

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

APPEAL No. ST/70146/2018-CU[DB]

(Arising out of Order-in-Appeal No. 323/ST/ALL/2017 dated 06/11/2017 passed by Commissioner CGST & Central Excise Commissionerate (Appeals), Allahabad)

M/s Lords Distillery Ltd.

Appellant

Vs.

The Commissioner CGST & Central Excise, Allahabad

Respondent

Appearance:

Shri Dharmendra Srivastava (CA)

for Appellant

Shri Gyanendra Kumar Tripathi (AC) AR

for Respondent

CORAM:

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

Hon'ble Mr. Anil G. Shakkwar, Member (Technical)

Date of Hearing : 04/12/2018

Date of Decision : 04/12/2018

FINAL ORDER NO 72805 / 2018

Per: Archana Wadhwa

After hearing both the sides duly represented by learned Chartered Accountant Shri Dharmendra Srivastava for the appellant and learned AR Shri Gyanendra Kumar Tripathi, Assistant Commissioner for the Revenue we find that the appellant, who is registered with the Service Tax Department for providing taxable services, filed a refund claim of Rs.15,80,479/- on 14.03.2014 for refund of Service Tax paid

by them on “Supply of Manpower Services” during July, 2012 to November, 2013.

2. After issuance of a show cause notice dated 10.06.2014 proposing to reject the refund claim on the ground of limitation as also unjust enrichment, the Original Adjudicating Authority vide its order dated 11.09.2014 sanctioned the same. It was observed in the said order that as the appellant was not required to pay 75% of the service tax on “Supply of Manpower Services” under the Reverse Charge Mechanism they are entitled to the refund of the same. As regards limitation, he observed that inasmuch as service tax was not liable to be paid and the amount paid was not tax and as such the provisions to Section 11B of the Central Excise Act, 1944 do not apply to the same.

3. The said order of the Original Adjudicating Authority was appealed against by the Revenue before Commissioner (Appeals), who reversed the same. As regards limitation, he observed that admittedly the provisions of Section 11B of the Central Excise Act, have been made applicable to the refund of service tax vide Section 83 of the Finance Act, 1944. As such the limitation angle is required to be examined. While examining the limitation, he found that the refund claim stands filed beyond the limitation prescribed under Section 11B of the Central Excise Act. By referring to the Hon’ble Supreme Court’s decision in the case of Collector of Central

Excise vs. Doaba Cooperative Sugar Mills reported as 1988 (37) E.L.T. 478 (SC) as also to the Hon'ble Madras High Court's decision in the case of Assistant Commissioner of Central Excise, Chennai vs. Natraj and Venkat Associates reported as 2015 (40) S.T.R. 31 (Madras), he rejected the refund claim filed beyond the limitation period.

It stands held in the above decisions that refund claim made before Departmental Authorities are required to satisfy the limitation criteria and the authorities functioning under the Act are bound by the provisions of Section 11B of the Central Excise Act, even if the tax was paid under mistake of law.

The said decision of Commissioner (Appeals) stands appealed against before Tribunal.

4. Apart from the above decisions referred to and relied upon by the Commissioner (Appeals) we note that the Hon'ble Supreme Court in another decision of M/s Porcelain Electrical Manufacturing Co. vs. Collector of Central Excise, New Delhi reported at 1998 (98) E.L.T. 583 (SC) has dealt with an identical issue and has held that the authorities working under the Act are bound by the provisions of the Act and the refund claims are required to pass the test of limitation. The constitutional powers exercised by the Hon'ble Courts are not available to the Departmental Authorities.

5. Inasmuch as the issue stands decided against the appellant and inasmuch as the refund claim is admittedly beyond the period of limitation, we find no infirmity in the impugned order of Commissioner (Appeals) vide which he has set aside the Order-in-Original to the extent of sanctioning the refund claim of service tax, which is beyond the period of one year of the date of filing the same.

6. Accordingly, the same is upheld and the appeal is rejected.

(Dictated and pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ankit