

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50807 OF 2019

(Arising out of Order-in-Appeal No. 186/ST/DLH/2018 dated 18.01.2019 passed by Commissioner (Appeals-I) Central Tax & GST, New Delhi)

JPG Construction Pvt Ltd.

F-7, First Floor, 1521, Wazir Nagar
Kotla Mubarakpur, New Delhi-110014

.....Appellant

Versus

Commissioner of Goods & Service Tax

GST Delhi East Commissionerate,
Central Revenue Building,
New Delhi-110002

.....Respondent

APPEARANCE:

Shri Ved Prakash Batra, Consultant for the Appellant
Shri Arun Thaplial, Authorized Representative for the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: January 27, 2021
Date of Decision: February 09, 2021**

FINAL ORDER No. 51040/2021

JUSTICE DILIP GUPTA:

1. This appeal seeks the quashing of the order dated January 18, 2019 passed by the Commissioner (Appeals), Central Tax and GST Delhi¹, by which the appeal has been dismissed and the order dated August 31, 2018 passed by the Assistant Commissioner

1 the Commissioner (Appeals)

rejecting the refund claim of Rs. 64,68,025/- filed by the appellant under the provisions of section 102 of the Finance Act, 1994², has been upheld.

2. The services provided by the appellant to governmental authority or local authority for construction, erection, commissioning, installation etc. were exempted from the levy of service tax by Notification dated June 20, 2012. This exemption was however, withdrawn by Notification dated March 01, 2015 that was made effective from April 01, 2015. The appellant claims that upon withdrawal of this exemption, it paid service tax during the period commencing April 01, 2015 upto February 29, 2016 on the services provided by the appellant to government authorities or local authorities.

3. The Finance Act, 2016, which was presented in the Parliament on February 29, 2016, inserted sections 101, 102 and 103 to the Finance Act. Section 102 contains special provision for exemption in certain cases relating to construction of Government buildings. Sub-section (1) of section 102 provides that notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing April 01, 2015 and ending with February 29, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning etc., under a contract entered into before March 01, 2015. Sub-section (2) of section 102 provides that

2 the Finance Act

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. Sub-section (3) provides that notwithstanding anything contained in the Chapter (i.e. Chapter VA), an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill 2016 receives the assent of the President. Section 102 of the Finance Act is reproduced below:

"102. Special provision for exemption in certain cases relating to construction of Government buildings.

(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as—

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(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.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President."

4. The Finance Bill 2016 received the assent of the President on May 14, 2016.

5. The appellant claims that it submitted an application online through Automation of Central Excise and Service Tax³ portal on October 13, 2016 and also filed a hard copy of the refund claim on December 20, 2016 in the office of the Assistant Commissioner of Service Tax-Division-I ⁴.

6. The Assistant Commissioner wrote a letter dated January 17, 2017 to the appellant in connection with the refund claim filed by the appellant on December 20, 2016 mentioning therein that while processing the refund claim it was noticed that some documents were not filed by the appellant. The appellant was, therefore, asked to submit the documents. This letter of the Assistant Commissioner was followed by reminders dated April 28, 2017 and November 29, 2017.

7. Thereafter, the appellant sent a letter dated December 16, 2017 to the Superintendent (Refund) pointing out that the appellant had paid service tax as per the bills, but service tax components were not received from NBCC(India)Limited, which was the main contractor, as the project was exempted from service tax. The Superintendent (Refund), however, sent a letter dated January 31, 2018 to the appellant in connection with the aforesaid letter dated December 16, 2017 requiring the appellant to furnish information for processing the refund claim. The appellant claims that it submitted the documents on March 16, 2018 through a letter dated March 15, 2018.

3. ACES

4. the Assistant Commissioner

8. Thereafter, a show cause notice dated June 28, 2016 was served upon the appellant mentioning therein that the application filed by the appellant for refund of service tax on December 20, 2016 appeared to be time barred since the application for refund could have been filed upto November 30, 2016 in view of the provisions contained in sub-section (3) of section 102 of the Finance Act.

