IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/70496/2017-CU[DB]

(Arising out of Order-in-Appeal No. 180-ST/ALLD/LKO/2016 dated 25/02/2016 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Star Enterprises **Appellant**

Vs.

Commissioner of Central Excise & S.T., Allahabad **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR) for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 19/06/2018
Date of Decision : 19/06/2018

Final ORDER NO-**71185 / 2018**

Per: Archana Wadhwa

After hearing both the sides duly represented by Shri Rajesh Chhibber, Advocate for appellant and Shri Pawan Kumar Singh, Supdt (AR) for revenue we find that the appellant was engaged in providing services of Erection Commissioning and Installation to Uttar Pradesh Rajkiya Nirman Nigam. As per the contract entered by the appellant with the said Government under taken, the rates were inclusive of all taxes and duties. In terms of the said contract, as per the appellant, they paid the excess service tax to the service recipient, who deposited the same with the exchequer and as such they were entitled to the refund of the same. Accordingly, they filed a refund claim for Rs.6,94,362/- on 27.07.2015, claiming refund of duty deposited during the period of 2013.

2. Revenue proposed to deny the said claim on the issue of time bar, inasmuch as the same was filed beyond the normal period of one year, as available in terms of provisions of Section 11B of the Central Excise Act. The appellant contended before the authorities below that inasmuch as the service tax was illegally collected by revenue and was not required to be paid, limitation prescribed under Section 11B of the Act would not be applicable.

3. However, Original Authority rejected the claim as barred by limitation. The said order of the original authority stands upheld by Commissioner (Appeals) and hence the present appeal.

4. Learned Advocate is not disputing the fact that the refund claim was filed by them after the normal period of one year from the relevant date. He is also not disputing that the assessment was neither provisional nor duty was paid under protest. However, his contention is that inasmuch as the service tax was not required to be paid, the limitation as

provided under Section 11B would not be applicable. He also referred to certain decisions of the High Courts.

5. We note that every refund claim arises on the ground that the same is not payable. If the amounts claimed to be refunded were otherwise required to be paid, the refund claim would not arise. As such we note that if all the refund claims which are not payable to the revenue, are allowed without examining the limitation aspect, the provisions of Section 11B, which provide a period of one year for claiming such refund, would become redundant.

6. Apart from the above, we also note that Commissioner (Appeals) have relied on various decisions of Hon'ble Supreme Court in the following cases:-

- *Union of India Vs Namdang Tea Estate reported at 2004 (164) ELT 132 (SC),*
- *Assistant Commissioner of Central Excise Vs Kashyap Engg & Metallurgicals Pvt. Ltd. reported at 2002 (142) ELT 518 (SC) &*
- *Collector of Central Excise Vs Rallis India Ltd. reported at 2002 (142) ELT 19 (SC).*

laying down that the limitation as provided under Section 11B of the Act is required to be adhered to. A further reference can be made to the Hon'ble Supreme Court's decision in the case of M/s Porcelain Electrical Manufacturing Co. Vs Collector of Central Excise, New Delhi reported at 1998 (98) ELT 583 (SC), wherein it was observed that the revenue authorities are bound by the provisions of the Act and cannot exercise the extraordinary jurisdiction, as available to the High Courts in terms of the Article 226 of the Constitution. As such Tribunal being a creature of the Act cannot go beyond the provisions of the Act and cannot extend the period of limitation for claiming the refund. Inasmuch as the refund claim admittedly stands filed after a period of one year from the relevant date, we are of the view that the lower authorities have rightly rejected the same as barred by limitation.

7. Accordingly, we uphold the impugned orders and reject the appeal.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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