# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 946 of 2009**

(Arising out of Order-in-Appeal No. 64/2009 dated 10/09/2009 passed by CCE(Appeals-II), Bangalore)

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| **EMC Data Storage System (India) Private Limited**<br>Bagmane World Technology Center, Kr Puram-marathahalli Ring Road, Mahadevapura, Doddanekundi Village<br>KR Puram Hobli, Bangalore<br>BANGALORE - 560048<br>KARNATAKA | Appellant(s) |

*VERSUS*

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| **Commissioner of Service Tax Bangalore Service Tax- I**<br>1ST TO 5TH FLOOR,<br>TTMC BUILDING, above BMTC BUS STAND,DOMLUR<br>BANGALORE, - 560071<br>KARNATAKA | Respondent(s) |

**Appearance:**

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| **Shri Prasad Paranjape, Advocate**<br>**PDS Legal, Advocate (M)**<br>20TH FLOOR, EXPRESS TOWER,<br>NARIMAN POINT,<br>MUMBAI, - 400021<br>MAHARASHTRA | For the Appellant |
| **Smt. D.S. Sangeetha,**<br>**Joint Commissioner(AR)** | For the Respondent |

**CORAM:**

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

**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 20736 / 2020**

Date of Hearing: 24/09/2020

Date of Decision: 24/09/2020

**Per : S.S GARG**

The present appeal is directed against the impugned order dt. 10/09/2009 passed by the Commissioner of Central Excise(Appeals), Bangalore whereby the learned Commissioner has rejected the rebate claim of the appellant for the period April 2006 to 3rd March 2007 on the ground of time bar and the claim for the remaining period i.e. for 28 days, the claim has been found to be within limitation but the same has also been rejected on the ground that the appellant have not submitted relevant GAR challans.

2. Briefly the facts of the present case are that the appellant is engaged in the business of providing certain sales support and has classified the service as 'Business Auxiliary Service'. During the period from April 2006 to March 2007, the appellant has exported BAS to its group entities located outside India. There is no dispute about the appellant's services classifying as export of service under Export of Service Rules, 2005. Under the Export of Service Rules, the appellant has two options viz. either to provide output services of export nature without payment of service tax or opt to pay service tax on exported output services which is subsequently refunded in the form of rebate subject to conditions and limitations. In the appellant's case, the appellant has opted to effect export of its output services on payment of service tax and claim rebate of service tax paid on output services under Notification No.11/2005-CE(NT) dt. 19/04/2005 issued under Rule 5 of the Export of Services Rules, 2005. Subsequently appellant was issued show-cause notice dt. 28/03/2008 raising certain objections with respect to the rebate claim filed by them. after considering the submissions made by the appellant, the adjudicating authority vide its Order-in-Original dt. 29/05/2008 rejected the rebate claim on two counts viz. (a) that the same was barred by limitation for the period upto 03/03/2007 and (b) for the period subsequent to that it was held that the appellant failed to produce tax payment challans. Aggrieved by the said order, appellant filed appeal before the

Commissioner(Appeals) who also rejected the same. Hence the present appeal.

3. Heard both the parties and perused the records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly considering and appreciating the Notification No.11/2005-CE(NT) dt. 19/04/2005 and also without considering the various decisions rendered by the Tribunal and the High Court on the same issue. He further submitted that Notification No.11/2005 is self-contained code to deal with rebate claims filed by the appellant and the said Notification does not prescribe any time limit for filing of the rebate claim and hence imposing of any time limit which is not envisaged under the Notification is not permitted under the law. Alternatively, he further submitted that the rebate be considered as refund under Rule 5 of Cenvat Credit Rules, 2004 and the same can be granted in view of the judgment of the Hon'ble Karnataka High court, keeping in mind that any input and output taxes embedded in exported services should be refunded. He also submitted that even assuming without admitting that the time limit would apply, in the present case, the appellant has filed the rebate claim for the entire financial year 2006-07 on 04/03/2008. He also submitted that receipt of consideration in foreign exchange is a condition precedent for qualifying a service to be export and therefore the limitation under Section 11B of the Central Excise Act, 1944, if at all applicable, should be computed from the end of the period in which consideration is received where refund is filed. It is his further submission that in the present case the refund is filed for whole one year, the limitation should be computed from 31/03/2007 and if so computed, the rebate application filed by the appellant on 04/03/2008 is within time. For this submission, the appellant relied upon the following cases:-

a. Span Infotech [2018(12) GSTL 200 (Tri. LB)]
b. Commissioner Vs. Sitel India Ltd. [2016-TIOL-818-CESTAT-MUM]

4.2. He further submitted that the appellant has also produced a statement of output invoices based on which they have claimed rebate along with corresponding FIRC numbers and its dates and has also filed revised return on 28/02/2008 disclosing payment of tax on exported services. Learned counsel also submitted that they have indeed produced copies of challans but the same were not properly verified.

