IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.638 of 2011

(Arising out of Order-in-Appeal No. 158/2011 (M-ST) dated 19.9.2011 passed by the Commissioner of Central Excise (Appeals), Chennai)

Commissioner of GST & Central Excise **Appellant**
Chennai South Commissionerate
MHU Complex, No. 692, Anna Salai
Nandanam, Chennai – 600 035.

Vs.

M/s. Zylog Systems Ltd. **Respondent**
No. 155, Tiruvalluvar Salai
Kumaran Nagar, Sholinganallur
Chennai – 600 119.

APPEARANCE:

Ms. T. Sridevi, ADC (AR) for the Appellant
None for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Venkata Subba Rao, Member (Technical)

Final Order No. **41777 / 2021**

Date of Hearing: 23.08.2021
Date of Decision: 23.08.2021

Per Ms. Sulekha Beevi C.S.

This appeal filed by the Revenue was originally disposed of by the Tribunal vide Final Order No. 40369/2019 dated 15.2.2019. The issue in the appeal was as to whether the assessee is eligible to avail credit of service tax before registering the premises. The Tribunal in the said final order followed the judgment of the Hon'ble High Court of Madras in BNP Paribas Sundaram Global Securities Operations Pvt. Ltd. – 2018-TIOL-1126-HC-MAD-ST wherein it was held that registration of assessee's premises is not a prerequisite for claiming refund of credit under Rule 5 of CENVAT Credit Rules, 2004. The order of the Commissioner (Appeals) was upheld by the Tribunal and the appeal filed by the Revenue was dismissed. Against such order, the department field appeal before the Hon'ble High Court wherein they contested that the issue of limitation for filing refund was not considered by the Tribunal in the above final order. Vide judgment dated 3.1.2020 in CMA No. 4755 of 2019, the Hon'ble High Court remanded the matter to consider the issue of limitation for filing refund. The operative portion of the said judgment is as under:-

> *"4. Prima facie the contention of the learned counsel for the Revenue appears to be correct and there seems to be no discussion on the issue of limitation by the learned CESTAT in the order impugned before us. Therefore, we dispose of the present appeal with liberty to the Revenue to raise the said issue again before the learned Tribunal and we expect the learned Tribunal to pronounce upon the said issue after giving opportunity of hearing to both the parties. With this observation, the present appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is also closed."*

2. The matter is taken up for hearing after hearing the ld. AR and after perusal of records.

3. The ld. AR has furnished written synopsis showing the period of refund claim, the amount involved and the date of filing of the claim. The respondent had filed two refund claims under Notification No. 5/2006-CE (NT) dated 14.3.2006 which are as under:-

S. No.	Period	Date of Filing	Amount in Rs.
1.	04/2008 to 03/2009	2.6.2009	Rs.81,27,129/-
2.	04/2009 t0 06/2009	13.10.2009	Rs.2,21,939/-

4. The original authority had rejected the refund claim on two grounds (a) the refund claim pertains to the period before taking registration and (b) the refund claims were hit by time bar under section 11B of the Central Excise Act, 1944. She submitted that the refund claim for the period pertaining to 1.4.2008 to 31.3.2009 has been filed on 2.6.2009 and therefore is beyond the period of one year as prescribed under section 11B of the Central Excise Act. Further

paragraph 6 of Notification No. 5/2006-CE(NT) dated 14.3.2006 reads as follows:-

> *"6. The application in Form A along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original, are filed with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in Section 11B of the Central Excise Act, 1944."*

5. The Commissioner (Appeals) while passing the impugned order relied upon the decision in the case of M/s. GTN Engineering (I) Ltd. Vs. CCE, Coimbatore – 2011-TIOL-149-CESTAT-MAD wherein it was held limitation under section 11B is not applicable for refund claims filed under Rule 5 of CENVAT Credit Rules, 2004. That the Hon'ble High Court of Madras had reversed this decision as reported in 2012 (281) ELT 185 (Mad.) holding that the assessee has to satisfy the limitation clause as provided under sec. 11B of the Act. For the refund claim covering 1.4.2008 to 31.3.2009, the period of 1.4.2008 to 30.6.2008 is beyond the period of one year and the assessee is not eligible for the refund for period upto 30.6.2008. She prayed that the impugned order of Commissioner (Appeals) may be modified in such manner.

6. We have perused the case records placed before us and also given careful consideration to the arguments put forward by the ld. AR on behalf of the department. As per section 11B, one year period is to be computed from the relevant date. In the present case, the refund claim is filed for refund of the credit availed on service tax paid on input services. Though the ld. AR has contended that one year has to be computed from the relevant date, it is not submitted as to which is the relevant date for computation of one year. Section 11B of the Central Excise Act defines relevant date in the context of payment of Central Excise duty and not in the context of service tax. In respect of export

of services, para 3(b) of the Appendix to Notification 5/2006-CE (NT) requires an application for refund of CENVAT credit must filed "along with a copy of the invoice and a certificate from the bank certifying realization of export proceeds." Therefore, it is impossible to file a refund claim before realization of export proceeds. Therefore, in the case of export of services, the relevant date would be the date of realization of consideration. Though the original authority has rendered a finding that the refund claim is hit by time-bar, such finding is not supported by any reasons and there is no discussion as to the computation made by him for arriving at the conclusion that the refund claim is hit by time-bar. As per notification itself, it can be seen that the refund claims are filed in each quarter. The contention of the learned AR that when computed from the first day of relevant quarter, the claim is beyond one year cannot be accepted since section 11B stipulates that the period of one year has to be computed from the relevant date and the relevant date is also explained in the said section. We find no reason for holding that the claim is barred by limitation. The Commissioner (Appeals) has rightly sanctioned the refund to the assessee. The impugned order calls for no interference and the appeal is dismissed.

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

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. VENKATA SUBBA RAO**)
Member (Technical)

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