Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017
~~~~~

Appeal No. ST/60893/2018

(Arising out of OIA-APPEAL-ST-PKL-326-2017-18 dated 09.03.2018 passed by the Commissioner (Appeals) of Central Excise and Service Tax-PANCHKULA)

Shri Sharwan Kumar Gupta : Appellant (s)

Vs

CCE & ST- Panchkula : Respondent (s)

Represented by:
For Appellant (s) : Shri Vikas Bansal, Advocate
For Respondent (s): Shri H. Singh, AR

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

Date of Hearing/Decision: 30.01.2018

ORDER No. A/60071 / 2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim has been dismissed as time barred.

2. The facts of the case are that the appellant has provided services of Construction of Housing Board, Haryana. As per the contract awarded to them on 21.06.2013 and 25.02.2014, the appellant was under bonafide belief that the services provided to Housing Board, Haryana are not taxable, therefore, did not pay service tax, but, the appellant received various letters from the department for payment of service tax. In persuasion to the letters from the department, the appellant paid service tax on 09.02.2016, thereafter, the show cause notice was issued for the period 2014-2015 on 06.05.2016 to the appellant. The issue has not
~~~~~

settled by the Hon'ble Punjab & Haryana High Court in the case of Bharat Bhusan Gupta in Civil Writ Petition No. 12304 of 2015 vide order dated 11.08.2016. Thereafter, the appellant filed refund claim on 08.11.2016 before the Commissioner of Service Tax, Panchkula, which was rejected that he is not a proper officer before whom the refund claim is to be filed. In the meantime, the show cause notice dated 06.05.2016 was adjudicated and it was held that the appellant is not liable to pay service tax. The appellant filed refund claim before the Deputy Commissioner of Service Tax, Ambala on 07.02.2017, the refund claim was rejected by the adjudicating authority as time barred and whether the appellant is provided any other taxable services or not. The said order was challenged before the Ld. Commissioner (Appeals), who found that the appellant is not provided any other taxable services and have provided only service to Housing Board, Haryana of construction of flats. Therefore, the Ld. Commissioner (Appeals) held that as the appellant has failed to show that whether the order dated 05.01.2017 has attained finality or not, therefore, dismissed the refund claim as time barred. Against the said order, the appellant is before me.

3. The Ld. Counsel appearing on behalf of the appellant submits that the appellant has paid service tax in persuasion to the department for the services which are not liable to pay service tax. He further submitted that vide adjudication order dated 05.01.2017, it was held that the appellant was not liable to pay service tax, therefore, the appellant filed refund claim

on 07.02.2017 which is well within the time limit prescribed under Section 11B of the Act. In that circumstance, the refund claim cannot be rejected as time barred. With regard to attain finality of the order dated 05.01.2017, Revenue has failed to show that any appeal has been filed against the said order, in that circumstances, burden lies on the revenue whereas the Ld. Commissioner (Appeals) failed to appreciate the said facts, therefore, the refund claim is to be sanctioned.

4. On the other hand, the Ld. AR for the Revenue submitted that in terms of Section 102 of the Finance Act, 1994, the appellant was required to file refund claim within 6 months from the date of amendment in the Finance Act w.e.f. 29.02.2016 which the appellant has failed to do so. Therefore, the refund claim is time barred.

5. Heard the parties and considered the submission.

6. I find that in this case, whether the appellant are liable to pay service tax on the services rendered to Housing Board, Haryana being taxable or not have been settled on 05.01.2017, in that circumstances, the relevant date in terms of Section 11B of the Act is the date on which litigation comes to an end i.e. 05.01.2017, thereafter, within almost one month, the appellant filed refund claim. In that circumstances, the refund claim cannot be held as barred by limitation. Accordingly, on the said ground, the appellant is entitled to claim refund.

7. Moreover, the Ld. Commissioner (Appeals) has held that the appellant has failed to show that whether the order dated 05.01.2017 has

attained finality or not? It is not the duty of the appellant to provide all details whether the said order has attainted finality or not, it is the duty of Revenue to show that the said order has not attained finality and has misunderstood by the Ld. Commissioner (Appeals) that the appellant is required to show that the said order has attained finality. Therefore, the Revenue has failed to discharge their onus to show that the said order dated 05.01.2017 has attained finality or not? In that circumstances, the refund claim cannot be rejected.

8. In view of the above discussion, I hold that the appellant is entitled to refund claim. Accordingly, the impugned order is set-aside and the appeal is allowed with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.