

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

ST/21317/2018-SM & ST/21319/2018-SM

[Arising out of No. 241-242/2018-CT dated 24/05/2018
passed by Commissioner of Central Tax, BANGALORE-II
(Appeal)]

Wisdomleaf Technologies Pvt. Ltd.

71/1 Margosa Road, Malleswaram
BANGALORE - 560055
KARNATAKA

Appellant(s)

Versus

**Commissioner Of Central Tax,
Bangalore North**

No.59, HMT Bhawan
Ground Floor, Bellary Road
BANGALORE - 560 032.
KARNATAKA

Respondent(s)

Appearance:

Mr. K. S. Ramu, Advocate

For the Appellant

Mrs. Kavitha Podwal,
Superintendent (AR)

For the Respondent

Date of Hearing: 26/12/2018

Date of Decision: 27/12/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 21935 - 21936 /2018

Per : S.S GARG

These two appeals have been filed by the appellant directed against the impugned order dated 24.5.2018 passed by the Commissioner (A) whereby the Commissioner (A) has

rejected the appeals of the appellant. Since the issue involved in the present appeals is identical and there is common order, therefore both the appeals are being disposed of by this common order.

2. Briefly the facts of the present case are that the appellants are engaged in providing taxable services i.e., Online Information and Data, Business Support Services, Development and Supply of Content service and Information Technology Software Services and they filed refunds of accumulated and unutilized CENVAT credit on various input services under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.5/2006 dated 14.3.2006 and Notification No.27/2012-CE dated 18.6.2012. Appellants have filed two refund claims for the periods from January 2010 to March 2010 and April 2010 to September 2010 for Rs.12,494/- and Rs.1,81,565/- respectively. The two claims were rejected by the Deputy Commissioner vide earlier Orders-in-Original No.1275/2012 dated 17.12.2012 and No.1276/2012 dated 17.12.2012 in terms of Section 11B of the Central Excise Act, 1944 as time barred. The appellants appeals to Commissioner (Appeals), Service Tax Bangalore against the OIO's were also rejected vide Orders-in-Appeal Nos.8-11/2016 dated 20.1.2016 on the grounds that the connected refund claims

were hit by limitation under Section 11B of the Central Excise Act, 1944 relying on Madras High Court decision in the case of **CCE, Coimbatore vs. TN Engineering (I) Ltd.: 2012 (281) ELT 185 (Mad.)**. The appellants filed an appeal before the Tribunal against the above mentioned order and the Hon'ble Tribunal vide Final Order No.20410/2017 dated 22.3.2017 allowed the appeal by way of remand by setting aside the OIA while remanding the case to the lower authority. In the CESTAT order, it was held that the relevant date will be computed from the end of the quarter when the FIRC is received. Accordingly, the lower authority caused verification of the claims based on the CESTAT order and it was found that the claim for the period January 2010 to March 2010 was fully time barred (Rs.12,494/-). The claim for the period from April 2010 to September 2010 was partly time barred and amount of Rs.31,343/- was sanctioned as refund and the remaining amount of Rs.1,50,222/- (Total Rs.1,62,716/-) was rejected. The details of the two refund claims are given herein below:

Sl. No.	OIO No./Date	Period	Amount Sanctioned	Amount rejected
1.	No.23/2017 (Refund) dt.15.12.2017	Jan. 2010 – March 2010 & April – Sep. 2010	Rs.31,343/-	Rs.1,62,716/-
2.	No.24/2017 (Refund) dt.21.12.2017	Oct. 2011 to June 2014	Rs.6,111/-	Rs.3,05,306/-

3. Heard both the parties and perused the records.
4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly considering the remand order passed by the Tribunal dated 22.3.2017. He further submitted that the limitation period under Section 11B of the Central Excise Act will not apply and he mainly relied upon the decision in the case of ***CCE, Bangalore vs. KVR Construction*** reported in ***2010-TIOL-89-HC***.
5. On the other hand, the learned AR defended the impugned order and submitted that as per the direction of the Tribunal in Final Order No.20410/2017 dated 22.3.2017 whereby this Tribunal remanded the matter back to the original authority to decide the claim of the appellant afresh after observing that the relevant date is the receipt of FIRC and the end of the quarter. She further submitted that the original authority after the remand order has conducted the verification and passed detailed order as per the direction of the CESTAT. She further submitted that on *de novo* proceedings, the original authority has found some of the claims within the period of limitation and the same was sanctioned and some of the claims of refund were

found to be beyond limitation and the same was rejected. She further submitted that the Larger Bench decision of this Tribunal in the case of **CCE vs. Span Infotech (India) Pvt. Ltd.: 2018 (12) GSTL 200 (Tri.-LB)**, after examining all the decisions has come to the conclusion that the relevant date can be taken as the end of the quarter in which the FIRC is received. Further, in para 13 of the decision, the Larger Bench of this Tribunal has observed as under:

“13. Revenue has expressed the view that relevant date in the case of export of services may be adopted on the same lines as the amendment carried out in the Notification No. 27/2012, w.e.f. 1-3-2016. Essentially, after this amendment the relevant date is to be considered as the date of receipt of foreign exchange. While this proposition appears attractive, we are also persuaded to keep in view the observations of the Hon’ble Supreme Court in the case of Vatika Township (supra), in which the Constitutional Bench has laid down the guideline that any beneficial amendment to the statute may be given benefit retrospectively but any provision imposing burden or liability on the public can be viewed only prospectively. Keeping in view the observations of the Apex Court, we conclude that in respect of export of services, the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis.”

6. After considering the submissions of both the parties and perusal of the material on record as well as the CESTAT order of remand dated 22.3.2017 and the Larger Bench decision in the

case of **CCE vs. Span Infotech** cited supra, I find that the original authority after the remand has considered the refund claim of the appellant afresh after causing verification of the claims of the appellant. Further, I find that the original authority after proper verification found some of the refund claim within time and some of the refund claim beyond time. Accordingly, what was within time was allowed and what was beyond the time as prescribed by the Tribunal was rejected and moreover, the Larger Bench of the Tribunal has also held that the time limit for consideration of the refund claim under Rule 5 of CENVAT Credit Rules, 2004 may be taken as the end of the quarter in which the FIRC is received in cases where the refund claims are filed on a quarterly basis. Therefore, keeping in view the Larger Bench decision as well as the remand decision of the Tribunal dated 22.3.2017, I do not find any infirmity in the impugned order which are upheld by dismissing both the appeals of the appellant.

(Order was pronounced in Open Court on **27/12/2018.**)

S.S GARG
JUDICIAL MEMBER

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