Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.10516 of 2020-SM

(Arising out of OIA-VAD-EXCUS-002-APP-532-2019-20 dated 13/02/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

PUJAN BUILDERS ENGINEERS & CONTRACTORS ......Appellant

Ff/19 To 21, Dr. Ambedkar Shopping Complex Nr. Hotel Plaza, Station Road
Bharuch, Bharuch,Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-II ...Respondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:

Shri. Mrugesh Pandey, Advocate for the Appellant
Shri Sanjiv Kinker, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 10478 /2021

DATE OF HEARING/ DECISION: 11.02.2021

RAMESH NAIR

This appeal is directed against Order-In-Appeal No.VAD-EXCUS-002-APP-532-2019-20 dated 13.02.2020 whereby the Learned Commissioner (Appeals) upheld the rejection of refund claim of excess paid service Tax of Rs.1,61,203/- on the ground of time barred. Therefore, the appellant filed present appeal.

2. The brief facts of the case are that the appellant during the period of April to June' 17 filed ST-3 Return on 14.08.2017. Due to cancellation of some of the invoices, the appellant has revised the ST-3 Returns on 21.09.2017. The said ST-3 Return was accepted by the department as no objection was raised. Due to cancellation of some of the invoices the amount of service tax, relevant to those cancelled invoices were paid in excess. In the revised ST-3 Returns an amount of Rs. 1,61,203/- was considered as excess service tax amount which was credited in TRANS-1(under GST Law). The GST department has taken objection and the amount which was

transferred in TRANS-1 was reversed along with payment of interest by the appellant on 27.02.2019, thereafter they filed a refund application on 05.04.2019 for excess payment made by the appellant. By the Order-In-Original dated 13.02.2020 the refund was rejected on the ground of time barred by treating the relevant date is the date of payment of service tax i.e 05.07.2017 under Section 11B of Central Excise Act, 1944. Being aggrieved by the Order-In-Original appellant filed an appeal before the Commissioner (Appeals) which came to be rejected maintaining the Order-In-Original, therefore, the present appeal filed by the appellant.

3. Shri. Mrugesh Pandya, Learned Counsel appearing on behalf of the appellant submits that since the invoices were cancelled the amount shown in invoices actually not a service tax payable in accordance with law and hence the same is treated as deposit, therefore the limitation provided under Section 11B is not applicable.

3.1 Alternatively, he submits that since excess paid service tax was transferred to TRANS-1 (under GST) and subsequently, it was reversed along with payment of interest on 05.04.2019, thus the refund accrued only after 27.02.2019, therefore, filing of refund claim on 05.04.2019 which is within 2 months i.e within the time limit prescribe under section 11B, therefore, for this reason also a refund is not time barred. . In support of his above argument, he placed reliance on the following judgments:-

- Reiter India Ltd-2018 (363) ELT 1064 (Tri. Mumbai)
- Pratibha Constn., Engnr. & Contr. (I) P. Ltd.-2011 (22) STR 182 (Tri. Mumbai)
- Lancor Holdings Ltd-2020 (43) GSTL 399 (Tri-Chennai)
- Fluid Controls Pvt. Ltd-2018 (364) ELT 1041 (Tri.-MUM.)
- Josts Engineering Co. Ltd.-2018 (364)ELT 1039 (Tri. Mum.)
- National Ceramic Works-2009 (237) ELT 576 (Tri. Ahmd.)
- Staunch Natural Resources Pvt. Ltd-2018 (361) ELT 356 (Guj.)
- Staunch Natural Resources Pvt. Ltd-2018 (362) ELT A113 (S.C)
- R.S.Chemicals-2017 (353)ELT 247 (Tri. All.)
- Satya Prakash Builders Pvt. Ltd-2018 (8) GSTL 90 (Tri.-Del.)
- REITER INDIA LTD-2018 (363) ELT 1064 (Tri.-Mumbai)
- C.C. PATEL & ASSOCIATES PVT. LTD.-2013 (32) STR 392 (Guj.)

4. On the other hand, Shri. Sanjiv Kinker, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the finding of the impugned order. He further submits that the appellant have admittedly paid the service tax during the period April to June 2017, therefore, the refund filed on 05.04.2019 is much beyond the prescribed time limit on 1 year, therefore, both the lower authorities have rightly rejected the claim on the ground of time bar in terms of Section 11B of Central Excise Act, 1944. He also submits that the refund claim has not passed the test of unjust enrichment for the reason that the refund was primarily rejected on the ground of time barred, therefore the aspect of unjust enrichment also need to be examined. He placed reliance on the following judgments:-

- MAFATLAL INDUSTRIES LTD-1997 (89) ELT 247 (S.C)
- MILES INDIA LIMITED-1987 (30) ELT 641 (S.C)
- ASSISTANT COLLR. OF CUS.-1997 (90) ELT 260 (S.C)
- COMEXX-2020-TIOL-698-CESTAT-AHM
- STEEL STRIPS-2011 (269) ELT 257 (Tri. –LB)
- NATIONAL FERTILIZERS LTD-2019 (31) GSTL 38 (M.).)

5. I have considered the submissions made by both the sides and perused the records. The facts in the present case is not under dispute that the appellant have paid the excess service tax during the quarter April to June, 2017, however, the appellant under bona fide belief transferred the said excess paid service tax into their TRANS-1 as balance in personal ledger account. Subsequently, on objection raised by the GST department the appellant have reversed the said amount and also paid an interest of Rs. 52,256/- on 27.02.2019. In these peculiar circumstances, I find that since the appellant has transferred the amount of excess paid service tax in the TRANS-1 and same was reversed on 27.02.2019, therefore till the date up to 27.02.2019 there is no cause for claiming refund of this amount. The refund is arising only after the appellant reversed the amount on 27.02.2019. The refund was admittedly filed on 05.04.2019 i.e well within the prescribed time limit of 1 year in terms of section 11B. Therefore, in my considered view, the refund was filed well within the time. Hence, the same is not time barred. As submitted by the Learned Authorized Representative the issue of unjust enrichment need to be verified at the time when the refund is to be granted to the assessee. Therefore in the present case also though the refund is not

hit by limitation but the fact that whether the incidence of the refund amount has been passed on or otherwise needs to be examined by the sanctioning authority.

6. Accordingly I set aside the impugned order and remand the matter to the adjudicating authority to only verify the unjust enrichment and accordingly, to dispose of the refund claim of the appellant. Appeal is allowed by way of remand to the adjudicating authority.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi