

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
ST/MISC/70347/2016 IN
APPEAL No.ST/70473/2016-ST[SM]**

(Arising out of Order-in-Appeal No. 94/ST/APPL-LKO/LKO/2016 dated 04/02/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Madhu India Deco Ltd.

Appellant

Vs.

Commissioner of Central Excise & S.T., Lucknow

Respondent

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant

for Appellant

Shri Gyanendra Kr. Tripathi, Asstt. Commissioner (AR),

for Respondent

CORAM:

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

Date of Hearing : 19/12/2018
Date of Pronouncement : /12/2018

FINAL ORDER NO-72920 / 2018

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Appeal No. 94/ST/APPL-LKO/LKO/2016 dated 04/02/2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. Brief facts of the case are that the appellant had filed an application for refund of Rs.4,78,574/- on 29.09.2010 with Assistant Commissioner Central Excise and Service Tax Sitapur on account of Service Tax paid erroneously on 'Foreign Commission Agent Service'. The refund arose

because said service was exempted from payment of service tax vide Notification No.18/2009-ST dated 07.07.2009. The refund application made by the appellant was returned to them in original for want of necessary documents. Due to reasons beyond the control of appellant as mentioned by the appellant in the present appeal, the said refund claim was again submitted on 25.11.2013. The Original Authority has rejected the refund application stating that it was filed beyond the time limit prescribed under the provisions of Section 11 B of Central Excise Act, 1944 made applicable to service tax law through Order-in-Original dated 14.11.2014. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) has upheld the said order dated 14.11.2014. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Chartered Accountant Shri Dharmendra Srivastava on behalf of the appellant. He has argued that initially the refund claim was filed on 29.09.2010 which was returned by the department for want of certain documents and the application was once again submitted on 25.11.2013. He has submitted that some documents had got misplaced and refund claim could not be submitted till 25.11.2013. He has further submitted that date of payment of service tax was 10.09.2009. He has further submitted that provision of Section 11 B of Central Excise Act, 1944 governing time limitation is not applicable to the amounts not

being in the nature of service tax paid under mistake of law and therefore, he prays for setting aside the impugned order.

4. Heard the learned A.R. for Revenue. He has submitted that date of filing of application should be treated as 25.11.2013 because as per the admission of appellant they could not trace the required documents till 25.11.2013 and therefore, it was not possible for department to examine the claim without necessary documents. Therefore, the date of filing cannot be treated as 29.09.2010. He has further submitted that the issue is no more res-integra and stands settled by the ruling of Hon'ble Supreme Court in the case of M/s Porcelain Electricals Manufacturing Company Vs Commissioner of Central Excise, New Delhi reported at 1998 (98) ELT 583 (SC) wherein Hon'ble Supreme Court has held that the authorities functioning under the Central Excise Act are bound by the provisions of Central Excise Act in respect of processing of refund applications.

5. Having considered the submissions made by both the sides and on perusal of record, I find the contentions raised by the A.R. are tenable in law. It is admitted by the appellant that important documents could not be located by them and therefore, they took time from 2010 to 2013 to resubmit application for refund along with required documents. Therefore, the date of filing of refund claim has to be treated as 25.11.2013 and since the date of payment of service tax is

10.09.2009, the refund is hit by limitation. I, therefore, do not find any infirmity in the impugned order.

6. I, therefore, dismiss the appeal filed by appellant. Miscellaneous application for submission of certain documents is disposed of.

(Pronounced in Court on- /12/2018)

(Anil G. Shakkarwar)
Member (Technical)

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