CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. ST/61441/2018

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-89-18-19 dated 15.05.2018 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of hearing/decision: 03.01.2019

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

M/s Technico Agri Sciences Ltd. : **Appellant(s)**

VS

C.C.E. Chandigarh-I : **Respondent(s)**

Appearance:
Present for the Appellant(s):Shri Vikrant Kackria (Advocate)
Present for the Respondent(s):Shri Vijay Gupta (AR)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

FINAL ORDER NO. 60009/2019

Per : **Ashok Jindal**

The appellant is in appeal against the impugned order when refund claim has been rejected as time barred in terms of Section 11B of Central Excise Act, 1944.

2. The facts of the case are that the appellant was engaged in transportation of potatoes (agriculture product) and was paying service tax on transportation service which was not liable to be paid by them. Later on realization, the appellant filed the refund claim for the period 01.03.2013 to 13.11.2014 on 05.01.2015, the refund claim which pertains to the period within limitation was sanctioned but remaining refund claim was rejected on the ground that barred by limitation in terms of Section 11B of the Act.

3. Both sides referred rival contentions that refund claim is governed by section 11B of the Act, but the issue has been examined by the Hon'ble Delhi High Court in the case of ***National Institute of Public Finance and Policy Vs. Commissioner of Service Tax vide its order dt. 23.08.2018***, after the decision of the Larger Bench of this Tribunal in the case of ***M/s Veer Overseas Ltd order dt. 27.03.2018*** and after considering the said decision, this Tribunal in the case of ***M/s Radiant Textiles Ltd. vide its final order dt. 02.11.2018*** observed as under:-

> ***"5.*** *I have gone through the judicial pronouncements relied upon by the Ld. AR. All these judicial pronouncements pertains either the old rules or the order of this Tribunal but the appellant has produced the latest decision on the Hon'ble Delhi High Court dated 23.08.2018 the latest decision on the issue, therefore, I following the decision of the Hon'ble Delhi High Court in the case of National Institute of Public Finance and Policy (supra) and hold that for the refund claim of service tax which were not required to pay by the appellant, the provision of Section 11B of the Central Excise Act, are not applicable.*
>
> *In that circumstances, I set aside the impugned order and allow the appeal with consequential relief, if any."*

4. In view of the above, I hold that the refund claim filed by the appellant is not barred by limitation in terms of Section 11B of Central Excise Act, 1944. Therefore, the impugned qua reject order of refund claim is set aside.

5. In result, the appeal is allowed with consequential relief, if any.

(Order dictated and pronounced in the court)

Ashok Jindal
Member (Judicial)

Kailash