CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 41410 of 2016

(Arising out of order in Appeal no. 209/2016 (STA-I), dated 23.03.2016 passed by Commissioner of Service Tax, (Appeals – I), Newry Towers, 2nd Floor, No.2054 – 1, II Avenue, Anna Nagar, Chennai 600 040).

M/s. Tata International Limited **.... Appellant**
Plot No.15, Mechano Industrial Estate
Velappanchavadi
Chennai 600 077

VERSUS

Commissioner of GST & Central Excise **...Respondent**
Ananda Office Centre, I Floor
459, Anna Salai, Teynampet, Chennai 600 018

APPEARANCE :

Ms. Mallows Priscilla P, Advocate for the Appellant
Ms. Rajini Menon, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER NO.40277/2026

DATE OF HEARING: 04.02.2026
DATE OF DECISION: 20.02.2026

Per Mr. Ajayan T.V.

Tata International Limited, the Appellant herein, is aggrieved by the Order in Appeal No.209/2016 (STA-I) dated 23.03.2016 (impugned order), whereby the Ld. Appellate Authority has upheld the Order in Original No.219/2011 dated 24.11.2011 of the Ld. Adjudicating Authority by which the Appellant's refund claim was rejected.

2. The brief facts are that the Appellant is stated to be engaged, inter-alia in the export of leather garments, footwear and leather articles and in the course of the said business has entered into agreements

with commission agents located outside India to procure export orders, in terms of which, commission was paid to such agents.

3. The Appellant has discharged service tax under the reverse charge mechanism on the said commission in terms of Section 66A of the Finance Act, 1994 (the Act). In terms of Notification No.41/2007-Cus dated 06.10.2007 as amended (refund notification) the appellant was entitled to claim refund of the service tax paid on input services, i.e. the commission agent services used for the export of goods. Accordingly, for the period from April 2008 to March 2009, the appellant filed three refund claims for refund of an amount of Rs.29,97,999/-, which is stated to have been revised to Rs.25,50,562/-.

4. Pursuant to the refund claims filed, the appellant was issued three separate show cause notices proposing to reject the refund claims on the ground that the Appellant had not fulfilled condition (ii) of Sl.No.15 of Schedule to the refund notification inasmuch as the appellant had not indicated the commission amount in all the shipping bills. In so far as the SCN No.03/2010 dated 16.02.2010 pertaining to the period April 2008 to November 2008 was concerned, in addition to the aforesaid contention, an additional ground for denial of refund was that the claim was filed beyond the six month from the end of the relevant quarter as stipulated in the refund notification and that therefore the claim for the period from April 2008 to September 2008 was hit by limitation. After due process of law, the Adjudicating Authority vide the Order in Original No.219/2011 dated 24.11.2011 confirmed the proposals in the SCNs and rejected the refund claim. Aggrieved, the appellant had preferred an appeal before the Appellate Authority which stood rejected vide the order impugned in this Appeal. Hence this Appeal.

5. Ms.Mallows Priscilla P., Ld. Advocate, appearing on behalf of the Appellant submitted that by virtue of Section 83 of the Finance Act, 1994 the provisions of Section 11B of the Central Excise Act, 1944

applies to claims for refund of service tax. Under section 11B of the Central Excise Act ibid, the prescribed time limit for filing a refund application is one year from the "relevant date" as defined in Explanation B to Section 11B of the CEA 1944. In the instant case the relevant date as per the said Explanation to Section 11B is the 'date of payment of duty', since refund of service tax paid to commission agents is not specifically covered under any of the other clauses, i.e. clauses (a) to (e) of the said explanation. She would contend that when the time limit of one year is calculated from the date of payment of service tax, which date remains undisputed in the impugned order as well as the OIO of the Ld. Adjudicating Authority, the date of refund claim is well within the period of limitation.

6. Ld. Counsel contends that it is a settled principle of law that the time limit prescribed for refund claim under Section 11B of CEA prevails over the time limit prescribed under any other subordinate legislation. Reliance is placed on the decision of this Tribunal in *Core Minerals v. CST, Chennai, 2023 (2) TMI 945 and JVS Export v Commissioner of GST & Central Excise, Madurai, 2023 (7) TMI 207* in this regard. It is therefore contended that the impugned order applying the six month time limit specified in the notification is contrary to the settled legal position.

7. It is further argued by the Ld. Counsel that the time limit to file refund application has to be calculated from the date of payment of tax under RCM and not the actual quarter of export. Reliance in this regard is placed on the decision in *CCE & ST, Kanpur v M/s. Pacific Leather Finishers, 2016 (2) TMI 727-Cestat Allahabad, Balakrishna Textiles Pvt Ltd v. CCE, Ahmedabad-I, 2022 (6) TMI 613 Cestat Ahmedabad* and *JVS Export v Commissioner of GST & Central Excise, Madurai, 2023 (7) TMI 207*. It is therefore urged that the 'relevant date' for claim of refund of service tax paid on actual commissions disbursed is the date of payment of service tax under RCM and not the end of the quarter of the relevant exports.