9. The appellant filed a reply to the show cause notice.

10. The Assistant Commissioner framed two issues for consideration, namely,:

(i) Whether the refund filed by the appellant was barred by time; and

(ii) Whether the copy of online refund request dated October 13, 2016 filed with the documents on December 20, 2016 can be considered to be within the prescribed time limit or barred by time.

11. After examining the provisions of the Finance Act, the Assistant Commissioner rejected the refund application. The observations are as follows:

"9.2 Further, to examine whether the online refund request filed on 13.10.2016 through ACES be considered for filing within time limit, it is submitted that although copy of online refund request filed on 13.10.2016 was submitted to this office but alongwith the documents filed on 20.12.2016, which is beyond the time limit as discussed above. **Further, to examine the authenticity of online refund request, the ACES portal was accessed and any such request was not found to be pending. It is also observed that the helpline facility of the ACES portal was also accessed through cbecmitra.helpdesk@icegate.gov.in but status of such request was not confirmed by the helpline. Hence, it**

appears that the online refund request filed on 13.10.2016 could not be validated.

10. I find that in view of the provisions of Section 102(3) of the Finance Act, 1994 governing the refund claim and the circumstances prevailing, there are no grounds left to consider the **refund request of the assessee that appears to be time barred in all respect.**

11. On the basis of foregoing discussions and in the light of provisions stated above, I am of the considered opinion that in the instant case, amount of service tax for Rs. 64,88,025/- is liable to be rejected."

(emphasis supplied)

12. This order dated October 31, 2018 passed by the Assistant Commissioner was assailed by the appellant before the Commissioner (Appeals). The contentions advanced on behalf of the appellant were, however, not accepted and the appeal was dismissed holding that application submitted by the appellant was beyond the time stipulated in sub-section (3) of section 102 of the Finance Act. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:

"8. I observe that the assent to the Finance Bill 2016 had been given by the Hon'ble President on 14.05.2016. The time limit prescribed for refund of service tax specified that the claim should be made within a period of six month from 14.05.2016. **Hence appellants were required to file the refund claim on or before 13.11.2016.** Further, it is only by way of Section 102(2) that the refund of tax paid during 01.04.2015 and 29.02.2016 was provided for. However, this is subject to time limit for filing claim prescribed in Section 102(3). Provisions of Section 102 being special dispensation, levy of service tax was normal and proper except for the stipulations under Section 102. The provisions of the Act being substantive, delay in filing claim cannot be treated as procedural infirmity.

9. **The appellants claimed to have filed the online refund claim on 13.10.2016, but, filed the hard copies along with necessary documents on 20.12.2016.** This means that the refund claim had been filed beyond the limit of six months, which was prescribed in the provisions of the Act. I note that the provisions of Section 102 are very specific and there is no scope for deviation from the same. Appellants have claimed refund under the provisions of Section 102 only and if the claim is filed as per Section 102(2), it is inevitable that Section 102(3) becomes applicable. Therefore, the provision for time limit under Section 102(3) cannot be ignored and there being no provision for condonation of delay, the same cannot be applied.

9. **Appellants contended that date of 'online application should be taken as date of refund application.** However, the Adjudicating Authority could not verify the authenticity of online refund request either through pendency list or through ACES helpline. **The enquiry could not validate the claim of appellants to have filed online request. From the copy of online claim printout submitted by the appellants, it is seen that appellants entered "offline" against the item "mode of submission of supporting documents."** That being the case, appellants have not explained more than two months delay in submitting documents i.e. if they themselves stated in an online application on 13.10.2016 that supporting documents would be submitted offline, why did they submitted such documents on 20.12.2016 only when they were aware that the last date for filing claim was 13.11.2016. Such behavior raises doubt over fact of filing online application which could not be ascertained by the AA. **To get the refund, one has to submit hard copies of such application along with the documents.** In absence of such copies processing of refund application, could not in any way have been done by the authorities. **It is clear that appellants had not filed the hard copy of application along with requisite documents on time.** They were actually submitted on 20.12.2016. However, no cogent reason has been provided by the appellants as to why such submission of hard copies was delayed. In terms of Apex Courts judgment in the case of N. Balakrishnan vs. M. Krishnamurthy reported in 2008 (228) E.L.T. 162 (S.C.), the length of delay in filing of appeal is not relevant and what is relevant is acceptability of the explanation of delay, that in this case there is no explanation of which justify the late submissions of such documents. Thus, there is no ground to interfere with the observations & findings of the adjudicating authority.

