CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

<u>Appeal(s) Involved:</u>

ST/20164/2019-SM

[Arising out of Order-in-Appeal No. TVM-EXCUS-000-APP-1073-2018 dated 29/11/2018 passed by Commissioner of Central Tax , COCHIN]

M/s LBS Centre For Science And Technology
Nandavanam Vikas Bhavan PO
THIRUVANANTHAPURAM - 695033
KERALA

Appellant(s)

VERSUS

Commissioner Of Central Tax And Central Excise, Thiruvanthapuram
P.B.No.13, I.C.E Bhawan, Press Club Road
Thiruvanthapuram - 695001
Kerala

Respondent(s)

<u>Appearance:</u>

Mr. Manoj Pillai, Advocate
TAXAIDE T C
26/1747,KALYAN
U R 72,UPPALAM ROAD, TRIVANDRUM
TRIVANDRUM - 695001
KERALA

For the Appellant

Mrs. Kavita Podwal, Superintendent (AR)

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

<u>Final Order No. 20695 / 2019</u>

Date of Hearing: 13/08/2019

Date of Decision: 13/08/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 29.11.2018 passed by the Commissioner (Appeals) whereby the

Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellant is engaged in providing services under the category of "Consultancy Engineer Service" and filed a refund claim of Rs.5,61,697/- on the grounds that an excess amount paid as Service Tax against three Bills for consultancy work during October 2014, February 2015 and May 2015. The Original Authority rejected the refund claim as time barred and on the ground that the appellant has not produced sufficient documents. Aggrieved by the said order, the appellant filed appeal before the Commissioner who rejected the same. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that rejection of the refund claim on time bar is not tenable because the refund was filed within one year of the relevant date. He further submitted that the appellant had made three payments of Service Tax on 26.11.2014, 06.03.2015 & 05.06.2015 and these payments were made under Point of Taxation Rules, 2011. The relevant bills were presented to the Director but the Director had made the payment on 17.09.2016 wherein the payment was less by Rs.51,06,169/-. He further submitted that the appellant came to know on 17.09.2016 that he had excess paid Service Tax and Cess to the tune of Rs.5,61,697/- and thereafter filed the refund claim from the date of knowledge of such error. He further submitted that in respect of erroneous payment of Service Tax, limitation commences from the date of discovery of error as prescribed by Section 17 of the Limitation Act, 1963, period of six months prescribed by Section 11B of Central Excise Act, 1944 is inapplicable.

5. On the other hand, the Learned AR defended the impugned order and submitted that both the authorities have rightly rejected the

refund claim on time bar. He relied upon the following decisions in support of the claim:

- *Assistnat Collector of Customs Vs Anam Electrical Manufacturing Co. – 1997 (90) ELT 260 (SC).*
- *Commissioner of Central Excise and Service Tax, Cochin Vs M/s Cannanore Handloom Exports - 2017-TIOL-4192-CESTAT-BANG.*

6. After considering the submissions of both the parties and perusal of the material on record, I find that the Learned Commissioner has given detailed reasoning regarding application of limitation and has rightly come to the conclusion that the refund claim was barred by limitation. It is pertinent to reproduce the said findings of the Commissioner which is contained in Para (iii) is reproduced herein below:

"(iii) With respect to the limitation aspect, the appellant stated that under Rule 3(b)(ii) of Point of Taxation Rules, 2011, in the case of continuous supply of service, point of taxation shall be the date of completion of the last event in the provision of the service and in the instant case the service was completed only in 31.03.2015. But the appellant has not produced copy of agreement between them and his client. Hence, the nature of service provided and mode of payment could not be verified by me. On going through the general description of the service provided by the appellant, it is seen that it is not of a continuous nature. Even if it is considered as a continuous service, since the service was completed on 31.03.2015, the claim should have been submitted on or before 30.03.2016. Appellant's claim that the excess payment was noticed only on 17.09.2016 and hence, the refund claim filed on 28.02.2017 is well within the time limit could not be accepted as a valid reason since such a provision is not given anywhere in the law. Accordingly, in the present, the refund claim is to be considered to have been filed after the prescribed time limit. Hence, I am of the opinion that the rejection of refund claim by the lower authority as time barred is a correction decision."

6.1. Further, I find that this Tribunal in the case of *Cannanore Handloom Exports* (supra) has already held that the refund is governed by Section 11B and the period prescribed therein is strictly applicable.

Therefore, by following the ratio of the above said decisions, I am of the considered view that there is no infirmity in the impugned order which is upheld by dismissing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **13/08/2019**)

S.S GARG
JUDICIAL MEMBER

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