8. As regards the non-mentioning of the commission amount on the shipping bills, she would urge that the appellant had paid service tax on the services used in the export of goods and had not availed Cenvat Credit which in turn satisfies conditions (a) through (e) under para 1 of the refund notification. Hence the appellant had substantially complied with the conditions under the refund notification and the fact that the amount of service tax claimed as refund is paid by the appellant to the commission agent on the actual amounts of commission disbursed also remains undisputed. Hence, she would contend, that for mere non fulfilment of a procedural condition, the substantial benefit of refund ought not to be denied. Reliance is placed on the decisions in *Faizan Shoes Pvt Ltd v CST, Chennai, 2014 (34) STR 205 (Tri), CCE, Surat v. ABG Shipyard Ltd, 2013 (9) TMI 741, CCE, Surat v Essar Steel Ltd, 2010 (20) STR 769 and Mangalore Chemicals & Fertilizers Ltd v Deputy Commissioner, 1991 (55) ELT 437 (SC)* in this regard. Ld. Counsel submits that the appeal be allowed.

9. Ms. Rajini Menon, Ld. Authorised Representative appearing for the Respondent, reiterated the findings of the Ld. Appellate Authority.

10. Heard both sides, perused the appeal records and the case laws submitted.

11. The issue that arises for consideration is whether the rejection of the appellant's refund claims on grounds of the same having been filed beyond the period specified in the Notification No.41/2007-Cus dated 06.10.2007 as amended as well as on the ground of having not indicated the commission amount in the shipping bill, is tenable.

12. It is seen that the issue of whether the time limit specified in the Notification No.41/2007-Cus dated 06.10.2007 as amended is sacrosanct has already come up for consideration before this Tribunal in the decision in ***M/s. Core Minerals v. CST, Chennai,***

2023(2) TMI 945-Cestat Chennai, the relevant portions of which are as under:

> "8. Having heard the rival contentions, we are of the view that the issue to be decided is no more res integra. The Hon'ble Supreme Court in the case of *M/s. Sansera Engineering Ltd. v. Deputy Commissioner, Large Tax Payer Unit, Bengaluru [2022 (382) E.L.T. 721 (S.C.)]* has held, in very clear terms, as under:-
>
> > *"9. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, "refund" includes "rebate of duty" of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The "relevant date" is defined under Explanation (B) to Section 11B of the Act, which means in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of goods Thus, the "relevant date" is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the "relevant date" and in such form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004 issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.*
> >
> > *10. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002 Rules and notification dated 6.9.2004 can be said to be a subordinate legislation. The subordinate legislation cannot override the parent statute. Subordinate legislation can always be in aid of the parent statute. At the cost of repetition, it is observed that subordinate*

legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory…….

.

.

11. It is required to be noted that Rule 18 of the 2002 Rules has been enacted in exercise of rule making powers under Section 37(xvi) of the Act. Section 37(xxiii) of the Act also provides that the Central Government may make the rules specifying the form and manner in which application for refund shall be made under section 11B of the Act. In exercise of the aforesaid powers, Rule 18 has been made and notification dated 6.9.2004 has been issued. At this stage, it is required to be noted that as per Section 11B of the Act, an application has to be made in such form and manner as may be prescribed. Therefore, the application for rebate of duty has to be made in such form and manner as prescribed in notification dated 6-9- 2004. However, that does not mean that period of limitation prescribed under Section 11B of the Act shall not be applicable at all as contended on behalf of the appellant. Merely because there is no reference of Section 11B of the Act either in Rule 18 or in the notification dated 6-9-2004 on the applicability of Section 11B of the Act, it cannot be said that the parent statute - Section 11B of the Act shall not be applicable at all, which otherwise as observed hereinabove shall be applicable with respect to rebate of duty claim."

9. In view of the above guiding binding principle laid down by the Hon'ble Apex Court, it is clear that the period of limitation prescribed under Section 11B shall have to be applied since Section 11B ibid. is a substantive provision in the parent statute and the subordinate legislation in the form of Notification cannot override the parent statute."

13. It is also pertinent that the notification No.17/2009 dated 07.07.2009 which superseded the Notification No.41/2007-ST, has prescribed a time limit of one year. It appears therefore that the legislature has consciously taken steps to remedy the incongruity between the notification provisions and the statutory time limit prescribed under Section 11B.

