CUSTOMS, EXCISE & SERVICE TAXAPPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE MEMBER BENCH

COURT NO.1

Appeal No.ST/60671/2018-EX (SM)

(Arising out of OIA No.APPL-ST-PKL-332-2017-18 dt.9.3.2018 passed by the CCE(Appeals), Panchkula)

Date of hearing/decision: 06.02.2019

Lajpat Rai Chanana **Appellant**

Vs.

CCE & ST, Rohtak **Respondent**

<u>Appearance</u>

Shri Akhil Gupta, Advocate for the appellants
Shri G.M.Sharma, AR for the respondent

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

FINAL ORDER NO.60081/2019

Per **ASHOK JINDAL:**

After hearing the parties, short issue emerges whether the refund claim filed by the appellant is barred by limitation or not. It has been declared that services provided by the appellant are non taxable.

2. The facts of the case are that the appellant is a contractor and engaged in providing construction service who undertakes construction of flats for BPL families on behalf of the Haryana Housing Board. The appellant has paid service tax on the said activity during July, 2012 to March, 2015. The said service was exempted from payment of service tax vide Notification No.25/2012-ST dt.20.6.2012 Later whether the services provided for construction of flats to Haryana Housing Board was taxable or not held is non taxable by

the Hon'ble Punjab Haryana High Court vide order dt.11.8.2016. Therefore, the appellant has filed refund claim of service tax on the above mentioned service. The said refund claim was rejected as by barred by limitation. Against the said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that as per Notification No.25/2012-ST dt.20.6.2012, the appellant was not required to pay service tax for construction of flats for BPL families on behalf of Haryana Housing Board, therefore, they were not liable to pay service tax. Hence, they are entitled to claim refund and limitation as prescribed under Section 11B of Central Excise Act, 1944 is not applicable to the fact of this case. To support his contention, he relied on the decision of Hon'ble Bombay High Court in the case of M/s. Parijast Construction vs. CCE, Nashik-2017-TIOL-HC-MUM-ST and the decision of Hon'ble Delhi High Court in the case of National Institute of Public Finance and Policy vs. Commissioner of Service Tax-2018-TIOL-1746-HC-DEL-ST.

4. On the other hand, Ld.AR submits that all the refund claims governed by Section 11B of Central Excise Act ,1944 and as per the said section, the time limit prescribed for filing the refund claim is within one year from the date of payment of duty. The appellant filed refund claim beyond a period one year from the date of payment of service tax. Therefore, the Commissioner (Appeals) has rightly held that refund claim by the appellant is barred by limitation.

5. Heard the parties.

6. On careful consideration of the submissions made by both sides, I find that the issue has been examined by the Hon'ble High Court in

the case of National Institute of Public Finance and Policy (supra) wherein the Hon'ble High Court has observed as under:-

> "4. Concededly, at the relevant time service tax was not payable for any of the functions or work undertaken or performed by the appellant/assessee. In these circumstances, under a wrong impression that it was liable to service tax, the assessee was levied certain amounts. Subsequently, upon inquiry, it was informed by CBEC on 13.04.2009 that its activities were not taxable. Soon thereafter, it sought refund of the amounts deposited. The Deputy Commissioner refunded part of the amount but disallowed refund of ` 11,49,090/- on the ground that the application was filed after a lapse of period of one year. The Assessee unsuccessfully filed an appeal to CESTAT which appears to have relied upon the judgment of the Supreme Court in Collector of Central Excise, Chandigarh v. Doaba Co-operative Sugar Mills, 1988 (37) E.L.T. 478 (S.C.).
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> 5. Counsel for the assessee contends that when the amount in question was never payable as there was no levy at all, the question of denying the refund of part payment did not arise and that the general principal of limitation will be applicable from the date of discovery of mistaken payment in the present case. So the refund claim is made within the stipulated period of the limitation.
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> 6. Counsel for the Revenue, on the other hand, relied upon the judgment of the Supreme Court in Collector of C.E., Kanpur vs. Krishna Carbon Paper Co., 1988 (37) ELT 480 (SC). Relying upon the said judgment, it is submitted that the refund claim before a departmental authority is to be made within the four corners of the statute and the period of limitation prescribed in the Central Excise Actand the Rules framed there-under.
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> 7. This court is of the opinion that the CESTAT clearly fell into error. Krishna Carbon Paper Co. (supra) was a case where principal duty was payable; excess amount had been paid on a mistaken notion with respect to the liability for excess production under a notification which was later discovered to be not correct. In the present case, levy never applied - a fact conceded by no less than the authority of CBEC. In these circumstances, the general principle alluded to in Krishna Carbon Paper Co. (supra) would apply. Consequently, the appeal has to succeed and is therefore allowed. The appellant shall be entitled to refund of entire amount with proportionate interest.
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> 8. The appeal is disposed of in the aforesaid terms."

7. Further, in the case of 3E Infotech vs. CESTAT, Chennai-2018 (18) GSTL 410 (Mad.), Hon'ble Madras High Court has also taken the same view. Thereafter in the case M/s. Technico Agri Sciences Ltd. vs. CCE, Chandigarh vide Final Order No.60009/2019 dt.3.1.2019, this Tribunal has observed as under:-

> 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.23.8.2018, after the decision of the Larger Bench of this Tribunal in the case of M/s.Veer Overseas Ltd order dt.27.3.2018 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:-
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> "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."
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> In that circumstances, I set aside the impugned order and allow the appeal with consequential relief, if any."
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> 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 order quo reject order of refund claim is set aside."

8. On going through the above cited decision by the Ld. Counsel, I am of the considered view that in the facts and circumstances of the case, it is admitted fact that the appellant is not liable to pay service tax on the said activity. Therefore, time limit prescribed under Section 11B of the Central Excise Act,1944 is not applicable to the facts of this case.

9. In these circumstances, I hold that the refund claim filed by the appellant is within time. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

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