FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **10/02/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53949/2015-CU[DB]** dated **29/10/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

11/2/16

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/560/2009	**RITES LTD.** RITES BHAWAN, PLOT NO. 1, SECTOR-29, GURGAON- 122001.
		Name and Address of Respondent
2		-C.S.T. DELHI 17-B, I.P. Estate, IAEA House, New Delhi.

Copy To

3Advocate(s) / Consultant(s):

J. C. Seth & Co.
C-451, C.R. PARK,
NEW DELHI,
DELHI
110019

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. **16** Office Copy **17** Guard File

11/2/16

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI 110 066

APPEAL NO: ST/560/2009

[Arising out of Order-in-Appeal No: 19/App0l/STAX/Div-II/Delhi-I/07/976 dated 13/04/2009 passed by the Commissioner of Central Excise (Appeals), Delhi – I]

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

RITES Ltd ...*Appellant*

Vs

Commissioner of Service Tax
Delhi ...*Respondent*

Appearance:

Shri Anil Seth, Advocate for the appellant

Shri Amresh Jain, DR for the respondent

CORAM:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. C J Mathew, Member (Technical)

Date of hearing:	**29/10/2015**
Date of decision:	**29/10/2015**

Final **ORDER NO:** 53949\2015

Per: C J Mathew:

M/s RITES Limited, Gurgaon has filed this appeal against order-in- appeal no 19/App0l/STAX/Div-II/Delhi-I/07/976 dated 13th April 2009 of Commissioner of Central Excise (Appeals), Delhi-I concurring with the rejection of the refund claim by the Deputy Commissioner of Service Tax, Division-III, Delhi.

2. M/s RITES, *vide* their application dated 24th June 1998, had sought refund claim of ₹ 13,05,690/- being tax stated to have been paid in excess as providers of 'consulting engineers' service. They also sought clarification from the Directorate General of Service Tax, Central Board of Excise and Customs, on their entitlement for refund because operation and maintenance of railway tracks as well as maintenance of rolling stock did not fall within the ambit of that

taxable entry. Director General of Service Tax informed the appellant that the service rendered by them was taxable under that head as defined under section 45(48) of the Finance Act, 1994. During the pendency of this clarification, appellant deposited a further sum of ₹ 16,16,423/- for which refund was sought *vide* application dated 23rd February 2001. Both these refund claims were rejected by the Deputy Commissioner of Service Tax *vide* order dated 26th March 2001. The appellant thereafter filed two appeals before the Commissioner (Appeals) who, *vide* order-in-appeal dated 21st November 2001 allowed consequential relief after setting aside the rejections. These orders were not challenged by Revenue and thus acquired an undeniable finality.

3. Instead of complying with the order of Commissioner of Central Excise (Appeals), the original authority chose to issue show cause notice dated 28th September 2005 following which a refund of ₹ 2,45,172/- against the first refund claim was sanctioned while rejecting the remaining claims on the ground of being barred by limitation of time. The impugned order concurred with the findings of the lower authority and hence this appeal.

4. In the grounds of appeal it is contended that the earlier order of the Commissioner of Central Excise (Appeals) should have resulted in sanction of the refund claim without further delay. It is further contended that the refund sanctioning authority had failed to carry out

the clear-cut direction of the higher appellate authority which is a violation of basic norms of judicial discipline and that the action of the original authority is tainted by grave impropriety in re-examining an order that had been set aside. It is also contended that the impugned order has failed to appreciate the amendments made w.e.f. 12th May 2000 which extended the period of refund from six months to one year.

5. Learned Authorized Representative contends that the order which had been set aside had not adjudicated upon the issue of limitation and hence it was open to the proper officer to issue a show-cause notice and adjudicate thereon.

6. We have hard the rival contentions and cannot but fail to note that this is the second round of appeal. The orders of the first appellate authority in the first round are crystal clear in setting aside the rejection of the refund claim after detailed appreciation of facts and circumstances in which the tax had been paid by the appellant besides taking into account the eligibility of the appellant for the refund claim. The original authority was merely required to implement the direction relating to consequential relief.

7. Contrarily, it appears that the refund sanctioning authority took it on himself to sit in judgment on the higher appellate authority by issue of a fresh notice for rejection on the ground of limitation without

applying his mind to the scope of his authority, the extant legal provision and the importance of judicial discipline in taxation. The failure of the first appellate authority in not appreciating the claims of the appellant does not appear to do credit to his exalted level in the hierarchy, the breadth of administrative experience and the depth of understanding of tax law.

8. It is an accepted position in law, as well as in ethical practice, that all grounds to the detriment of an assessee are to be stated comprehensively and completely in the first instance without resort to piecemeal objections. It would appear that the original authority in its determination to deny refund sought to clutch at any straw to achieve that end. By resorting to such tactic, the original authority has, in effect, challenged the appellate as well as the executive authority – by refusal to comply with the order of the former and refusal to acquiesce in the acceptance of that order by the latter.

9. The first order of the Commissioner (Appeals) having attained a finality, the original authority had no option other than to release the refund sought. In any proceedings under the tax laws, jurisdiction and limitation of time are the twin legs of maintainability. These are not subject to discretion of flexibility by condonation and, thereby, a decision on merit – in favour of, or to the detriment of, the applicant – implicitly accepts the maintainability of the proceedings. To reverse the legal sequence subsequently by raising maintainability in a fresh

proceeding after having decided on merit is not only an act of impropriety but is also indicative of an obduracy that exceeds normal fidelity to the institution.

10. Tax is, fundamentally, an intrusion into individual liberty; it is tolerated and finds acceptance to the extent that the competent legislative authority has imposed it. That same tolerance and acceptance cannot be expected when the determination by the tax collector is seen to exceed legislative sanction. It is for that reason that autonomy is conferred on the tax collector by law but subordinated to a hierarchical appellate mechanism created by the competent legislative authority. In such a scheme for protection of the rights of the individual against arbitrariness of the tax executive, a lower authority is mandated to comply with the orders of the higher appellate authority or to act in accordance with the decision of the reviewing authority. Here the two have coalesced and, by its action of choosing a third option, the original authority has placed himself beyond the pale of acceptable behavior.

11. This egregious act of indiscipline and impropriety on the part of the refund sanctioning authority has compelled the appellant to traverse needlessly once more through the appellate process and has also added to the burden of an over-burdened appellate mechanism.

12. For the above reasons, we set aside the impugned order and

also impose a cost of ₹ 10,000/- on the Deputy Commissioner of Central Excise, Service Tax Division –III, Delhi.

(Pronounced in Court)

(Justice G. Raghuram)
President

(C J Mathew)
Member (Technical)

**/as*