CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60523 of 2021

(Arising out of Order-in-Appeal No. CHD-EXCUS-001A-APP-73-2021-22 dated 27.10.2021 passed by the Commissioner (Appeals), Chandigarh)

M/s Arpit Advertising **......Appellant**
(SCO-6 Sector-30d Chandigarh, 160030)

VERSUS

C.G & S.T. Chandigarh **......Respondent**
(Central Revenue Building, Plot No. 19, Sector 17/C, Chandigarh 160017)

APPEARANCE:

Mr. A.S. Gill, Advocate for the Appellant

Mr. Bhasha Ram, Authorised Representative for the Respondent

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

FINAL ORDER NO. 60038 of 2022

DATE OF HEARING: 01.02.2022
DATE OF DECISION: 01.02.2022

PER ASHOK JINDAL:

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

2. The facts of the case are that during the period 2014-2015 to 2016-2017, the appellant was paying service tax under the category of Renting of Immovable Property Service, although, they are not

required to pay service tax of the said service as they have provided that service for residential purposes. After investigation, a show cause notice was issued to the appellant on 04.10.2018 to demand differential service tax from the appellant on Renting of immovable property service along with service tax on other services also, the said show cause notice was adjudicated and it was held that the appellant is not liable to pay service tax under the category of Renting of Immovable Property Service for residential purposes and the show cause notice was dropped by the adjudicating authority on 16.12.2019. The appellant filed a refund claim of service tax paid inadvertently on 16.09.2020, the said refund claim was rejected holding that refund claim is barred by limitation under Section 11B of the Act. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that they were not required to pay service tax under the category of Renting of Immovable Property Service for use of residential purposes which was paid mistakenly, therefore, the provision of Section 11B of the act are not applicable to the facts of the case. He relied on the certain decisions of this Tribunal as well as of the decision of the Hon'ble High Court and the Hon'ble Apex Court.

4. On the other hand, Ld. AR submitted that the appellant has paid service tax voluntarily under the category of Renting of Immovable Property Service, therefore, the refund claim is admissible under Section 11B of the Act and as per the provision of 11B of the

Act the appellant can file refund claim within one year from the date of payment of service tax. To support his contentions he relied on the following decisions of ***Veer Overseas Ltd. Vs. Commissioner Of Central Excise, Panchkula*** reported in ***2018 (15) G.S.T.L 59 (Tri.-LB),*** in the case of ***New Allenberry Works Limited vide Final order no. 60552 of 2021, Collector of C.E, Chandigarh Vs. Doaba Co-operative Sugar mills*** reported in ***1988 (37) E.L.T. 478 (S.C), Assistant Collr. Of Cus. Vs. Anam Electrical Manufacturing Co.*** reported in ***1997 (90) E.L.T. 260 (S.C), Cannanore Handloom Exports Vs. Commr. Of C.Ex., C & S.T. Calicut*** reported in ***2021 (44) G.S.T. 345 (Ker.), Southern Surface Finishers Vs. Asstt. Commr. Of C. Ex Muvattupuzha*** reported in ***2019 (28) G.S.T.L. 202 (Ker.), Uniroyal marine Exports Ltd V. Commissioner of C.Ex., Kozhikode*** reported in ***2021 (54) GSTL 156 (Ker.).***

5. Heard the parties and considered the submissions.

6. The facts which are not disputed by both the sides that a show cause notice dated 04.10.2018 was issued to the appellant to demand differential service tax on Renting of Immovable Property Service and it was held by the adjudicating authority that appellant is not required to pay service tax under the category of Renting of Immovable Property Service vide order dated 16.12.2019, thereafter, the appellant has filed refund claim on 16.09.2020.

7. As the refund claim has been filed within one year from the date of the adjudication order wherein it has been held that the appellant is not required to pay service tax, therefore, in terms of Section 11B of the Act, refund claim is to be filed within one year, from the relevant date. The relevant date is the date of adjudication order date i.e 16.12.2019.

8. In these circumstances, I hold that refund claim filed by the appellant is within time.

9. In view of this, I do not find any merit in the impugned order, the same is set aside, the appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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