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

ST/40184/2017

(Arising out of Order-in-Appeal No. ~~117~~ 101/2016-ST dated 27.10.2016 passed by the Commissioner of Central Excise (Appeal-Is), Chennai).

M/s. Subhashri Bio Energies Pvt. Ltd. — Appellant

Vs.

CCE & ST, Salem — Respondent

Appearance

Shri S. Kannappan,Advocate
for the Appellant

Shri Arul Durairaj, Supdt. (AR)
for the Respondent

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing/Decision: **23.10.2017**

FINAL ORDER No. 42407 **/2017**

The appellant, who is engaged in the manufacture of generation of power using non-conventional material was availing GTA services for the purpose of transportation of organic manure, which is a by-product. The appellants were paying service tax on such GTA services so utilized by them. However they subsequently realized that the transport service for the purpose of transportation of organic manure was exempted w.e.f. 11.07.2014 and service tax was not liable to be paid by them. Accordingly they filed refund claim of service tax so paid by them on 23.03.2016.

2. The said claim of the appellant was taken up for adjudication and the amount falling within the limitation period was granted to them. However, the lower authorities rejected the balance refund claim on the ground of time bar. Appeal against the same did not succeed before the Commissioner (Appeals). Hence the present appeal.

3. The contention of the Ld. Advocate is that the said service tax was collected by the Revenue without any authority of law and as such the same is required to be considered as a deposit in which case it will not attract any limitation period. As such, the contention of the Ld. Advocate that in as much as no service tax was payable, they are entitled to refund of the same.

4. Countering the argument, the Ld. DR submits that the provisions of Section 11 B squarely lay down the time limit of one year from the relevant date for claiming refund of any tax paid by the assesse. The said period is extended only when the tax stands paid either under protest or provisionally. In as much as in the present case, the said situations were not available, the appellant's refund claim has been rightly held as barred by limitation.

5. After appreciating the submissions made by both sides, I find that all the refunds arise on account of the fact that the same were not required to be paid. If the tax or duty so paid by an assessee is considered as a deposit, the same would be required to be refunded, irrespective of the time gap between the payment of tax/duty and the date of claim of refund. In such a scenario, the provision of 11 B of CEA laying down a period of one year for claiming refund of any amount so paid by an assessee, would become redundant and otiose. The Tribunal being a creation of the Act is bound by the provisions of the Act and cannot declare or announce any provision as invalid or redundant. As per the mandate of Section 11 B of the CEA, the refunds are required to be filed within the limitation period prescribed therein and the present refund claim having been filed beyond the period, I find no justifiable reason to interfere in the impugned order of the lower authority. Accordingly, the same are upheld and the appeal is rejected.

(Order dictated and pronounced in the open Court on)

25/10/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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