5. On the other hand, the learned AR reiterated the findings of the impugned order and submitted that in this case, the appellant has not filed quarterly rebate claims as is required under Notification No.27/2012-CE dt. 18/06/2012 and therefore the claim filed by the appellant on the yearly basis is not maintainable and is time-barred.

6. After considering the submissions of both the sides and perusal of the material on record, we find that in the present case, there is no dispute regarding the appellant's services qualified as export of service under Export of Service Rules, 2005. We also find that in the present case, the appellant had paid the service tax on exported output services and subsequently filed rebate claim under Notification No.11/2005-CE(NT) dt. 19/04/2005 which is a self-contained code to deal with the claim filed by the appellant. Further we find that in the said Notification, no time limit is prescribed for filing rebate claim but this issue has been settled by various decisions of the Tribunal and the High Court that for claiming refund/rebate, the time limit prescribed under Section 11B of the Central Excise Act, 1944 is applicable. The Hon'ble Karnataka High Court in a recent case Suretex Prophylactics India Pvt. Ltd. Vs. CCE,C&ST, Bangalore [2020(373) ELT 481(Kar.)] has held that limitation for claiming refund of unutilized cenvat credit should be within the period prescribed under Section 11B

of the Central Excise Act. Further we find that in the present case, the rebate claim has been filed under Notification No.11/2005-ST dt. 19/04/2005. In the said notification, no time limit is prescribed but it has been settled by the Hon'ble Karnataka High Court that the limitation as provided under Section 11B of Central Excise Act would be applicable for claiming refund. Further we find that as per the Export of Service Rules, 2005, the receipt of consideration in foreign exchange is a condition precedent for qualifying a service to be an export service. Since in the present case, the refund is filed for whole of one year i.e. for April 2006 to Marcy 2007 and hence the limitation should be computed from the end of the year i.e. from 31/03/2007 and the appellant filed the rebate application on 04/03/2008 and hence it is within time. The objection of the learned AR that refund claim has to be necessarily filed on quarterly basis is not tenable in view of the judgment of the Division Bench of the Tribunal in the case of Western Cans P. Ltd. Vs. CCE, Mumbai-I [2011(270) ELT 101 (Tri. Mumbai)] wherein in para 8, the Division Bench has held as under:-

> ***8.*** *To deal with the first issue, we have gone through the Notification 5/2006 dated 14-3-2006 wherein it is provided that the refund claim can be submitted not more than once in any quarter in a calendar year. From the perusal of the provisions, we find that the intent of the legislature was that the assessee should not file refund claim on day to day basis or weekly or invoice-wise. To avoid multiplicity of the refund claim this provision was made, therefore, it is suggested that refund claim can be filed on quarterly basis in a calendar year i.e. not more than four times in a calendar year. It does not mean that the assessee has to file refund claim quarterly. It is not the intent of the legislature. In our opinion, if the assessee files a refund claim once in a year that will also avoid the multiplicity. Therefore we do not find any merit in the denial of the rebate claim on this ground.*

7. In view of the decision of Hon'ble Karnataka High Court in the case of Suretex Prophylactics India Pvt. Ltd. and the Larger Bench decision of the Tribunal in the case of Span Infotech India Pvt. Ltd.

cited supra, which has also been upheld by the Hon'ble High Court in the above said case, we hold that the yearly claim filed by the appellant on 04/03/2008 is within time. Further for the purpose of verification of documents regarding the payment of service tax on export of services and the corresponding FIRCs received by the appellant, we remand the case back to the original authority for the limited purpose of verifying the documents. Accordingly, the appeal is allowed subject to verification of documents.

(Operative portion of the Order was pronounced
in Open Court on **24/09/2020**)

**(S.S GARG)**
**JUDICIAL MEMBER**

**(P. ANJANI KUMAR)**
**TECHNICAL MEMBER**

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