

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

ST/59521/2013-CU[DB]

(Arising out of Order-in-Appeal No.82-ST/APPL/NOIDA/13 dated 16.04.2013 passed by Commissioner(Appeals), Customs & Central Excise, Noida.)

M/s. Icara Management Consulting Services Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Sanjay Kumar (Advocate) for the Appellant (s)
Shri Pratap Singh (Dy.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 06.12.2018

FINAL ORDER NO.72817/2018

Per Mrs.Archana Wadhwa :

As per facts on record the appellant is engaged in providing services under the category of 'information technology software services', 'management and business consultant services' and 'banking and other financial services' as also 'on-line information and data processing services' duly registered with the Service Tax department. During the period 01.04.2006 to 31.03.2007, the appellants provided 'information technology software services' to M/s.Yes Bank and paid Service Tax to the tune of Rs.5,25,862/-. However, the 'information technology software services' became taxable only w.e.f. 16.05.2008,

and as such no Service Tax was required to be paid in respect of the same prior to the said date. The appellants realized their mistake that the Service Tax was paid by them inadvertently and accordingly filed a refund claim of the same on 03.01.2011.

2. The said refund claim stand denied by the original adjudicating authority on the ground of limitation. The appeal thereagainst stands rejected by Commissioner(Appeals) and hence the present appeal.

3. After hearing both sides duly represented by Shri Sanjay Kumar, learned Advocate for the appellant and Shri Pratap Singh (Dy.Commr.) (A.R.) for the Revenue, we note that there is no dispute about the fact that the refund claim filed on 03.01.2011 related to the Service Tax paid during the period 01.04.2006 to 31.03.2007. As such the said refund stands filed by the appellant after the expiry of the normal period of limitation of one year as provided under Section 11B of the Central Excise Act. The only contention of the learned Advocate is that the said deposit made by them was not Service Tax and was a mere deposit and as such the provisions of Section 11B would not apply.

4. However, we find no merits in the above contention of the learned Advocate. Learned Commissioner(Appeals) has referred to various decisions of the Tribunal as also of the Hon'ble Supreme Court in support of his findings that limitation as provided under Section 11B is applicable to all the refunds made under the said Section. He has referred to the Tribunal's decision in the case of Karnik Meritime Pvt.Ltd. v. Commissioner of Central Excise, Mumbai [2008 (12) S.T.R. 145 (Tri.-Mumbai)] wherein reference was made to the Hon'ble

Supreme Court's decision in the case of Mafatlal Industries v. Union of India [1997 (89) E.L.T. 247 (SC)]. He also relied upon another decision of the Hon'ble Supreme Court in the case of Asstt. Commissioner of Customs v. Anam Electrical Manufacturing Company [1997 (90) E.L.T. 260(SC)] wherein while dealing with the limitation aspect under Section 11B, it was observed that statutory time limit is not extendable by any authority or Court in case of illegal levy. Reference was also made to Delhi High Court's decision in the case of Jumay Foam Pvt.Ltd. v. Union of India [2003 (157) E.L.T. 252 (Del.)].

5. In fact we find that the applicability of the limitation as provided under Section 11B to the various refunds filed under the Act has since long been decided by the Hon'ble Supreme Courts in the case of Collector of C.Ex., Chandigarh vs. Doaba Co-operative Sugar Mills [1988 (37) E.L.T. 478 (S.C.)], wherein, *inter alia*, it was held as under:-

"Refund of duty recovered without the authority of law – Limitation under the general law applicable – But for refund claims made before departmental authorities-Limitation provided under Customs Act/Central Excise Act or the Rules made thereunder applicable-Authorities functioning under an Act bound by its provisions – However proceeding beyond this period can be initiated in the Civil Court – Demand/Recovery of amount erroneously refunded-Time limit under the Excise Act applicable-Sections 11A and 11B of the Central Excises and Salt Act, 1944."

6. Similarly the Hon'ble High Court of Madras in the case of Commissioner of S.T., Chennai v. Natraj and Venkat Associates [2015 (40) S.T.R. 31 (Mad.)] has held as under:-

"Refund – Limitation – Export of services – Architectural services, provided for construction of building in Sri Lanka – Refund claim filed beyond period of limitation – Plea that limitation under Section 11B of Central Excise Act, 1944 not applicable, amount paid being only a deposit as no tax was required to be paid – Impugned plea not correct – Said amount paid under Head of Account "0044-Service Tax" through TR-6 challan meant for payment of service tax – Contention of it to be a deposit, not sustainable – Taxes, whether direct or indirect, intended for immediate expenditure for common good of State – Having once spent taxes fully or in part, it would be unjust for State to require its repayment – Refund claims filed beyond statutory period of limitation, not tenable even if tax is paid under a mistake of law – Refund not admissible – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994 – Article 226 of Constitution of India [paras 7, 8,9]

At this stage we may also take note of the Hon'ble Supreme Court's decision in the case of Porcelain Electrical Mfg. Co. v. Collector of C.Ex., New Delhi [1998 (98) E.L.T. 583 (S.C.)], vide which the Hon'ble Supreme Court rejected the assessee's stand that since the duty has been paid under mistake of law, the period of limitation applicable would be three years. The Hon'ble Supreme Court further observed that the decisions where assessee has invoked extraordinary jurisdiction of the High Courts and the Courts have applied the period of limitation of three years under the General Law of Limitation are inapplicable to the cases where the refund applications have been

moved before the Revenue authorities, inasmuch as departmental authorities are governed by the time limit provided under the Statute.

7. As such we find that the issue stands decided against the appellant by various decisions discussed (supra). Admittedly the refund claims having been filed after normal period of limitation prescribed under Section 11B are required to be rejected and no infirmity can be found in the impugned orders of the authorities below. Accordingly we uphold the same and reject the appeal.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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