

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20327 of 2022

(Arising out of Order-in-Appeal No. 65/2022 dt. 22.02.2022
passed by Commissioner of Central Tax (Appeals-I),
Bangalore)

**M/s. Syngene International
Limited,**

Biocon Park SEZ, Bommasandra IV
Phase, Jigani Link Road,
Bangalore – 560 099.

Appellant(s)

VERSUS

**Commissioner of Central
Tax,
GST South Commissionerate,**

C.R. Building,
PB No.5400, Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Ms. Disha Gurushaney, Advocate for the appellant.
Mr. Dyamappa Airani, Dy. Commissioner (AR) for the
respondent.

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20704 / 2023

Date of Hearing: 05/07/2023

Date of Decision: 05/07/2023

Per : DR. D.M.MISRA

This is an appeal filed against the Order-in-Appeal
No.65/2022 dt. 22/02/2022 passed by the Commissioner of
Central Tax (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellant filed refund claim for Rs.41,07,587/- on 29.06.2018 on the ground that the service tax amount paid in rendering taxable services viz. Technical testing and analysis services in excess, during the period October 2015 to June 2017. In the application, it is claimed by the appellant that during the said period, they have not rendered services to the appellant and inadvertently raised invoices to its customers for provision of services and discharge of service tax on accrual basis. On adjudication, the refund claim was rejected on the ground of limitation prescribed under Section 11B of Central Excise Act, 1944. Aggrieved by the same, appellant preferred appeal before the learned Commissioner(Appeals) who inturn rejected their appeal. Hence the present appeal.

3. At the outset, the learned advocate for the appellant submits that the entire demand is not barred by limitation. Also on merit, she submits that since the services were not rendered during the service tax regime i.e. as on 30.06.2017, the services were rendered thereafter and GST was paid; therefore on merit, the refund is admissible to them. It is her contention that the amount paid since not tax but a deposit and hence refundable. In support, she refers the judgment of this Tribunal in the case of NIIT Limited Vs. Commissioner, CGST, Delhi East [2023-VIL-38-CESTAT-DEL-ST].

4. *Per contra*, learned AR for the Revenue submits that the appellant has correctly discharged service tax. In support, he has referred to the Rule 3 of the Point of Taxation Rules, 2011. Further, he submits that since the refund claim filed by the appellant for the period 2015 to 2017 on 29.06.2018, the same is barred by limitation as prescribed under Section 11B of the Central Excise Act, 1944 when the date of payment be considered as relevant date for computing the period of limitation. However, he fairly admits that there is no discussion on merit in the impugned orders as well as the refund pertaining to service tax payments made on 29.06.2017., which may not be hit by limitation, a fact needs to be scrutinised.

5. In her rejoinder, the learned advocate for the appellant arguing on merit submits that Point of Taxation Rule will come into play only if the services have been rendered during the period in question; during the said period, the services had not been rendered and the same were rendered during GST regime.

6. Heard both sides and perused records.

7. I find that applying Section 11B of the Central Excise Act to the refund claims, a portion of the refund claims be time barred; however, the claim of the appellant relating to the tax amount paid on 29.06.2017 may not be hit by limitation prescribed under Section 11B. Also, there is an argument on merit relating

to Point of Taxation Rules. Both sides fairly concede that the matter may be remanded for verification of the claim to the extent of payment made on 29.06.2017 and also on merit. The adjudicating authority to decide the same afresh.

8. In the result, the impugned order is set aside and the appeal is remanded to the adjudicating authority to decide the issue on merit and on limitation relating to the refund claims pertaining only to the period 29.06.2017 as for the earlier period, it is hit by limitation. Needless to mention that principles of natural justice be observed. Appeal is allowed by way of remand to the extent mentioned above.

(Pronounced and dictated in open court)

(D.M. MISRA)
MEMBER (JUDICIAL)

Raja...