(emphasis supplied)

13. Shri Ved Prakash Batra, learned Consultant appearing on behalf of the appellant made the following submissions:

(i) The Commissioner (Appeals) erred in not accepting the e-filing date of the refund claim as the date of filing the refund claim, as the Department itself had allowed on-line filing of refund claims and had also prescribed the procedure to do so. In this connection reference has been made to the Trade Notice dated September 17, 2009 that prescribes the procedure to avail the facility of ACES as also the Circular dated March 23, 2010 that provides for the procedure for electronic filing of the returns;

(ii) The Commissioner (Appeals) erred in holding that the refund claim was "time barred" on the ground that the appellant had not provided cogent reasons for delayed filing of the hard copy of the refund application accompanied by the relevant documents; and

(iii) In any view of the matter, the claim for refund would be governed by the provisions of section 11B of the Central Excise Act 1944⁵, wherein the time period prescribed for filing an application for refund is within one year. Thus, the time period for filing refund claim cannot be restricted to six months from the date on which the Finance Bill, 2016 received the assent of the President under the provisions of sub-section (3) of section 102 of the Finance Act.

14. Shri Arun Thaplial, learned Authorized Representative of the Department, however, submitted that the order passed by the Commissioner (Appeals) does not suffer from any illegality. It is his submission that the appellant could not substantiate that the application for refund was actually submitted online on October 13, 2016 and, therefore, since the hard copy of the refund application was filed on December 20, 2016, it was clearly barred by time in view of the limitation of six months contemplated under sub-section (3) of section 102 of the Finance Act. It is also his submission that the provisions of section 11B of the Excise Act would not have any application to the present case.

15. The submissions advanced by the learned Consultant for the appellant and the learned Authorized Representative of the Department have been considered.

16. The issue that arises for consideration in this appeal is as to whether the appellant had submitted the application for refund of service tax within the stipulated time since the application filed for refund has been rejected for the sole reason that it was not submitted within the time prescribed.

17. As noticed above, section 102 of the Finance Act deals with special provision for exemption in certain cases relating to construction of Government buildings. Sub-section (1) provides that notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from April 01, 2015 and ending with February 29, 2016 in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration under a contract entered into before March 01, 2015. Sub-section (2) provides that 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. Sub-section (3), which is relevant for the purpose of determining the issue involved in this appeal, provides that notwithstanding anything contained in this Chapter (i.e. Chapter VA), **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, 2016 received the assent of the President. Parties do not dispute that the President gave the assent on May 14, 2016.

18. The appellant claims that it submitted the refund application online on October 13, 2016. It is, therefore, necessary to examine the procedure for filing an application online. According to appellant, the procedure is provided in the Trade Notice dated September 17, 2009 as also the Circular dated March 23, 2010 issued by the Central Board of Excise and Customs.

19. The Trade Notice provides that to transact business on ACES, a user has to first register with the ACES through a process called "Registration with ACES". A detailed procedure for taking registration has also been provided for new assessee, existing assessee, non-assessee and large taxpayer unit. The Trade Notice further provides that an assessee can electronically file a statutory refund by either filing it online or by downloading the offline return utilities which can be filled in offline and uploaded to the system through internet. Steps for preparing and filing returns have also been provided. The relevant portion is reproduced below:

Returns

The assesses can electronically file statutory returns of Service Tax by choosing one of the two facilities being offered by the department at present: (a) they can file it online, or (b) download the off-line return utilities which can be filled-in off-line and uploaded to the system through the internet.

