CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Appeal No. ST/61079/2018

[Arising out of OIA No. LUD-EXCUS-001-APP-897-18 Dated 06.04.2018 passed by the Commissioner (Appeals) of Central Excise & Customs, Ludhiana]

M/s Malwa Industries Limited **: Appellant (s)**
Village Harian Kohara Machhiwara Road
Ludhiana, Punjab

Vs

CCE & ST- Ludhiana **: Respondent (s)**
Central Excise House, F-Block, Rishi Nagar
Ludhiana, Punjab-141001

APPEARANCE:
Shri Naveen Bindal, Advocate for the Appellant
Shri Basha Ram, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER No. 60917 / 2019

Date of Hearing/Decision: 31.10.2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim has been dismissed as time barred by the Ld. Commissioner (Appeals).

2. The facts of the case are that the appellant is manufacture of excisable goods and exported the same. The appellant paid certain commission to their foreign agent for procuring the purchase orders. The appellant was sought to pay service tax under reverse charge mechanism on the commission paid to their foreign agent. The appellant paid the service tax thereon and contested the matter that they are not liable to pay service tax under reverse charge mechanism prior to 18.04.2006. Therefore, the Ld. Commissioner held that the appellant is not liable to pay service tax and they are entitled for refund of the amount already paid on 10.09.2008. The said order was challenged by the revenue before this Tribunal and this Tribunal has
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dismissed the appeal filed by the Revenue on 15.03.2012. Thereafter, the appellant filed a refund claim on 23.12.2015, the same was dismissed as time barred. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that vide order dated 10.09.2008 the refund claim was sanctioned by the Ld. Commissioner (Appeals), in that circumstances, they were not required to file refund claim again. Therefore, the refund claim cannot be dismissed as time barred.

4. On the other hand, the Ld. AR submits that the appellant is required to file refund claim in terms of Section 11B of the CEA, 1944 which the appellant did not filed and same was filed on 23.12.2015 which is barred by limitation.

5. Heard the parties and considered the submissions.

6. It is an admitted fact that on 10.09.2008 the Ld. Commissioner (Appeals) sanctioned the refund claim to the appellant and the said order was challenged by the revenue before this Tribunal and this Tribunal dismissed their appeal on 15.03.2012, in that circumstances, the revenue was required to sanction the refund claim *suo-moto* to the appellant and there was no requirement to file the refund claim by the appellant. In that circumstances, I hold that the refund claim filed by the appellant is not barred by limitation. Accordingly, they are entitled for refund claim.

7. In these terms, I set-aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.