CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Appeal No. ST/60547/2019 -[SM]

(Arising out of Order-in-Appeal No. 264-265-ST-CGST-APPEAL-GURUGRAM-SG-2018 dated 31.01.2019 passed by the Commissioner (Appeals), Gurgaon I)

M/s Penta Software Pvt Ltd **......Appellant**
(Plot No. 387 Phase IV Udyog Vihar Gurugram, Haryana 122015)

VERSUS

C.C.E & S.T. Gurgaon I **......Respondent**
(Plot No. 36 & 37 Sector 32, Near Medanta Hospital Gurgaon, Haryana 122001)

WITH

Appeal No. ST/60548/2019 -[SM]

(Arising out of Order-in-Appeal No. CGST-APPEAL-GGM-QL2software-228-2018-3217 dated 21.01.2019 passed by the Commissioner (Appeals), Gurgaon I)

M/s QL2 Software India Private Limited **......Appellant**
(Plot No. 6 Electronic City, Sector 18, Gurugram, Haryana 122015)

VERSUS

C.C.E & S.T. Jammu & Kashmir **......Respondent**
(Plot No. 36 & 37 Sector 32, Near Medanta Hospital Gurgaon, Haryana 122001)

<u>APPEARANCE:</u>

Shri Gaurav Gupta, C.A for the Appellant

Shri H.S. Brar, Authorised Representative for the Respondent

<u>CORAM:</u> **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 61131-61132 of 2019

DATE OF HEARING: 21.11.2019
DATE OF DECISION: 21.11.2019

PER ASHOK JINDAL:

As the issue involved in both the appeals is common, therefore both the appeals are taken up together.

2. The appellants are exporter of services and filed refund claim of the Cenvat credit lying unutilized in Cenvat credit account under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE dated 18.06.2012, which has been amended on 01.03.2016. M/s Penta Software Pvt Ltd filed a refund claim on 12.09.2017 for the quarter of July, 2016 to September, 2016, wherein the first payment of the export made by their recipients on 05.07.2016 and the last payment was received on 06.09.2016. The said refund claim was rejected being time barred and in the case of QL2 Software (India) Pvt Ltd, wherein refund claim was filed on 07.06.2017 for the quarter 01.04.2016 to 30.06.2016 wherein the last payment was received on 02.06.2016. The same was also rejected as time barred, therefore, these appeals.

3. The Ld. Consultant appearing on behalf of the M/s Penta Software Pvt. Ltd. submits that in terms of notification, the appellant was required to file one refund claim for the quarter ending September, 2016 within one year from the date of end of the quarter, but as per the amendment, they were required to file refund claim within one year from the date of receipt of the payment in foreign convertible exchange. The provisions of the said notification are contrary as one refund claim is required to be filed and is to be filed within one year from the date of receipt of foreign convertible exchange. It is his further submission that the Larger Bench of this

Tribunal in the case of ***Commr. of Service Tax, Bengaluru vs. Span Infotech (India) Pvt Ltd.*** *vide* **Interim Order No. 4/2018** ***dt.*** **09.02.2018** held that one year period is to be counted from end of the quarter. He fairly submits that the said observation of the Larger Bench of this Tribunal is for the period prior to Notification No. 27/2012 dated 18.06.2018. He also drew my attention to the decision of this Tribunal in the case of ***M/s Poona Brush Co. Vs. Commissioner of Central Excise, Pune-III*** *reported in* ***2018 (363) E.L.T. 678 (Tri. – Mumbai)*** to contend that the relevant date should be within one year from the date of end of the quarter. He further submits that the same view was taken by this Tribunal in the case of ***M/s Gran Overseas Ltd. Vs. Commissioner of Central Excise, Delhi-I*** *reported in* ***2017 (52) S.T.R. 286 (Tri.- Del.).***

4. On the other hand, the Ld. AR submits that the refund claim was required to be filed by the assessee within one year from the date of receipt of payment; but in this case, it is clear from the fact the refund is filed after one year from the date of the receipt of the last foreign convertible exchange.

5. Heard the parties and considered the submissions.

6. It is an admitted position that one refund claim is required to be filed for each quarter. Admittedly, in a case, where one refund claim is required to file in each quarter, therefore, the period of limitation is to counted one year from the last date of the said quarter is the date for filing the refund claim in terms of Section 11B of the Central Excise Act, 1944. As, there is an ambiguity in the notification that what should be the relevant date. In the notification on the one

hand, it has been stated that one refund claim is to be filed quarterly and on the other hand, it is saying that within one year from the date of receiving of the foreign convertible exchange, when a Notification is having ambiguity that the benefit of doubt goes in favour of the assessee as held by this Tribunal in the case of ***M/s Mangalam Alloys Ltd. Vs. C.C.E. Ahmedabad,*** *reported in* ***2010 (255) E.L.T. 124 (Tri. Ahmd),*** wherein this Tribunal held that when there are two possible views in the notification itself, then benefit is given to the assessee. Admittedly, it is an admitted position that there is an ambiguity in the notification, therefore, benefit of doubt goes in favour of the appellant and the same views was taken in the various pronouncements of the Tribunal as in the cases of ***M/s Gran Overseas Ltd. (supra)*** and ***M/s Poona Brush Co. (supra).*** Therefore, I hold that refund claims filed by the appellants are within one year from the last date of the quarter in each.

7. In these terms, I do not find any merit in the impugned orders, the same are set aside.

8. In result, the appeals are allowed with consequential relief.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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