CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No.41311 of 2019

(Arising out of Order-in-Appeal No.146/2019 (CTA-II) dated 29.05.2019 passed by Commissioner of Central Tax (Appeals-II), CGST & Central Excise, Chennai]

M/s.Sovereign Agrotech Refinery Private Ltd. **Appellant**
A42, SIPCOT Industrial Complex, Therevoy Kandigai,
Gummidipoondi - 601 202.

VERSUS

Commissioner of GST & Central Excise, **Respondent**
Chennai Outer Commissionerate
Plot No.2054, II Avenue, 12th Main Road,
Anna Nagar,
Chennai 600 040.

APPEARANCE :

Shri M. Manimaran, Advocate
For the Appellant

Shri Vikas Jhajharia, AC (AR)
For the Respondent

CORAM: HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

DATE OF HEARING : 24.02.2022
DATE OF PRONOUNCEMENT:28.02.2022

FINAL ORDER No. 40081 / 2022

Brief facts of the case are that appellant is engaged in manufacture of edible oil and are registered with the department. They filed refund claim on 29.12.2017 for an amount of Rs.15,29,682/- being the service tax on Development Charges wrongly collected by SIPCOT, which is a Government of Tamil Nadu Undertaking. As per Section 104 of the Finance Act, 1994, the levy and collection of service tax on the onetime payment of development charges is eligible for refund provided that refund claim is filed within a period of 6 months from the date on which the Finance Bill, 2017 receives the assent of the President of India. As per the above time limit prescribed, the Finance Bill, 2017 was passed on 01.04.2017 and the refund claim has to be filed on or before 30.09.2017. The appellant had filed the refund claim only on 29.12.2017 which is beyond 6 months as prescribed under Section 104 (3) of the Act. Show cause notice was issued proposing to reject the refund claim on the ground of limitation. After due process of law, the original authority rejected the refund claim against which the appellant filed appeal before the Commissioner (Appeals). The order passed by the adjudicating authority rejecting the refund claim was upheld by the Commissioner (Appeals). Hence this appeal.

2. On behalf of the appellant, Ld. Counsel Shri M. Manimaran appeared and argued the matter. He submitted that appellant had paid development charges along with service tax to SIPCOT. Pursuant to the introduction of Section 104, the appellant was eligible for refund of the service tax collected by SIPCOT. However, SIPCOT had issued letter dated 09.11.2017 which was received by the appellant only on 26.11.2017. The letter issued by SIPCOT itself was beyond 6 months period. The said Section 104 does not stipulate as to who has to file the refund. Since the service tax was collected by SIPCOT, the appellant was under bonafide belief that SIPCOT would get refund of the service tax and pay the same to the appellant. The delay in the present case has occurred only because there was delay on the part of SIPCOT to intimate the

appellant that the refund claim has to be filed by appellant. He relied upon the following decision of the Tribunal :

(a) *M/s. Suprajit Engineering Ltd. Vs. Commissioner of GST and Central Tax, Chennai Outer Commissionerate* – 2020 (5) TMI 290 CESTAT Chennai

(b) *M/s. Teknomec Vs. Commissioner of GST and Central Excise, Chennai* – 2019 (7) TMI 1416 – CESTAT Chennai

(c) *M/s. Dynamic Techno Medicals Pvt. Ltd. Vs. Commissioner of CGST and Central Excise* – 2021 (4) TMI 888 – CESTAT Chennai

3. Ld. A.R. Shri Vikas Jhajharia appeared for the respondent. He supported the findings in the impugned order. He relied upon the decision in the case of *JPG Construction Pvt. Ltd*. Vs CGST New Delhi vide Final Order No.51040/2021 dated 09.02.2021 and the decision in *Roop Automotives Ltd. Vs CGST & CE Chennai* - 2019 (37) ELT 1676 (Tri.-Chennai).

4. Heard both sides.

5. The appellant had claimed refund of service tax paid on development charges as under Section 104 of the Finance Act, 1994 as amended. The said section reads as under :-

> **"SECTION 104. Special provision for exemption in certain cases relating to long term lease of industrial plots.** — (1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, or in section 66B, no service tax, leviable on one time upfront amount (premium, salami, cost, price, development charge or by whatever name called) in respect of taxable service provided or agreed to be provided by a State Government industrial development corporation or undertaking to industrial units by way of grant of long term lease of thirty years or more of industrial plots, shall be levied or collected during the period commencing from the 1st day of June, 2007 and ending with the 21st day of September, 2016 (both days inclusive).
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> (2) Refund shall be made of all such service tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.
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> (3) Notwithstanding anything contained in this Chapter, an application for claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2017 receives the assent of the President."

The Finance Bill received the assent of the President of India on 31.03.2017. The refund ought to have been filed within a period of 6 months of which the Finance Act, 2017 receives the assent of the President of India i.e; on or before 30.09.2017. The claimant has filed application for refund of service tax on 29.12.2017 which is beyond 6 months from 31.03.2017. It is filed within one year from the date of assent of the Finance Bill, 2017. Further, in the present case, the appellant is not at all responsible for the delay. The Section 104 of the Finance Act, 1994 does not provide as to who has to file the refund claim. When SIPCOT has collected service tax from the appellant, the refund claim can be filed by SIPCOT or the appellant. However, when the appellant has to make an application for refund, they have to get the necessary documents from SIPCOT. The documents in the nature of proof of payment of service tax and also the letter of SIPCOT stating that SIPCOT has not applied for refund have to be submitted for claiming the refund. Only after obtaining necessary documents, the refund claim can be filed. SIPCOT has intimated the appellant vide letter dated 09.11.2017. This letter issued by SIPCOT dated 09.11.2017 has been received by the appellant only on 26.11.2017. The refund claim has been filed in the next month itself. Thus, it can be seen that there is no delay on the side of the appellant. In the decision cited by the Ld. Counsel for appellant, on the very same set of facts and circumstances, the Tribunal has held in favour of the claimant that the delay has not occurred on the part of the claimant.

6. Ld. A.R has relied upon the decision in the case of *JPG Construction Pvt. Ltd*. Vs CGST New Delhi (supra). The said decision deals with Section 102 and not of Section 104 of the Finance Act, 1994 and the same is not applicable to this case.

7. In the decision in the case of *Roop Automotives Ltd. Vs CGST & CE Chennai* (supra), the matter has been remanded to look into whether the refund has been made within a period of one year in terms of Section 11B of the Central Excise Act, 1994.

8. From the discussions made above and also relying upon the Tribunal decisions cited supra in favour of the claimant, I am of the view that the rejection of refund is not justified. Impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in court on 28.02.2022)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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