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

**ST/42283/2015**

(Arising out of Order-in-Appeal No. 223/2015 (CXA-II) dated 10.08.2015 passed by the Commissioner of Central Excise (Appeal-II), Chennai).

M/s. Rajshree Sugars and Chemicals Ltd. — Appellant

Vs.

CCE & ST, Pondicherry — Respondent

Appearance

Shri G. Rajendran, Advocate
for the appellant

Shri S. Govindarajan, AC (AR)
for the Respondent

**CORAM :**

**Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER**

Date of Hearing: **04.08.2017**
Date of Pronouncement: 10/8/17

FINAL ORDER No. 41587 **/2017**

The appellant who are engaged in the manufacture of export of Sugar and Molasses filed a refund claim of service tax utilized on various input services used for the purpose of export, in terms of Notification No. 41/2012-ST dated 29.06.2012, which allow such refunds In terms of Sl. No. 3 (g), "the claim for rebate of service tax paid on the specified services used for export of goods shall be filed

Customs, Excise & Service Tax Appellate Tribunal within one year from the date of export of the said goods". As per the explanation annexed to the said provision, " For the purpose of this clause the date of export shall be the date on which the proper officer of Customs make an order permitting clearance and loading of the said goods for exportation under Section 51 of the Customs Act, 1962."

2. In as much as the refund claim for the period 01.07.2012 to 30.09.2013, was filed by the appellant on 13.08.2013 ie., beyond the limitation period of one year, from the date of export, as provided in the notification, the lower authorities proposed to reject the same on the said ground of time bar. Accordingly, proceedings were initiated resulting in passing of the order by the original adjudicating authority and upheld by the Commissioner (Appeals).

3. There is no dispute that the refund claim stands filed on 13.08.2013 for the period 01.07.2012 to 30.09.2013. Ld. Advocate has drawn my attention to a precedent order of the Tribunal in the case of M/s. KKSK Leather Processors (P) Ltd. Vs. CCE, Salem – 2013 (11) TMI- 1502-CESTAT-Chennai, wherein the Tribunal, while dealing with the refund claim under Notification No. 41/07 dated 06.10.2007 has referred to the provision of relevant date appearing under Section 11 B of the Central Excise Act and has held that date of payment of service tax to the service provider is the relevant date for the purpose of accounting limitation period. As such it is their contention that the said decision, even though rendered in the context of Notification No. 41/2007, should be followed in as much as

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the present Notification No. 41/2012 is only a succeeding notification. The lower authorities have not accepted the above stand of the assessee by observing that when the notification in question provides a clear date ie., date of export as the relevant date, interpretation of the earlier notification by the Tribunal cannot be adopted.

4. I have carefully gone through the earlier order of the Tribunal, strongly relied upon by the appellant. Admittedly, the said order is in the context of Notification No. 41/2007 and the Tribunal clearly observed that the relevant date, for the purpose of notification, is to be decided in terms of the provisions of Section 11 B of the Act. It only shows that there was no time limit specifically provided under the earlier notification.

5. On the contrary, I find that the Notification No. 41/2012-ST dated 29.06.2012, specifically provided that the claim for rebate of service tax shall be filed within one year **from the date of export of the said goods**. As such, it is clear that the date of export is the relevant date for the purpose of computing the period of one year and not the date of service tax paid by the assessee to the service provider, as contented by them. It is well settled law that when the wordings of a notification are unambiguous, the same have to be adhered to. The expressions used in the notification laying down the 'date of export' as the relevant date cannot be held to be ambiguous, thus requiring any no legal expertise to interpret them. It is well settled that neither any extraneous expressions or wordings can be introduced nor any wordings of notification can be ignored, while

interpreting the same. The appellant's claim has to be adjudged in the light of the clear expression used in the notification. As such, I am of the view that the lower authorities have rightly held against the assessee as regards the limitation aspect.

6. I also find the Hon'ble Madras High Court decision in the case of CCE, Coimbatore Vs. GTN Engineering (I) Ltd. - 2012 (281) ELT 185 (Mad.), has relevance in as much as it stands held by the Hon'ble Court that the assessee has to necessarily satisfy the limitation clause provided under the statute. Limitation is not a procedural aspect and if a particular action is required to be done within the time limit provided under law, it should be done within that time limit so as to earn the benefit of the same. The time period prescribed by the legislature can neither be extended by the Tribunal nor the delay can be condoned, as the Tribunal, being a creature of the statute is bound by the legal provisions. As such the assessee's prayer to condone the delay of around 13 days in filing the refund claim can also not be considered.

7. In view of the above, I find no justifiable reasons to interfere in the impugned order of the lower authorities. The same are accordingly upheld and the appeal is rejected.

(Order pronounced in the open Court on 10/8/17)

10/8/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

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Customs, Excise & Service Tax Appellate Tribunal

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