

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

**ROA Application No. E/ROA/70146/2018 in
APPEAL No. E/1096/2010-EX[SM]**

(Arising out of Order-in-Appeal No. 339-ST/APPL/KNP/2009 dated 27/11/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

M/s Euro Footwear Ltd

Appellant

Vs.

Commissioner of Central Excise, Kanpur

Respondent

Appearance:

Shri Rajesh Chhibber (Advocate)
Shri Mohd Altaf (Asstt. Commr. AR)

for Appellant
for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 06/09/2018
Date of Decision : 06/09/2018

FINAL ORDER NO **72133 / 2018**

Per: Archana Wadhwa

The application is for Restoration of the appeal dismissed for non-prosecution vide Final Order No. 70369 of 2018.

Learned Advocate submits that appearance could not be caused on the said date as he was having some personal difficulty and tried to send fax for adjournment, which was not received by the Registry.

2. Inasmuch as in the order itself opportunity has been given to the appellant to apply for restoration, I recall the said final order and restore the appeal to its original number and proceed to decide the appeal itself inasmuch as the short issue is involved.

3. The appellants are engaged in the manufacture and export of Leather Footwear. They were paying service tax on 'reverse charge basis', in respect of services obtained by them from foreign service provider. The period involved in the present appeal is prior to 18.04.2006.

4. Subsequently, in terms of the Hon'ble Bombay High Court's decision in the case of Indian National Shipowners' Association vs. Union of India reported at 2009 (14) STR 289 (Bom.) dated 23.03.2009, no service tax was payable on 'reverse charge basis' for the period prior to 18.04.2006, when the provisions of Section 66A were introduced in the Statute Book. Accordingly, the appellant filed a refund claims amounting to Rs. 83,142/- alongwith interest, which were originally rejected by the Adjudicating Authority on merits as also on limitation. On appeal Commissioner (Appeals) held in favour of the appellant on merits, in terms of the law declared by the Hon'ble Bombay High Court but rejected the claim on the point of limitation.

5. Accordingly, the only issue to be decided in the present appeal is as to whether the refund claim filed by the appellant on 24.06.2009 for the period 04.05.2006 and 19.07.2007 would be barred by limitation or not. The learned Advocate submits that Bombay High Court's decision in the case of Indian National Shipowners' Association (*supra*) was pronounced on 23.03.2009 and as such the refund claims filed by the appellant on 24.06.2009 are required to be held as having been filed within the limitation period, by treating the date of Bombay High Court's decision as the relevant dated. He also submits that inasmuch as the service tax was not payable by the appellant, the exchequer cannot retain the same illegally and the same needs to be refunded to the appellant, without raising the issue of limitation. He also draws my attention to Tribunal's decision in the case of Monnet International Ltd. vs. Commissioner of Central Excise, New Delhi reported at 2017 (3) GSTL 380 (Tri.- Del.) wherein the refunds filed beyond the period of limitation as provided under Section 11B of the Central Excise Act, 1944 were allowed by observing that at the relevant time there was no authority of law to collect service tax on the activity carried out by the assessee and as such retention of the unauthorized collected amount by the Department is not permissible.

6. After hearing learned AR and after going through the impugned order, I find that there is no dispute on facts. Admittedly, during the relevant period the appellant had discharged its tax liability on reverse charge basis in respect of services received from a foreign person. Neither any protest was alleged by the appellant nor the assessments were provisional. The refund claims stand filed on 24.06.2009 i.e., after the normal period of limitation under Section 11B. Admittedly, the refunds are required to be adjudicated in terms of the provisions of Section 11B of Central Excise Act inasmuch as there is no other provision in the Act to deal with the refunds. As per the definition of relevant dated provided in the said section, there are certain circumstances requiring a particular date to be treated as the relevant dated for the purpose of computation of limitation. There is no such circumstance so as to treat the judgment of the Higher Authorities as the relevant date. As such the plea of the learned Advocate that Bombay High Court's decision having been pronounced on 23.03.2009, the said dated should be taken as the relevant date and the refunds having been filed within the period of one year from the said relevant date cannot be appreciated. No artificial relevant date can be introduced by the Tribunal, as the same would be against the legal principles of interpretation.

7. Further the contention of the assessee that such collection of service tax by the Revenue was unauthorized and as such no limitation would apply, can also not be accepted. As already observed all the refunds claims filed by assessee are required to be dealt with in terms of the provision of Section 11B which provides a normal period of limitation of one year from the relevant date, unless said payment of tax/duty was under protest or in terms of the provisional assessments. The Tribunal working within the four corners of the Act is required to decide all the disputes falling under the Act, in terms of the provisions of the Act only. This has been so held by the Hon'ble Supreme Court in the case of Porcelain Electrical Mfg. Co. vs. Collector of C. Ex., New Delhi reported at 1998 (98) ELT 583 (S.C.). It stands held by the Hon'ble Supreme Court that refund claims filed before the Departmental Authorities are to be governed by the time limit provided under the Statute and general law of limitation is not available to the Revenue Authorities. It stands further held by the Hon'ble Supreme Court that decisions where assessee has invoked extraordinary jurisdiction of the High Court's and who have applied the period of limitation of three years are inapplicable to cases where the refund application has been moved before the Revenue authorities. While holding so the Hon'ble High Court has referred to the earlier decision of the Apex Court in the case of Collector of Central Excise, Chandigarh vs. M/s Doaba Co-Operative Sugar Mills

Limited reported at 1988 (37) ELT 478 (S.C.) laying down that in making claims for refunds before the departmental authority an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and Rules framed therein must be adhered to as the authorities functioning under the Act are bound by the provisions of the Act.

8. In view of the foregoing decisions of the Hon'ble Supreme Court, the limitation as provided under Section 11B is to be applied to each and every refund claim. The refunds in the present case having been admittedly filed beyond the period of limitation of one year are barred by limitation. Accordingly, the impugned order is set aside and appeal is rejected. ROA application also gets disposed of.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)