

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Single Member 3 B1]**

Appeal No.: ST/42282/2018

[Arising out of Order-in-Appeal No. 331/2018 (CTA-I)
dated 04.07.2018 passed by the Commissioner of G.S.T. &
Central Excise (Appeals-I), Chennai]

M/s. Bhavya Enterprises, : **Appellant**
E-3, Classic, R.C. Westminister, 46,
Kamaraj Road, Kodingayur,
Chennai – 600 118

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai North Commissionerate

Appearance:-

Shri. M. Karthikeyan, Advocate
for the Appellant
Shri. L. Nandakumar, AC (AR)
for the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing/Decision: 01.01.2019

Final Order No. 40001 / 2019

The appellants are providing Management or Business Consultant Services and are registered under the said category. They provided services to foreign customers and discharged service tax on such services. Later, they came to realize that the services provided to foreign customers, being export of services, is not exigible to service tax. They filed refund claim under Rule 6A of the

Service Tax Rules, 1994 for an amount of Rs. 4,93,059/- for the period from April 2016 to March 2017.

2. After due process of law, the Original Authority sanctioned an amount of Rs. 4,12,549/- and rejected an amount of Rs. 80,509/- on the ground that the said amount is time-barred in terms of Section 11B of the Central Excise Act, 1944 read with the Finance Act, 1994. In appeal, the Commissioner (Appeals) upheld the rejection. Hence, the appellants are now before the Tribunal.

3.1 The Ld. Counsel Shri. M. Karthikeyan appearing for the appellant submitted that the authorities below have granted the refund amount of Rs. 4,12,549/- and rejected an amount of Rs. 80,509/- stating that the said amount is time-barred. The appellants had discharged the service tax on the services provided to foreign customers by mistake. Since the place of supply of such services is outside the taxable territory, the said services are exempted from service tax being export of services. When the service tax has been paid by mistake, time prescribed under Section 11B *ibid* cannot be pressed into application.

3.2 To support his argument, he relied upon the decision of the Hon'ble jurisdictional High Court in the case of *M/s. 3E Infotech,*

Kanyakumari Vs. CESTAT, Chennai & C.C.E., Madurai – 2018-TIOL-1268-HC-MAD-ST.

4. Ld. AR Shri. L. Nandakumar appearing for the respondent supported the findings in the impugned Order.

5. Heard both sides.

6. The appellants are aggrieved by the rejection of refund claim on the ground that the refund claim is barred by limitation as per the provisions of Section 11B of the Central Excise Act, 1944. Undisputedly, the services provided to foreign customers are not exigible to service tax and the appellants have paid the service tax by mistake.

7.1 The issue as to whether the time prescribed under Section 11B *ibid* is applicable to such a situation when the service tax is paid by mistake has been analyzed by the Hon'ble jurisdictional High Court in the case of *M/s. 3E Infotech (supra)* relied by the Ld. Counsel for the appellant. The relevant paragraphs are reproduced as under :

“13. On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs. 4,39,683/- cannot be barred by limitation, and ought to be refunded.

14. There is no doubt in our minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper, and against the tenets of Article

265 of the Constitution of India. On the facts and circumstances of this case, we deem it appropriate to pass the following directions :-

- (a) The Application under Section 11B cannot be rejected on the ground that is barred by limitation, provided for under Section.*
- (b) The claim for return of money must be considered by the authorities."*

7.2 Following the same, I am of the view that the rejection of refund claim is unjustified. The impugned Order is set aside.

8. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

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

Sdd