CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 80 of 2012

(Arising out of Order-in-Appeal No. 391/2011-ST dated 10.10.2011 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

Cadence Design Systems (India) Private Limited
2nd Floor, 3B Building,
RMZ Ecospace,
Sarjapur Outer Ring Road,
Opp. Pratham Motors,
Bangalore – 560 103.

Appellant(s)

VERSUS

The Commissioner of Service Tax
S.P. Complex, No.16/1,
Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

APPEARANCE:

Shri Prasad Paranjape, Advocate for the Appellant

Shri Akshay Kumar, Suptd., Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20368 / 2025

DATE OF HEARING: 20.03.2025
DATE OF DECISION: 20.03.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is regarding relevant date for filing rebate claim. Appellant is registered under the category of Business Auxiliary Service, Commercial Training and Coaching and Renting of Immovable Property Service. The appellant had made a claim for rebate on 02.02.2009 under Rule 5 of Export of Service Rules, 2005 read with Notification No.11/2005 dated

19.04.2005 for the service tax paid for the taxable services exported from 01.04.2007 to 30.09.2007. However, alleging that the rebate claim made by the appellant is barred by limitation and also on the ground that there is no correlation regarding inward remittances, the rebate claim was rejected. Aggrieved by the said order, appellant filed an appeal before the Commissioner (A) and the Commissioner (A) also held that the limitation of one year has to be reckoned from the date of receipt of payment and not the date of payment of service tax. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, the learned counsel drew our attention to the Notification No.11/2005-ST dated 19.04.2005 where conditions and procedures are laid down for claiming rebate of service tax. Learned counsel further submits that there is no time limit prescribed under the above Notification and since the provisions of rebate is subject to Central Excise Act, 1944. Learned counsel drew our attention to Section 11B regarding claim for rebate and submits that the relevant date as per Section 11B(f) is the duty of excise.

2.1 Learned counsel drew our attention to the impugned order where the adjudicating authority has considered the issue and submits that the limitation issue was not considered by the adjudicating authority and without considering the same, it is held that the limitation has to be reckoned from the date of receipt of payment. In appellant’s case, as per the show-cause notice, it is evident that there are two invoices bearing Nos. Q2-7 dated 28.06.2007 and Q3-07 dated 28.09.2007. The learned counsel further submits that for the period from April 2007 to June 2007 invoice was issued on 28.6.2007 and FIRC is dated 18.12.2007, the due date for payment of service tax was on 05.01.2008 and as per the show-cause notice, service tax was paid on 05.01.2008 itself. As regarding the claims against July 2007 to September 2007, the invoice was issued on 28.09.2007 and FIRC is dated 15.01.2008. The due date for payment of service tax was 05.02.2008 and payment was made on the very same day.

2.2 Learned counsel further submits that the issue is considered by the Commissioner (A) in appellant's own case for subsequent period and as per the Order-in-Appeal No.209/2013 dated 20.06.2013, the Commissioner (A) categorically held that date of payment of duty is the relevant date and allowed the rebate for the period October 2008 against the rebate claim made on 29.6.2009. The issue was also considered by the Tribunal in the matter of **Vodafone Mobile Services Limited vs. CST, New Delhi: 2019 (29) GSTL 314 (Tri.-Del.)** and held that:

> "**11.** The moot question to be considered for the purpose is as to whether the time limit prescribed under Section 11B of the Central Excise Act, 1944 is applicable to the rebate claims Notification No. 11/2005-S.T., dated 19-5-2005 only shall be applicable. The appellant herein had filed the rebate claim in terms of the aforesaid Notification of 19-5-2005 issued under Rule 5 of Export Services Rules, 2005. The period covered for the rebate was April, 2007 to March, 2008 and April, 2008 to March, 2009 and both the applications for refund were filed on 30-11-2010. The adjudicating authorities below have held that since rebate application is filed after one year from the payment of Service Tax, the claim is barred by time. The appellant, on the other hand, has contended that the Notification of 19-5-2005 has no limitation prescribed for filing the claim. Hence, the claim cannot be rejected being time barred. We notice that provision of Section 11B of the Central Excise Act, 1944 which deals with excise duty, has been made applicable for Service Tax vide Section 83 of the Finance Act, 1994. This would imply that the time limit of one year from the payment of tax for filing of refund claim would apply in respect of Service Tax refund also. Irrespective, there is no time limit set out in the respective notifications, it is otherwise the settled position of law that even if a law is silent on the time limit applicable, a reasonable time limited has to be read into the law. The decision of the Hon'ble High Court (Bombay) in the case of *Everest Flavours Ltd.* v. *Union of India* - 2012 (282) E.L.T. 481 (Bom.) is being relied upon. In this judgment, the decision of Hon'ble Apex Court in the case of

Government of India v. *Citedal Fine Pharmaceutical* - 1989 (42) E.L.T. 515 (S.C.) was relied upon."

2.3 As regarding the lack of correlation between the export and the inward remittances, the learned counsel submits that they have submitted refund application along with details of export, copy of export invoices, bank certificate as proof of export, bank realisation details of input tax paid by the appellant during the period, copy of invoice, input tax and GR7 evidencing payment of service tax on export. The learned counsel also drew our attention to the correlation certificate produced by them along with refund application.

3. Learned Authorised Representative for the Revenue reiterated the findings in the impugned order and submits that both the rebate claims made by the appellants are barred by limitation since the refund claims were submitted beyond one year from the date of realisation of the inward remittances and adjudication authority had categorically held that when the money is received in convertible foreign exchange against the said services, thus export in respect of the transaction is completed. Fact being so, entire claim is barred by limitation.

4. Heard both sides. The issue is no more *res integra* and considering the decision of the Tribunal in the matter of **Volkswagen India Pvt. Ltd.: 2016 (41) STR 716 (Tri.-Mumbai)** and the decision of the Commissioner (A) in appellant's own case for the subsequent period which attained finality, the relevant date for claiming the rebate claim is from the date of payment of service tax only. As regarding the eligibility of the appellant, the claim was made only on 02.02.2009 against the payment of service tax made on 05.01.2008 for the period from April 2007 to June 2007. Fact being so, the said claim is beyond one year over from the date of payment of service tax and it is barred by limitation.

4.1 As regarding the claim for the period from July 2007 to September 2007, the due date for filing the rebate claim was on 05.02.2009 and considering the submissions of refund claim on 02.02.2009, it is within the time limit and appellant is eligible for the rebate. Accordingly, appeal is partially allowed, and appellant is eligible for rebate claimed for the period from July 2007 and September 2007.

5. In view of the above, appeal is partially allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in Open Court
on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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