CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH - COURT No. III

Service Tax Appeal No. 41773 of 2014

(Arising out of Order-in-Appeal No.96/2014-ST dated 23.04.2014 passed by Commissioner of Customs & Central Excise (Appeals), No.1, Foulk's Compound, Anai Medu, Salem-636 001.)

M/s.Rasi Seeds Private Limited **.... Appellant**
No.273, Kamarajanar Road,
Attur - 636 102.

VERSUS

The Commissioner of GST &
Central Excise **... Respondent**
Salem Commissionerate,
No.1 Foulks Compound, Anai Road,
Salem 636 001.

<u>APPEARANCE :</u>

Ms. Radhika Chandrasekar, Advocate for the Appellant
Shri Harendra Singh Pal, Authorized Representative
for the Respondent

<u>CORAM</u> :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

<u>FINAL ORDER No.40001/2025</u>

DATE OF HEARING : 14.11.2024
DATE OF DECISION :<u>01.01.2025</u>

Per: Shri P. Dinesha

The issue in this case rests on a very narrow compass; facts in brief that are relevant, are as available in the Order in-Original, which are also not disputed by both the parties. The same is reproduced for ease and convenience:-

> "M/s.Rasi Seeds (P) Ltd., Attur (hereinafter referred to as the "claimant") are the holders of Service Tax Registration Certificate No.AABCR2871CST001 have filed a refund claim of Rs.25,44,841/- for the Service Tax paid from 01.07.2012 to 30.09.2012 in this office on 30-05-2013. On scrutinizing the refund claim, it was found they have not submitted copies of challans for payment of service tax and work sheet for payment of service tax. Hence a Query Memo has been issued to call for the same and the refund claim was returned on that day. The present refund claim was resubmitted by the appellant on 03-09-2013 for the same amount i.e. Rs.25,44,841/- but including all the branches all over India, claiming service tax paid for the following services namely ;
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> 1. Goods Transport Agency (GTA)
> 2. Man Power Supply Service
> 3. Import of Services

2. From the above, it is very much clear that the original application for refund dated 30.05.2013 was very much within the time limitation of 2-years prescribed under the provisions of Section 11B of the Central Excise Act, 1944. The subsequent filing of the application of refund is clearly at the instigation of the Revenue. Therefore, application dated

03.09.2013 re-submitted by the appellant cannot therefore be considered in isolation or independently; it has its roots in the original/1st application dated 30.05.2013. Thus, re-submitted refund application which has its roots in the original application, cannot be considered in isolation, to be rejected as time barred.

3. Secondly, the original authority has relied upon the change in the statute incorporated vide Sl. No. 21 of Notification No. 25/2012 – ST dated 20.06.2012, which came to be substituted with effect from 01.04.2013. The Adjudicating Authority has held that since the claimant was engaged in production of seeds for cultivation purposes, the commodity produced falls under the category of "Agricultural Produce". The period of claim in the case on hand was only up to 30.09.2012 and hence, the above exemption notification was not applicable in the present case. It is contended by the claimant that by the amendment brought in w.e.f. 01.04.2013 is only clarification in nature would be applicable from the date of very inception and hence, the denial is not in accordance with law. In any case, it was further submitted that it is not the case of the Revenue that the client has not satisfied with any other conditions or that there is any violation as regards any other condition of the statute, insofar as refund claim is concerned. Without prejudice to the above, ld. Advocate would seriously contend that when the application for refund was filed, the revenue ought to have issued SCN, which is the condition precedent, in conformity with the principles of natural justice. It is the right of every claimant to know the mind of the Revenue,

when an application for refund is filed, the intention of the department would be shown in the show cause notice if the revenue Authority does not accept the refund claim made in the application.

4. We find that the non-issuance of SCN is a serious issue; the same is required to be issued when the Revenue does not propose to entertain the refund claim of the claimant. It's a different matter altogether if the application for refund is accepted and refund is granted, in which event, no such SCN is required. This is more relevant as it assumes importance for a bona fide claimant to know the stand of the revenue as to the grounds for not entertaining its application. Hence, SCN is the foundation without which no proceedings shall commence. Calling for a personal hearing, as indicated by the Adjudicating Authority would not take the place of SCN nor would it cure the blunder of non-issuance of the same and nor would it undo the blunder since personal hearing which follows the SCN, is the second stage of meeting with the principles of natural justice. Hence, the Adjudicating Authority has been very casual in taking very lightly the request of the applicant for non-issuance of SCN and dismissing the same in a very casual manner, thereby seriously prejudicing the principles of Natural Justice. Hence, any order that follows such an incurable irregularity thereafter would only be a castle in the air, lacking seriously the very foundation and hence, the same is to be held as unsustainable, un-enforceable and contrary to the established principles of law and arbitrary. It is unfortunate that such an irregular order has been

sustained in the impugned OIA, thereby only perpetuating the irregularity, which also cannot sustain. We therefore set aside the order and allow the appeal with consequential benefits if any, as per law.

(Order pronounced in the open court on 01.01.2025)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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