CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1
Appeal No. ST/60864/2019

[Arising out of OIA No. Appl/ST/PKL/258/2018-19 dated 12.03.2019 passed by the Commissioner (Appeals) of Central Goods & Service Tax and Central Excise, Panchkula]

Verma Brothers : **Appellant (s)**
660 Police Line Area Near Town
Park, HISSAR, HARYANA, 125001

Vs.

CCE & ST- Rohtak : **Respondent (s)**
Pacific City Centre, IInd Floor,
Near Jat Bhawan, Delhi Road
ROHTAK, HARYANA, 124001

APPEARANCE:
Shri Vikrant Kackaria, Advocate for the Appellant
Shri M. S. Dheendsa, Authorised Representative for the Respondent

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

ORDER No. A/ 61031 / 2019

Date of Hearing:20.11.2019

Date of Decision:20.11.2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim was rejected as time barred.

2. The facts of the case are that the appellant is engaged in Construction Service and the refund claim filed is with regard to Construction Service provided to the Government for building of MES. The said service was exempted from service tax vide entry number 12(a) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. The said entry was withdrawn vide Notification No. 06/2015-ST dated 01.03.2015 which was effective from 01.04.2015, but, on the premise that the date of notification 01.03.2015, the appellant paid service tax for the period March 2015 and later on the
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refund claim was filed on 07.11.2016. The said refund claim was rejected as barred by limitation of time limit prescribed under Section 11B of CEA, 1944 applicable to service tax. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that it is an admitted position that as per Notification No. 25/2012-ST dated 20.06.2012 they were not liable to pay service tax at all. When the amount paid by them was not service tax then the time limit prescribed under Section 11B of the Act is not applicable as held by the Hon'ble Delhi High Court in the case of ***National Institute of Public Finance & Policy vs. Commissioner of Service Tax 2019 (20) GSTL 330 (DEL.),*** the same has been followed by this Tribunal in the case of Radian Textiles Ltd. vs. ***Commissioner of Central Excise, Ludhiana 2019 (26) GSTL 197 (Tri.-Chan.)***. Further, in the case of ***Hitachi Metals (I) Pvt. Ltd. vs. Commissioner of Central Excise & Service Tax, Gurgaon-I 2019 (25) GSTL 573 (Tri.-Chan.)***.

4. On the other hand, the Ld. AR submits that all refunds are governed by the Section 11B of the Act and as per the decision of the Hon'ble Apex Court in the case of ***Assistant Collector of Customs vs. ANAM Electrical Manufacturing Co. 1997 (90) ELT 260 (S.C.)*** relying on the decision of ***Mafatlal Industries vs. Union of India 1997 (89) ELT 247 (S.C.)***, the refund filed by the appellant is barred by limitation in terms of Section 11B of the Act.

5. Heard the parties and considered the submissions.

6. I have gone through the decision placed by the Ld. AR before me in the case of ***Anam Electrical Manufacturing Co. (supra)*** the

paragraph 1 of the said decision is very much relevant to deal the case in hand which is extracted herein below:-

> "(1) Where a refund application was filed by the manufacturer/purchaser beyond the period prescribed by the Central Excise Act/Customs Act in that behalf, such petition must be held to be untenable in law. Even if in any appeal, suit or writ petition, direction has been given that the refund application shall be considered with reference to the period of limitation prescribed in the Central Excise Act/Customs Act - or that the period of limitation shall be taken as three years - such a direction of the Appellant Court/Civil Court/High Court shall be deemed to be unsustainable in law and such direction shall be set aside. The period prescribed by the Central Excise Act/Customs Act for filing a refund application in the case of "illegal levy" cannot be extended by any Authority or Court."

As per the said decision, if the refund claim is filed for central excise duty, customs duty or service tax, the same shall be governed by the Central Excise Act or Customs Act if no such an time limit prescribed under these act is applicable otherwise the time limit shall be taken as three years from the date of payment.

7. Now, from the facts of the case, it is to be seen that whether the appellant is claiming the refund of service tax or an amount paid by them mistakenly. It is an admitted position in the facts of the case that during the period March 2015, the service provided by the appellant to MES was exempt from payment of service tax. Therefore, the amount paid by the appellant is not service tax. In that circumstances, the time limit prescribed under Customs Act or Central Excise Act is not applicable and the time limit prescribed as per the decision of the Hon'ble Apex Court in the case of ***Anam Electrical Manufacturing Co. (supra)*** is applicable i.e. 3 years. Admittedly, the appellant has filed refund claim within 3 years from the date of payment of the service tax, in that circumstances, I hold that the refund claim filed by the appellant is not barred by limitation and the same view has taken by the Hon'ble High court of Delhi in the case of ***National Institute of Public Finance & Policy (supra).*** Therefore,

the appellant is entitled to claim refund of the amount paid for the period March 2015.

8. In these terms, the impugned order qua rejecting the refund claim of the appellant as time barred is set-aside.

9. In result, the appeal is allowed.

(Dictated & pronounced in the Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.