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

ST/41084/2017

[Arising out of Order-in-Appeal No.30/2017 -(STA-II), dated 21.02.2017 passed by the Commissioner of Service Tax (Appeals-II), Chennai]

M/s.OTV ENGINEERING CENTRE INDIA PVT. LTD. APPELLANT

Versus

COMMISSIONER OF SERVICE TAX, CHENNAI-II RESPONDENT

Appearance:

For the Appellant Shri Sundara Rajan, Adv.
For the Respondent Shri K.P. Muralidharan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing **27-07-2017**
Date of Pronouncement **01.08.2017**

FINAL ORDER NO. 41490/2017

Per Archana Wadhwa:

As per facts on record, the appellant is engaged in providing services under the category of "Consulting Engineering Service" and "Man-power Recruitment and Supplier Agency Services". Inasmuch as, the said services were being exported by them, they filed a refund claim of Rs.13,19,415/-on 22.12.2015 for the period Jan.'15 to Mar.'15 under Rule 5 of the Cenvat Credit Rules, 2004. After due process of law, the refund of around Rs.3,71,885/- was allowed and the balance claim was rejected on the ground of limitation. It was observed that the refund claim under Rule 5 is subject to the provisions of section 11B of Central Excise Act and inasmuch as, section 11B allows a time-limit of one year from the relevant date, to

Customs, Excise & Service Tax Appellate Tribunal claim refunds, the same are required to be filed within a period of one year. In support of the relevant date, it was observed that the date of export invoice is the relevant date for calculating the time-limit. On the other hand, it was the appellant's contention that the relevant date would start from the date when foreign exchange is received by the exporter. The said order of the original adjudicating authority was upheld by the Commissioner (Appeals). Hence the present appeal.

2. The short issue required to be decided is as to what is the relevant date to be adopted for the purpose of calculating the limitation period of one year. Before I go to the legal issue, I find that the same Commissioner (Appeals) vide his earlier Order-in-Appeal dated 18.11.2016 passed in the same assessee's case has held that the relevant date would be the date when the exporters receive the foreign exchange for the services so provided by him. For arriving at the above finding, he has also taken note of the subsequent amendment in Notification No.2012-CE(NT), dated 18.06.2012, vide Notification No.14/2016-CE(NT), dated 01.03.2016 vide which a clarification was issued that the date of receipt of payment in convertible foreign exchange, where provisions of services had been completed prior to receipt of such payment, would be the relevant date. By observing that the said notification is clarificatory and would apply for the period earlier, he held in favour of the assessee.

2.1 However, in a subsequent order, which is the present impugned order, dated 21.02.2017, the same Commissioner (Appeals) has taken an altogether different view laying down that the notification would apply only from the date of issuance and the relevant date is

Customs, Excise & Service Tax Appellate Tribunal date of export invoice. As such, two contra stands are taken by the same Commissioner (Appeals) without any justifiable explanation.

3. In any case, I find that the issue is no more *res integra* and stands settled by the Tribunal's decision in the case of *M/s. Bechtel India Pvt. Ltd. Vs Commissioner of Service tax* reported as *2013 (7) TMI 490 CESTAT NEW DELHI* as also in the case of *Commissioner of Service Tax, Goa Vs Ration Pharma India Pvt. Ltd.* reported as *2015 (39) S.T.R. (Tri.-LB)*. The said decision stands followed by this bench of the Tribunal vide Final Order No.40182/2016, dated 24.06.2016, wherein the relevant date for determining limitation was determined as the date of receipt of foreign exchange. Inasmuch as the issue stands covered by the above referred decisions, I set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Pronounced in open court on **01.08.2017**)

1/8/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
31-07-2017

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

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