Complete text of the judgment on the aforesaid issue argued by APRA & Associates LLP is reproduced below: -

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 71062 of 2018-[SM]

[Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1905-17-18 dated 26/03/2018 passed by Commissioner (Appeals), Customs & Central Tax, Noida]

M/s Dharampal Satyapal Limited (Supari Processing Division) ..... Appellant

VERSUS

Commissioner, CGST, Noida ..... Respondent

APPEARANCE: -

Shri Varun Gaba, Advocate for Appellant

Shri Mohammad Altaf, Authorized Representative for Respondent

CORAM: Hon'ble MR. ARCHANA WADHWA, MEMBER (JUDICIAL)

DATE OF HEARING: - 15.03.2019

DATE OF DECISION: - 15/03/2019

FINAL ORDER NO. 70790 / 2019

ARCHANA WADHWA:

After hearing both the sides, I find that the appellant is engaged in processing and selling of supari and was availing services of GTA. As per the requirement of law, the said services are required to discharge their service tax liability on reverse charge basis. Accordingly, appellants have to pay on reverse charge basis. However, they subsequently realized that the GTA Services, if utilized for transportation of agricultural produce and food stuffs were, exempted from payment of service tax in terms of Notification No.25/12-ST read with Notification No.3/13 and as such there was no liability on their part to pay the service tax. They accordingly filed refund claim before the Original Adjudicating Authority, who allowed a part of the claims which was falling within the limitation period and rejected the refund claim which was outside the limitation period. While allowing refund claims, he also examined the angle of unjust enrichment and by relying upon the certificate of the Chartered Accountant produced by the assessee, held that there was no unjust enrichment.

2. The said order of the Original Adjudicating Authority was appealed against the Revenue's order of Commissioner (Appeals). The Appellate Authority referred to the assessee's profit and loss account and by observing that the said amounts have been shown as expenditure in their said P & L Account, arrived at a finding that the same was recovered by the assessee from their customers and as such refund of the same was barred by unjust enrichment. He, accordingly allowed Revenue's appeal and set aside the order of the Original Adjudicating Authority. Hence the present appeal.

3. Without going into the detailed reasoning adopted by Commissioner (Appeals) for holding against the assessee on the point of unjust enrichment, learned advocate has drawn my attention to various decisions of the Tribunal laying down that where the service tax stands paid on reverse charge basis, the refund of the same would not invite examination of unjust enrichment angle. As such, he submits that on this ground itself the impugned order is liable to be set aside. He has also drawn my attention to another order of the Original Adjudicating Authority wherein their refund claims, made on the same ground, by M/s DS Spiceco (P) Ltd. stands sanctioned by the Original Adjudicating Authority and the Revenue has not challenged the same. In support the copy of the Order-in-Original No.04/R/AC/N-I/2016-17 stands placed on record.

4. After hearing learned A.R. for Revenue, I find that there is no dispute about the claim of the appellant on merits. The only reason for denial of refund claim is unjust enrichment. The Tribunal in number of cases has held that the refund of service tax paid on reverse charge basis would not invite the principles of unjust enrichment. Reference can be made by following decisions:-

I. Radicura Pharmaceuticals Pvt. Ltd. vs. Commissioner of Service Tax, Delhi-II 2015 (39) S.T.R. 485 (Tri.-Del.).

II. Needle Industries (India) Pvt. Ltd. vs. Commissioner of Central Excise, Salem 2016 (46) S.T.R. 489 (Tri.-Chennai).

III. M/s ICOMM Tele Ltd. vs. CC, CE & ST, Hyderabad-III 2016 (6) TMI 779 – CESTAT Hyderabad.

As such, I note that the impugned order of Commissioner (Appeals) rejecting the refund claim on the ground of unjust enrichment were not called for and is not justified. Accordingly, the same is set aside and appeal is allowed by restoring order of the Original Adjudicating Authority.

(Dictated and Pronounced in open Court)

Sd/-

(Archana Wadhwa)

Member (Judicial)