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

REGIONAL BENCH- COURT NO.3

**Excise Appeal No.10748 of 2019**

(Arising out of OIA-CCESA-SRT-APPEALS-PS-614-2018-19 dated 29/11/2018 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**Heranba Ind Ltd** ........**Appellant**
Plot No A-2,2214/15, 3rd Phase
Gidc, VAPI, GUJARAT

*VERSUS*

**C.C.E. & S.T.-Surat-i** .......**Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

**APPEARANCE:**
None appeared for the Appellant
Shri G.Kirupanandan, Superintendent (AR) for the Respondent

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

**Final Order No. A/ 10059 /2022**

DATE OF HEARING: 27.01.2022
DATE OF DECISION:27.01.2022

**RAMESH NAIR**

The issue involved in the present case is that whether the appellant's refund claim of service tax paid on reverse charge mechanism which was otherwise not payable is governed by Section 11B or otherwise.

02. None appeared on behalf of the appellant nor any adjournment request is on record therefore, the appeal is taken up for final disposal on the basis of appeal records.

03. Shri G.Kirupanandan, Learned Superintendent (Authorised Representative) appearing on behalf of the revenue submits that the appellant have admittedly paid the amount as Service Tax therefore, the refund of the service tax amount is clearly governed by Section 11B of the Central Excise Act, 1944. He placed reliance on the following judgments:-

- BENZY TOURS & TRAVELS P. LTD. Vs CCE, MUMBAI-I- 2016 (43) STR 625 (Tri.-Mumbai)
- PATEL CONSTRUCTION COMPANY Vs. CST, AHD.-2017 (50) SR 257 (Guj.)

04. I have carefully considered the submissions made by Learned Authorized Representative and perused the records. The limited issue to be decided in the present case is that whether the limitation provided under Section 11B is applicable for dealing with the refund claim of service tax paid by the appellant. I find that the plea of the appellant is that, since the service tax on reverse charge mechanism was not payable by the appellant but the same was paid by mistake therefore, it is not a service tax payment hence, the refund of the said amount is not governed by Section 11B. I find that there is no dispute that whether service tax was payable or not, the appellant have paid the amount as service tax only therefore, the refund of the same is governed by Section 11B, there is no other provision for refunding the said amount.

3.1 I further observed that, if on the pretext that since the amount of duty or service tax is not payable, Section 11B will not be applicable, any amount of refund arise only when it is not payable therefore, in any case Section 11B will not be applicable and become redundant which is not the intention of the legislators. The judgments cited by the learned Authorized Representative clearly supports the case of the revenue. Accordingly, since the appellant filed the refund claim after the stipulated time period of one year as provided under Section 11B, the same is time barred.

04. Accordingly, the impugned order is upheld. Appeal is dismissed.

(Dictated & Pronounced in the open court)

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

Mehul