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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 12313 of 2019-SM

(Arising out of OIA-VAD-EXCUS-001-APP-140-2019-20 dated 28/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

L & T Sargent & Lundy Limited **........Appellant**
6th Floor, East Block-1, L&T Knowledge City, N.H. 8, Between Ajwa Waghodia Crossing
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i **......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:
Shri Anindya Bikash Mandal, DGM (Indirect Taxation) appeared for the Appellant
Shri Tara Prakash, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 11103 /2022

DATE OF HEARING: 01.09.2022
DATE OF DECISION: 01.09.2022

RAMESH NAIR

The issue briefly involved is that for the purpose of granting the refund claim under Notification No. 12/2013 –ST dated 01.07.2013 whether the limitation period provided under Clause (e) of Para 3(III) the refund should be filed within 1 year from the date of invoice or from the actual date of payment of service tax by the service recipient to the service provider. Both the lower authorities have rejected the claim on the ground that the appellant has filed refund claim after 1 year from the date of invoice which is considered as the date of payment. Therefore, the present appeal.

2. Shri Anindya Bikash Mandal, DGM (Indirect Taxation) appearing on behalf of the appellant at the outset submits that the revenue has taken the date of invoice as date of payment of service tax and accordingly the refund was made time-bar. It is his submission that the date of invoice is not the actual date of payment of service tax to their service provider . Therefore, the entire basis of denial of refund on the time bar is incorrect. He has submitted a statement wherein he has shown the actual date of

payment according to which all the refund claims were filed within 1 Year from the date of payment. He submits that as per this fact the refund was wrongly rejected on the ground of time bar.

3. Shri Tara Prakash, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the record. Both the Lower authorities have rejected the claim on the time bar considering the date of payment of the service tax to the service provider as the date of invoice. It is very obvious that in normal course the date of invoice cannot be the date of payment. It appears that the Adjudicating Authority has not verified the actual date of payment. As per the submission made by the appellant, the correct date of payment was provided and considering the same the refund has been filed within 1 year hence, the refund ought not have been rejected on the ground of time bar.

4.1 Shri Mandal invited my attention to the various documents such as bank details for payment through NEFT and payment voucher which shows that the correct date of payment is at the later date as compared to the date of invoice and if from the date of such payment is taken into consideration the refund was filed within the stipulated time period of 1 Year. As per this undisputed fact, I am of the clear view that the appellant has filed the refund claim within 1 year from the date of payment of service tax to their service provider. Accordingly they are eligible for the refund and the same is not time bar.

5. Hence the impugned order is set aside. Appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)