellant is not liable to pay service tax. The said view has been affirmed by the CBEC Circular No.116/10/2009-ST dated 15th September, 2009, which is reproduced herein under :

> *"Circular No. 116/10/2009-S.T., dated 15-9-2009*
>
> *F.No. 137/40/2009-CX. 4*
>
> *Government of India*
>
> *Ministry of Finance (Department of Revenue)*
>
> *Central Board of Excise & Customs, New Delhi*
>
> *Subject : Leviability of Service tax on construction of canals by Government agencies – Regarding*
>
> *On a reference being received by the Board, two following issues were examined for a clear understanding of facts. The first is*

regarding leviability of service tax on construction of canals for Government projects.

1. As per Section 65(25b) of the Finance Act, 1994 "commercial or industrial construction service" means —

(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

© completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is —

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended ***for commerce or industry****, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.*

2. Thus the essence of the definition is that the "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by

the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.

3. The second issue is about Government taking up construction activity of dams, irrigation projects, buildings or infrastructure construction etc. through turnkey or EPC (Engineering Procurement & Construction) mode. The said service is covered under Section 65(105)(zzzza) of Finance Act, 1994. The said section itself excludes works contract in respect of dams, tunnels, canals of irrigation projects, road, airports, railways, transport terminals & bridges executed through such turn-key or EPC mode. Hence works contract in respect of above works even if done through turn-key or EPC mode are exempt from payment of service tax."

Therefore, there is no liability of the appellant to pay service tax in this case. Accordingly, the Issue No.(a) is answered in favour of the appellant.

Issue No. (b)

Whether the refund claims filed by the appellant of service tax paid, which was not payable by the appellant is hit by the provisions of Section 11B of the Central Excise Act, 1944, or not?

8. Now the issue arises that as the appellant has paid the service tax under mistake of law whether they are under the provisions of Section 11B of the Act, applicable or not ?

9. The ld.A.R. for the Revenue relied on the decision of the Madhya

Pradesh High Court in the case of MDP Infra (India) Private Limited (supra), wherein the facts of the case are as under :

> *"**4.** The appellant holds service tax registration and paying service tax under the category of "Works Contract Services". During the period 1-3-2015 to 30-9-2015 the appellant had paid Rs. 25,49,317/- towards Service Tax and interest of Rs. 57,716/- on the following work contracts :-*
>
> *"(i) Construction of EWS houses for Special Area Development Authority (A Government Authority) vide work order No. 02/SADA/2014-15, Agreement No. 04, dated 22-12-2014.*
>
> *(ii) Construction of LIG houses (Affordable Housing) for Indore Development Authority vide Four/Accounts/12-13/70006, dated 19-11-2012, Agreement No. 82/2012-13/IDA.*
>
> *(iii) Construction of Model School Building at Morena for PWD, PIU Division-4 Gwalior (Department of Government of Madhya Pradesh) work order No. : 2/2012-13, dated 15-6-2012, E-tender No. 14204 and office No. 1589.*
>
> *(iv) Construction of Model School Building at Sabalgarh for PWD, PIU Division-4 Gwalior (Department of Government of Madhya Pradesh) work order No. 2/2012-13, dated 15-6-2012, E-tender No. 14209 and office No. 1599, dated 2-11-2012.*
>
> *(v) Construction of Model School Building at Pahadgarh for PWD, PIU Division-4, Gwalior (Department of Government of Madhya Pradesh) work order No. : 2/2012-13, dated 15-6-2012, E-tender No. 14209 and office No. 1601, dated 2-11-2012.*
>
> *(vi) Construction of Boundary wall at National Law Institute University, a university established by State Legislature of*

Madhya Pradesh, Bhopal vide ref. no. by act No. 41 of 197, Letter Ref. No. 83/NLIUB, dated 23-1-2015."

5. *That prior to 1-4-2015, the appellant was availing exemption for civil works related to State and Union Government establishments used for administrative purpose. The exemption was availed under Notification No. 12/2012 and 25/2012, dated 20-6-2016. As the notification dated 20-6-2012 was withdrawn w.e.f. 1-4-2015, the exemption from service tax on the nature of work the appellant engaged in was not available; therefore, he paid service tax with interest for the period 1-3-2015 to 30-9-2015.*

6. *The exemption was later on restored vide Notification No. 9/2016-S.T., dated 1-3-2016 vide Entry Sr. No. 12A(a) for the services provided under a contract which has been entered into prior to 1-3-2015 and whereon appropriate stamp duty, where applicable, has been paid prior to that date. The exemption was restored till 31-3-2020. However, as the effect of exemption vide executive order was prospective; the legislature, vide Finance Bill, 2016 restored the exemption from retrospective effect by incorporating Section 102 as under :-*

"102. Special provision for exemption in certain cases relating to construction of Government buildings. –

(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as –

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

© a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date."

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President."

10. In these set of facts, the Hon'ble High Court has held as under :

*"**16.** As regard to substantial question of law at 'B', the said question in given facts of present also does not arise for consideration. The appellant was under legal obligation to deposit the service tax in respect of the service rendered qua non-exempted service. The contentions that it was beyond the control of the appellant to deposit the service tax on exempted service is misconceived. Evidently, the Notification No. 12/2012 & 25/2012*

ceased to exist w.e.f. 1-4-2015. The exemption was revived by notification dated 1-3-2016. But since it was prospective in effect, the appellant was not entitled for any exemption, which the appellant was aware of and with open mind and eyes deposited the service tax due with interest. It was only by virtue of subsequent legislation the notification was made effective from retrospective date with the stipulations that refund can be claimed within specific time provided. There was thus no ambiguity nor any dispute as would have prevented the appellant from seeking refund within the period of limitation. On these given facts the substantial question at 'B' also does not arise for consideration."

