CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

SINGLE MEMBER

Service Tax Appeal No. 53505 of 2018

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-156-18-19 dated 11.05.2018 passed by Commissioner of Central Excise and Service Tax, Raipur]

M/s Aryas Grains Pvt Ltd. **Appellant**
601/4, Ph No. 11, VIII-Jaroda, Gram
Panchayat, Chatod, Raipur, Chattisgarh

Versus

Commissioner of Central Excise, **Respondent**
Service Tax, Raipur
Office of the Commissioner, Central Excise
And Service Tax, Tikrapara, Raipur, Chhatisgarh

Appearance
Shri Jitin Singhal, Advocate for the appellant

Ms. Tamana Alam, Authorized Representative for the respondent

CORAM: **HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)**

Date of Hearing/ Decision: 05.12.2019

FINAL ORDER NO. 51623/2019

BIJAY KUMAR:

1. The present appeal is filed against the Order-in-Original dated 11.05.2018 passed by the learned Commissioner (Appeal), Central Goods and Service Tax, Central Excise and Customs, Raipur by which he has allowed the appeal filed by the Department against the Order-in-Original dated 18.12.2017 passed by the Assistant Commissioner, Central Excise Division Raipur. In the said order the original Adjudicating Authority has allowed the refund to the appellant to the extent of Rs. 3,71,524/- holding that the duty has been paid under the mistake of law, and therefore, the provision of Section 11B of Central

Excise Act, 1944 as made applicable to service tax matter vide Section 83 of the Finance Act, 1944 will not be attracted. Being aggrieved, the Department preferred appeal before the learned Commissioner (Appeal), who has held that in the facts and circumstances of the case has held that the refund will be governed by the provisions of Section 11B of the Central Excise Act as made applicable to the service tax matters and allowed the appeal of Revenue. Being aggrieved the appellant is in appeal before this Tribunal.

2. The facts of the case are that the appellant, M/s is holder of service tax registration No. AAMCA7359MSB001 and rendering the service tax under the reversed charge mechanism for GTA services. The appellant has filed a refund claim for the amount of Rs. 3,71,524/- on 09.10.2017 with the Department on the ground that they have paid service tax on GTA under the reversed charged mechanism in respect of transportation of rice from their rice mill to the godown of Food Corporation of India from the period 2015-16 and 2016-17 The transportation of rice is exempted under the Notification No. 25/2012-ST dated 26.06.2012 as amended.

3. The Departmental issued show cause notice to the appellant asking as to why the refund of amount Rs. 1,61,976 should not be rejected on the ground of limitation and the entire refund claim should not be rejected on account of unjust enrichment. This case adjudicating upon by the learned Assistant Commissioner has allowed the refund to the appellant. Learned Commissioner (Appeal), however, reverses the order.

4. Learned Advocate also submits the issue is no more *res integra* in view of decision of Hon'ble Bombay High Court in case of **Parijat**

Construction vs. CCE, Nasik 2018 (359) ELT 113 (Bom), wherein it has been held that limitation prescribed under Section 11B of the Central Excise is not applicable in the case of refund of duty which has been paid under the mistake of law.

5. Learned Advocate draws my attention to the division Bench decision of this Tribunal in case of **Ambiance Hospitality Pvt Ltd. vs. CCE, Delhi-IV, 2019 (21) GSTL 400(Tri.-Del.),** which is also on the same issue, wherein it is held that time limit would not be applicable in case of payment of duty under mistake of law. The Tribunal placed reliance on the decision of Hon'ble Supreme Court of India in **Union of India vs. ITC limited [1993 (63) ELT 3 (SC)]** accordingly, he prays for setting aside the impugned order and allowing of appeal.
6. Learned Authorised Representative on behalf of the Revenue, however, supports the impugned order and submits that the Commissioner (Appeal) has committed no illegality in setting aside the order in view of decision of Hon'ble Supreme Court in case of **Collector of C.E. Chandigarh, vs. Doaba Co-operative Sugar Mills [1988 (37)ELT 478 (SC)]**
7. I have heard the submissions made by both the sides and also perused the appeal records.
8. The issue before me is to decide as to whether the time limit as prescribed under Section 11B read with provisions of Section 83 of the Finance Act is applicable in this case. Admittedly, the duty in this case has been paid under the mistake of law as the appellant is engaged in transportation of agriculture products, which is rice, that is exempted by the Notification No.25/2012 dated 26.6.2012. The appellant has

paid the service tax under the mistake of law, and therefore, it is the contention of the learned Advocate that same is not sustainable.

9. I find the issue is settled in favour of the appellant by the Hon'ble Supreme Court in case of **ITC (supra)** and also by the decision of this Tribunal in case of **Ambiance Hospitality (supra)**. This issue has also been decided in favour of the appellant in Hon'ble Bombay High Court in **Partijat Construction (supra).** Therefore, the finding of the Commissioner (Apppeal) is not sustainable and liable to be set aside. I have perused the decision of Hon'ble Supreme Court in case of **Doaba Cooperative Sugar Mills**, however, facts of this case is not identical to the case at hand. In this case it was the question of refund of duty and it is the provisions of Section 28 of the Customs Act prescribed have rightly been upheld by the Supreme Court. Therefore, this decision distinguish and not applicable in the facts and circumstances of the case. In view of above, we set aside the impugned order and allow the appeal.

(Dictated and pronounced in open court)

(BIJAY KUMAR)
MEMBER (TECHNICAL)