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

ST/00318, 00319 & 00320/2011
and
ST/CO/00020, 00021 & 00022/2011

[arising out of Orders-in-Appeal No.50-52/2011, dated 14.02.2011 passed by the Commissioner of Central Excise (Appeals), Madurai]

COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI APPELLANT

Versus

M/s. LOYAL TEXTILES LTD. RESPONDENT

Appearance:

For the Appellant Shri K. Veeranhadra Reddy, JC (AR),
For the Respondent Shri S. Ramachandran, Cons.

CORAM:

Hon'be Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing/decision **19-12-2017**

FINAL ORDER NO. 43496 - 43498 / 2017

Per Archana Wadhwa:

All the three appeals filed by Revenue are being taken up for together for disposal as the issue involved is identical.

2. After hearing both sides and after going through the impugned order, we find that the disputed issue relates to refund of Cenvat credit of Service tax availed and utilised for export of the goods, in terms of Notification No.41/2007-ST, which prescribes a period of 60 days from the end of the quarter during which exports have taken place for filing refund claims.

3. Inasmuch as, the refund claims were filed by the respondent on the expiry of the said period of 60 days provided in the notification,

proceedings were initiated against them resulting in denial of refunds by the adjudicating authority. On appeal, Commissioner (Appeals) observed that the general period of one year of limitation as provided under section 11B would be applicable and by observing that the refund claims were within the period of one year, he allowed the same. The said order of Commissioner (Appeals) is impugned before Tribunal.

4. We find that the issue of limitation in terms of Notification No.41/2007-ST is no more *res integra*. In the decision of *M/s. Midex Global Pvt. Ltd. Vs Commissioner of Customs and Central Excise, Indore* reported in *2016 (41) S.T.R.125 (Tri.-Del.)*, Tribunal observed that the 60 days period provided in the notification have to be strictly adhered to. Similarly, in the case of *M/s. Spark Engineering P. Ltd. Vs Commissioner of Central Excise, Ghaziabad* reported in *2013 (31) S.T.R.71 (Tri.-Del.)*, it was observed that when the notification in question prescribes the limitation period, the same cannot be extended by referring to the other general provisions of limitation provided under the Act. Reference can also be made to other Tribunal decision in the case of M/s. Sakay Overseas Vs Commissioner of Central Excise, Ludhiana reported in 2014 (33) S.T.R.456 (Tri.-Del.) and *M/s. Kultar Exports Vs Commissioner of Central Excise, New Delhi* reported in *2017 (52) S.T.R.503 (Tri.-Del.)*. Inasmuch as, the issue is decided against the assessee, we find force in the Revenue's contention.

5. However, at this stage, learned Advocate for the respondent submits that the Tribunal in the case of *M/s. Knitex Textiles Pvt. Ltd. Vs Commissioner of Central Excise, Mumbai* reported in *2015 (40)*

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S.T.R.562 (Tri.-Mumbai) has taken into consideration a subsequent Notification No.17/2009-ST, dated 07.07.2009, which extended the period for filing refund claims to one year and has observed that the exports undertaken prior to 07.07.2009 and the refund claims being filed within one year would be covered by the notification. He submits that some of the claims would fall within the time-limit of one year as prescribed in the subsequent Notification No.17/2009-ST, dated 07.07.2009 and covered by the decision of the Tribunal in the case of *M/s. Knitex Textiles Pvt. Ltd.* (supra). At this stage, learned Authorised Representative submits that even if the claims fall within the one year period but the same would be hit on merits also.

6. In view of the above decisions of the Tribunal in the case of *M/s. Knitex Textiles Pvt. Ltd.* (supra), we would deem it ~~if~~ fit to set aside the impugned order and remand the matter to the original authority for deciding the refund claim afresh in the light of the observations made by us as above.

7. Cross objections filed by the respondents are also stand disposed of

(Dictated and pronounced in open court)

23.1.18

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
23-01-2018

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / CERTIFIED TRUE COPY
02/03/18
सहायक पंजीकार / Assistant Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण,
चेन्नई / CESTAT, CHENNAI - 600 006.