10. We observe that the Hon'ble High Court in the case of MDP Infra (India) Private Limited (supra) has examined the issue although the appellant was not liable to pay service tax, which was paid under mistake of law in terms of the Finance Bill, 2016. The appellant is required to file refund claim within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President. Admittedly, in the said case, the refund claim was filed beyond the time limit maintained under the Finance Bill, 2016, which is not the case in hand. Therefore, the decision of the case MDP Infra (India) Private Limited (supra) is not applicable to the facts and circumstances of this case. However, we find that the issue involved in the present case is where the service tax was paid under mistake of law whether the provisions of Section 11B of the Act are applicable or not ? We find that the said issue has been examined by the Hon'ble High Court of Telangana in the case of Credible Engineering Construction Projects

Limited (supra), wherein the Hon'ble High Court has observed as under :

> *"12. The judgement of this Court in Vasudha Bommireddy V. Assistant Commissioner of S.T.. Hyderabad 2020 (35) G.S.T.L. 52 (Telangana) was relied upon by other side by contending that the judgment of Karnataka High Court in KVR Construction (supra 3) was considered and this Court also held that when a tax is paid as a mistake of law, the embargo of limitation will not come in the way of claim of refund."*

11. Following the decision of the Hon'ble Telangana High Court in the case of Credible Engineering (supra), we hold that the refund claims filed by the appellant, are not hit by the provisions of Section 11B of the Central Excise Act, 1944 as the service tax has been paid by the appellant under mistake of law. Therefore, the Issue No.(b) is also answered in favour of the appellant.

Issue No.(c)

Whether the refund claims filed by the appellant are hit by bar of unjust enrichment or not ?

12. We find that the appellant has produced a letter issued by the service recipient. For better appreciation of facts, the said letter is extracted herein below :

95

Tokyo Engineering Consultants Co., Ltd.

in association with

Black & Veatch International, Poyry Environment GmbH, Shah Technical Consultants Pvt. Ltd and Centre for Environment and Development

Design and Supervision Consultants for JICA Assisted Kerala Water Supply Project

Head Office, Thiruvananthapuram

Tel: +91-471-2331991, 2389579 TL (Direct) - Tele / Fax 2368210 Fax: +91-471-2368822

TECC/KWA/11/11/1080

M/s. Electrosteel Castings Limited
Aswathy, T.C. No. 75/2230 (old) 30/1088
Ambalathungal Kn, Pettah P.O.
Thiruvananthapuram – 695024

Sub: JICA Assisted KWSP- Thiruvananthapuram Town Scheme Package 1 works- Payment of Service Tax under the contract- reg.

Ref: Your letter No. EIS/ECL/TC-101/TVM/TOKYO/3134 dt. 28.10.11

Please refer to letter cited above. In this regard, not withstanding to the provisions of the contract and your negotiations with the Client (KWA) if anything otherwise, we have come across a settled case in respect of a similar contract executed by M/s Nagarjuna Construction Company for the Gujarat Water Supply and Sewerage Board (GWSSB) wherein the CESTAT (Appellate Authority) has held a view that laying of pipelines for drinking water supply project by state agencies like GWSSB does not fall under the expression of "Commercial or Industrial Construction Service" in terms of section 65(25b) of the Service Tax Act, hence not liable for the Service Tax. A copy of the said decision as appeared in public media is attached for your ready reference.

In above regard, we ask for your clarification as to how your case is different from the above and you have to pay the Service Tax. If the payment of Service Tax by you is due to ignorance of the law and related provisions in your part, or due to your company's other specific circumstances which attracts the tax, KWA would not be liable for the same. But please also note that asking for this clarification itself does not entitle you for your claim as other contractual conditions as cited above has also to be looked upon.

Therefore, you are requested to furnish the clarification along with a comprehensive professional opinion (from a qualified Chartered Accountant) on the matter.

Yours faithfully,

Dr. Sunil Kumar Kar
Team Leader

Encl: As above.

Cc: Chief Engineer, JICA Project, KWA
Special Officer, JICA Project, KWA
Resident Engineer, TECC, TVM
Account Section, TECC

From the letter dated 31.10.2011 issued by Tokyo Engineering Consultants Co.,Ltd., who are the consultant for KWA, it is clearly stated that as the service rendered by them is not a taxable service, therefore, the service recipient refused to pay service tax to the appellant, in that circumstances, we hold that the appellant has borne the service tax by themselves and have passed the bar of unjust enrichment. Accordingly, we hold that the refund claim filed by the appellant are not hit by the bar of unjust enrichment. Accordingly, the Issue No.(c) is also answered in favour of the appellant.

13. As all the issues have been answered in favour of the appellants, accordingly, we hold that the appellants are entitled for refund claim. Consequently, we direct the adjudicating authority to sanction the refund claim to the appellants within one months from the date of receipt of this order.

14. Appeals are disposed off in the above terms.

(Pronounced in the open court on **09.08.2024**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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