14. The Ld. Counsel is also right in her contention that in the decision in in ***CCE & ST, Kanpur v M/s. Pacific Leather Finishers, 2016 (2) TMI 727-Cestat Allahabad***, the Tribunal has also gone on to hold that the relevant date for computing the time limit will start to run only when the right to claim refund has crystallised which would

be the date when the service tax was deposited. Relevant portion is reproduced below:

> "**6.** Having considered the rival contentions, we find that the issue of time bar in this appeal is no longer *res integra*, and is decided by the Hon'ble Delhi High Court in the case of *Sony India Ltd.* - 2014 (304) E.L.T. 660 (Del), wherein the Hon'ble High Court has held that the limitation cannot start to run unless right to receive a claim or refund crystallized. In the present case, the right to claim/refund under Notification No. 41/2007-S.T. crystallized only when the service tax was deposited in October, 2008. Thus, the refund claim was filed within six months on 30-3-2009. Accordingly, we hold that the refund claim is within time. In view of the above findings, we dismiss the appeal of the Revenue and confirm the order-in-appeal. The respondent assessee will be entitled to consequential benefit, if any, in accordance with law."

15. The Ld. Counsel has rightly placed reliance on the decisions in *JVS Export v Commissioner of GST & Central Excise, Madurai, 2023 (7) TMI 207,* and *Balakrishna Textiles Pvt Ltd v. CCE, Ahmedabad-I, 2022 (6) TMI 613 Cestat Ahmedabad* in this regard. Therefore, this Tribunal has no hesitation to hold that the relevant date for calculation of the time limit would be the date on which the service tax was deposited and the time limit from such date within which the claim has to be filed would be one year as has been prescribed under Section 11B as made applicable to the Finance Act 1994 by virtue of Section 83 of the Finance Act ibid.

16. As regards the issue of whether the non-declaration of the amount of commission in the shipping bills is only a procedural requirement, the same has been settled in the Appellant's favour as can be seen from the decision of a coordinate bench of this Tribunal in ***Faizan Shoes P Ltd v CST, Chennai, 2012 (9) TMI 702-CESTAT, Chennai,*** the relevant portions of which is reproduced below:

> "6. As regards the non-mention of the commission amounts in the shipping bill, this is a mere procedural condition and the refund claims can be considered if there is documentary evidence regarding

the amount of service tax paid on the actual amounts of commission disbursed."

Likewise, it is also noticed that the Gujarat High Court in ***CCE & Cus, Surat I v. ABG Shipyard Ltd, 2013 (31) STR 11 (Guj) : 2013 (9) TMI 741***, has accepted the contention of the appellant therein that non mentioning of the amount of commission paid or payable to the commission agent in the shipping bill is only a technical error which is condonable.

17. That apart, it is apposite to reproduce the oft cited observations of the Honourable Supreme Court in ***Mangalore Chemicals & Fertilizers Ltd v. Deputy Commissioner, 1991 (55) ELT 437 (SC),*** wherein it has been held as under:

"11……. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. ***<u>There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve</u>." (<u>emphasis supplied</u>)***

18. The Apex Court has gone on to emphasise in the said decision that a distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. It is also noticed that the Apex Court has yet again, in the decision in ***Govt. of Kerala v. Mother Superior Adoration Convent, 2021 (376) ELT 242 (SC),*** held as under:

23. It may be noticed that the 5-Judge Bench judgment did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub-silentio the line of judgments qua beneficial exemptions has been done away with by this 5-Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it [see Quinn v. Leathem - [1901] AC 495 as followed in State of Orissa v. Sudhansu Sekhar Misra - (1968) 2 SCR 154 at 162, 163].

24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, **<u>the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object.</u>** And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench. ***<u>(emphasis supplied)</u>***

19. Indisputably, there is no finding rendered by the Ld. Appellate Authority or the Ld. Adjudicating Authority that the date of payment of service tax is different from that as contended by the Appellant. That the appellant has received the specified services and used the same for export of the goods is undisputed. That the appellant has actually paid the service tax on the services used in the export of the goods and had also not availed cenvat credit, too remain undisputed facts. Thereby it is evident that the appellant has satisfied the substantial conditions of para 1 of the Notification 41/2007-ST ibid. Therefore, this Tribunal concurs with the view expressed in the judicial decisions cited above and hereby holds

that the non-mentioning of the commission amount in the shipping bills is only a venial technical breach that is condonable, when the other substantial conditions of the notification stood complied with.

20. In view of the discussions above, as well as in adherence to the ratio of the decisions of this Tribunal and Higher judicial forums cited above, this tribunal holds that the rejection of the refund claim preferred by the appellant is incorrect and resultantly the impugned order is untenable and liable to be set aside. Ordered accordingly.

The Appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in the open court on 20.02.2026)

(AJAYAN T.V.)
Member (Judicial)

ra