IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/CO/21/2011 and E/222/2011

(Arising out of Order-in-Appeal No.571/2010 dated 23.12.2010 passed by the Commissioner of Central Excise (Appeals), Madurai)

Commissioner of Central Excise, Tirunelveli Appellant

Vs.

M/s. Transworld Garnet India Pvt. Ltd. Respondent

Appearance

Shri S. Govindarajan, AC (AR) for the Appellant
Shri M.N.Bharathi, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **12.04.2018**

Final Order No. **41105 / 2018**

Per Bench

The above appeal is filed by the department against the order passed by Commissioner (Appeals) who allowed the refund claim in favour of the respondent.

2. On behalf of Revenue, ld. AR Shri S.Govindarajan submitted that the refund claim was filed beyond the period of

one year and therefore the Commissioner (Appeals) has erred in allowing the refund claim.

3. The ld. counsel Shri M.N. Bharathi appearing for the respondent submitted that the respondent had paid service tax both on inward transportation of goods and on the outward transportation of goods in the capacity of service recipient. They contested the levy of service tax on availing GTA Service, being a 100% EOU and only on the direction of the department had paid the service tax under protest. The lower authority has rejected the refund claim stating that a mere letter of protest is not valid before eye of law. He submitted that the period of limitation prescribed under section 11B of Central Excise Act, 1944 is not applicable as the service tax was paid under protest. In any case, the respondent being a 100% EOU is eligible for the refund of the accumulated unutilized credit.

4. Heard both sides.

5. On perusal of records, we find that the Commissioner (Appeals) has allowed the refund claim observing that the respondent have paid service tax on GTA service under protest. In the show cause notice, one of the grounds proposed for rejection of refund claim is that the claim is barred by limitation. In the earlier round of litigation, the adjudicating authority has observed that the protest letter has no validity in the eyes of law. From the records it is brought out that the

respondent had paid service tax under protest. Therefore, the rejection of refund claim alleging that the same is barred by limitation is without legal basis. The Commissioner (Appeals) has rightly analyzed the law as well as the facts holding that the respondents are eligible for refund. We do not find any infirmity in the order passed by the Commissioner (Appeals). The impugned order is upheld and the appeal filed by Revenue is dismissed. The cross-objection filed by the respondent is disposed of accordingly.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex