IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41025 of 2019

(Arising out of Order-in-Appeal No. 494/2018 (CTA-II) dated 25.10.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Sigma Forging & Forming Private Limited, **: Appellant**
Plot No. H-10, SIPCOT Industrial Park,
Vallam Vadagal, Palnallur Village,
Sriperumbudur Taluk, Kancheepuram District,
Tamil Nadu – 631 604

VERSUS

The Commissioner of G.S.T. and Central Excise, **: Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040

<u>APPEARANCE</u>:

Ms. A. Sivaranjani, Advocate for the Appellant

Shri. S. Govindarajan, Authorized Representative (A.R.) for the Respondent

<u>CORAM</u>:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 41679 / 2019

DATE OF HEARING: 05.12.2019

DATE OF DECISION: **<u>20.12.2019</u>**

The relevant facts, in brief, for disposal of this appeal, *inter alia,* are that an industrial plot was allotted to the appellant by the State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT), a Government of Tamil Nadu undertaking, for a period of 99 years; that the appellant paid one-time development charge to SIPCOT; that a Service Tax of Rs. 17,94,672/- on the above development charge was also collected; that the appellant filed a claim for refund of the above Service Tax vide its application dated 11.12.2017 on the ground that the same was erroneously collected, etc. The above refund claim was prompted by the retrospective amendment vide Section 104 of the Finance Act, 2017 whereby, the levy and collection of Service Tax on the one-time payment of development charges was exempted and even the refund mechanism was provided thereunder. The Revenue was of the view that any claim for refund was to be made within a period of six months from the date of assent of the Hon'ble President of India (which was on 01.04.2017) and therefore, the appellant's application for refund dated 11.12.2017, which was beyond six months, was barred by limitation as prescribed under Section 104 (3).

1.2 A Show Cause Notice was accordingly issued i*nter alia* with a proposal to reject the refund claim, vide Order-in-Original No. 70/2018-RF dated 02.05.2018 the proposal got culminated in rejection of the appellant's claim and the findings in the above Order-in-Original came to be upheld by the Commissioner of G.S.T. and Central Excise (Appeals-II), Chennai, vide impugned Order-in-Appeal No. 494/2018 (CTA-II) dated 25.10.2018. The appellant has assailed the above Order-in-Appeal by this appeal.

2. When the matter was taken up for hearing, Ms. A. Sivaranjani, Ld. Advocate, appeared for the assessee-appellant and at the outset submitted that the very same issue has been considered by the Chennai Bench of the Tribunal and therefore, the issue is no more *res integra*. In this regard, she placed reliance on the decisions of this Bench of the Tribunal in the cases of :

(i) *M/s. Roop Automotives Ltd. v. The Commissioner of G.S.T. and Central Excise, Chennai* in *Service Tax Appeal No. 42701 of 2018 [Final Order No. 40928 of 2019];* and

(ii) *M/s. Satyam Auto Components Pvt. Ltd. v. Commissioner of G.S.T. & C.E., Chennai* in *Service Tax*

Appeal No. 40373 of 2019 [Final Order No. 41160 of 2019].

3. *Per contra*, Shri. S. Govindarajan, Ld. Departmental Representative appearing for the Revenue, seriously contended, while supporting the findings of the lower authorities, that the Tribunal lacks jurisdiction to grant refund by extending the limitation and in this regard, he relied on the following decisions:

(i) *JSW Dharmatar Port Pvt. Ltd. v. Union of India [2019 (20) G.S.T.L.721 (Bom.)];*

(ii) *Essar Bulk Terminal Salaya Ltd. v. Union of India [2019 (25) G.S.T.L. 521 (Guj.)]; and*

(iii) *MDP Infra (India) Pvt. Ltd. v. Commr. of Cus., C.Ex. & C.G.S.T. [2019 (29) G.S.T.L. 296 (M.P.)]*

4. I have heard the rival contentions, perused the documents placed on record and also gone through the various judgements/orders relied upon during the course of arguments.

5. The decisions relied upon by the Ld. Departmental Representative are on refund under Section 103 which are different because of the in-built requirement of the certificate by the concerned authorities/Ministry, which is not the case with Section 104 ibid.

6.1 In the decision in the case of *M/s. Roop Automotives Ltd. (supra)*, this Bench has *inter alia* concluded that procedure is the handmaid of justice which is meant to serve justice rather than defeat the purpose, following the decision of the Hon'ble Apex Court in the case of ***M/s. JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd.*** in ***Civil Appeal No. 20978 of 2017 dated 30.04.2019***, in the following words :

"8.4 In this context, it is very useful to refer to a recent judgement of the Hon'ble Supreme Court in the case of M/s. JK Jute Mill Mazdoor Morcha Vs. Juggilal

Kamlapat Jute Mills Company Ltd. in Civil Appeal No. 20978 of 2017 dated 30.04.2019 and at paragraph 10, their Lordships observe as under :

> *"10.Even otherwise, we are of the view that…….*
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> *We must never forget that procedure is the handmaid of justice, and is meant to serve justice. This Court, in Kailash v. Nanhku and Ors., (2005) 4 SCC 480,put it thus:*
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> *"28.All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] are pertinent:(SCC p. 777, paras 5-6)*
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>> *"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels considerationof vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ...Justice is the goal of jurisprudence —processual, as much as substantive."*
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> *29.In State of Punjab v. Shamlal Murari [(1976) 1 SCC719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)*
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>> *"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."*

In Ghanshyam Dass v. Dominion of India [(1984) 3 SCC46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws ofprocedure are based on this principle."

This judgment was followed by the Constitution Bench decision in Sarah Mathew v. Institute of Cardio Vascular Diseases and Ors.,(2014) 2 SCC 62 [at paragraph 49]."

9.1 Therefore, a harmonious reading of the provisions points to one and only conclusion that though Section 104 is a special provision, it is practically dependent on Section 11B and Section 83 connects both the above provisions and thus, all procedures as in Section 11B would apply. There may be applications within six months, as contemplated in Section 104 (3), but that cannot take away the applicability of Section 11B.

9.2 The next question could well be about the word 'shall' used in Section 104 (3). The Constitution guarantees that no tax shall be collected without the authority of law and the statute also, by way of insertion of new Section 104, has made it clear that no tax shall be collected and thereby has also provided for granting refund of such tax collected in certain special cases. So, can the authorities still hold back the tax so collected, with them, not because of the appellant being ineligible, but because of an artificial fiction? Thus, when the power itself not being there to collect the tax, retention of such tax collected is the challenge. The purpose of the very insertion of Section 104 would become redundant if such an artificial fetter is allowed to prevent the administration of beneficial legislation, by which the very purpose gets defeated. Hence, 'shall' could and is only directory.

9.3 It is also for the other reason, as observed by me in earlier paragraphs, that Section 104 is not a self-contained one even though it is a special provision since filing application for refund and the Form required thereto not being prescribed, it rests on Section 11B and the rules and regulations therein. It is a special provision for extending the benefit and hence, when the eligibility otherwise is not questioned, the benefit cannot be denied. It cannot be said that only the limitation clause applies and not when it comes to the Form of application since it is the settled position of law that a Section has to be applied in full and that there is no scope for selective application. Hence, the Section in question has to live its life for the purpose for which it is brought in and to thus advance justice but not to defeat it. Its construction therefore, should be only to promote justice because, as observed by the Hon'ble Apex Court (supra), it is too rudimentary that a rule or procedure is the handmaid of justice and not its mistress.

10. In view of the above discussions and on the peculiar nature of facts involved, the time-limit

> *prescribed under Section 104 (3) is only directory, but however, the time as well as the procedure prescribed under Section 11B applies in full. The Adjudicating Authority is therefore required to grant refund if the refund application is within the time-limit prescribed under Section 11B and not otherwise.*
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> *11. Accordingly, the impugned order is set aside and the appeal is partly allowed and partly remanded with specific direction, for the limited purpose of ascertaining as to whether the date of refund application satisfies the limit under Section 11B or not, and if the same is within the limit prescribed, then the refund shall have to be issued with consequential benefits, as per law."*

6.2 Following the above, I am of the view that the limitation of one year as in Section 11B of the Central Excise Act, 1944 would have to be reckoned from 01.04.2017 which is the date on which the assent of the Hon'ble President was received.

7. With the above observations, the matter is remanded to the file of the Adjudicating Authority, who shall verify and pass appropriate orders as per the direction contained at paragraph 11 of the Order of this Bench in *M/s. Roop Automotives (supra)* in Service Tax Appeal No. 42701 of 2018 and then allow if the same is found to be within the time prescribed, with consequential benefits, if any, as per law.

(Order pronounced in the open court on **20.12.2019**)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd