IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.ST/3406,3407/2012-CU[DB]

(Arising out of Order-in-Appeal No.233-234-ST/APPL/KNP/2012 dated 03/07/2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur)

M/s Frost International Ltd. **Appellant**

Vs.

Commissioner, Central Excise & Service Tax, Kanpur **Respondent**

Appearance:

Shri Dharmendra Srivastava (CA) for Appellant
Shri Mohd Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 09/08/2018
Date of Decision : 09/08/2018

FINAL ORDER NO.71985-71986/2018

Per: Archana Wadhwa

After hearing both the sides duly represented by Shri Dharmedra Srivastava (C.A.) for appellant and Shri Mohd Altaf, Assistant Commissioner, A.R. for the Revenue, we note that the disputed issue relates to refund of input service tax credit utilized in respect of export of goods, in terms of Notification No.17/2009-ST dated 07.07.2009.

2. As the said Notification provides a period of one year from the date of export of goods for claiming refund, and inasmuch as the refund filed by the appellant were beyond the said period of one year, the same stands rejected by the lower authorities on the ground of time bar. Commissioner (Appeals) for rejecting the refunds as barred by limitation has taken note of Hon'ble Gujarat High Court's decision in the case of Ashwin Fastners V/s Union Of India reported at 2010 (258) ELT-174 vide which it stands held as under:-

"This Respondent authority has no power or jurisdiction to entertain the claim for refund after expiry of period of one year from relevant date. Petitioner did not make such application within one year. Respondent has rightly rejected applications for rebate made by the petitioner after expiry of period of one year from relevant date. Petitioner did not make claim for rebate within one year from the relevant date as required under Section 11B of Act. Assistant Commissioner right in rejecting the claim of petitioner as time barred."

3. Learned Advocate appearing for the appellant has not disputed the fact that the refund claims have been filed after the period of limitation provided in the notification and prays for condoning the delay. However, as observed by the Hon'ble Gujarat High Court, the authorities have no powers or jurisdiction to entertain the claims filed after the expiry of limitation period in the statute or notification. We also take

note of Hon'ble Supreme Court's decision in the case of Porcelain Electrical Mfg. Co. reported as 1998 (98) ELT 583 S.C., laying down that the Revenue Authorities working under the Act have no jurisdiction to go beyond the provisions of the Act and to grant refunds, accordingly. The refunds granted by various High Courts beyond the limitation period are in exercise of their constitutional powers, which cannot be exercised by Revenue Authorities.

4. Inasmuch as the refund stand filed after the period of limitation, we find no reasons to interfere in the impugned orders of the Authorities Below.

5. Accordingly, both the appeals of the appellant are rejected.

(Pronounced & Dictated in Court)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

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