Steps for preparing and filing returns

- (i) Assessee downloads the Offline return preparation utility available at <http://www.aces.gov.in> (under Download)
- (ii) Prepares the return offline using this utility. The return preparation utility contains preliminary validations which are thrown up by the utility from time to time.

- (iii) Assessee logs in using the User ID and password.
- (iv) Selects RET from the main menu and further chooses required activity such as e-filing/amending/Revise return as the case may be and uploads the return.
- (v) Returns uploaded through this procedure are validated by the ACES before acceptance into the system which may take up to one business day. Assessee can track the status of the return by selecting the appropriate option in the RET sub menu. The status will appear as "uploaded" meaning under process by ACES, "Filed" meaning successfully returns can be resubmitted after corrections.
- (vi) Returns can also be prepared and filed on line by selecting the 'File Return' option under RET module after logging into the ACES.
- (vii) All validations are thrown up during the preparation of the return in this mode and the status of the return filed using the online mode is instantaneously shown by ACES.
- (viii) The Service Tax returns can be modified once as per rules up to 90 days from the dated of filling the initial return.

Service Desk

In case of any difficulty in accessing or using the ACES Application, assesses can seek help of the ACES Service Desk by sending e-mail to aces.servicedesk@icegate.gov.in or calling up national toll free number 1800 425 4251 on any working day from Monday to Friday between 9 AM to 7PM.

20. The Circular dated March 23, 2010 issued by the Central Board of Excise and Customs also deals with procedure of electronic filing of Central Excise and Service Tax returns and for electronic payment of excise duty and service tax. This has been divided into 10 modules, including electronic filing of refund claims and their processing. It also provides for registration by a new assessee, existing assessee or non assessee and a Large Tap Payer. It also provides that an assessee can electronically file statutory returns by either filing it online or downloading the off-line return utilities which can be filled in off-line and uploaded to the system through

the internet. Steps for preparing and filing returns have also been also provided. They are reproduced below:

a. Steps for preparing and filling returns

- (i) Returns can be prepared and filed on line by selecting the 'File Return' option under RET module after logging into the ACES.
- (ii) All validations are thrown up during the preparation of the return in this mode and the status of the return filed using the online mode is instantaneously shown by ACES.
- (iii) Returns can also be prepared and filed off-line. Assessee downloads the offline return preparation utility available at <http://www.aces.gov.in> (Under Download)
- (iv) Prepares the return offline using this utility. The return preparation utility contains preliminary validations which are thrown up by the utility from time to time.
- (v) Assessee logs in using the User ID and password.
- (vi) Selects RET from the main menu and uploads the return. Instructions for using the offline utilities are given in detail in the Help section, under 'Download' link and assessee are advised to follow them.
- (vii) Returns uploaded through this procedure are validated by the ACES before acceptance into the system which may take up to one business day. Assessee can track the status of the return by selecting the appropriate option in the RET sub menu. The status will appear as "uploaded" meaning under process by ACES, "Filed" meaning successfully accepted by the system or "Rejected" meaning the ACES has rejected the return due to validation error. The rejected returns can be resubmitted after corrections.
- (viii) Once the Central Excise returns are filed online in ACES or uploaded to the system using the off-line utility, the same can not be modified or cancelled by the assessee. The Service Tax returns, however, can be modified once as per rules up to 90 days from the date of filing the initial return.
- (ix) Self-assessed CE returns, after scrutiny by the competent officer, may result into modification. Both the 'Original' and the 'Reviewed' return can be viewed by the assessee online.

21. The Circular also deals with validation of the entries made while filling return and they are as follows:

d. Validation of the entries made while filling return

- 1. At the time of making entry in the electronic format of the relevant return, the software does some preliminary validation for ensuring correctness of data, either concurrently or at the time of saving/ submitting the return. This validation process is automated. The user is prompted by the application software to correct the particulars entered wherever required. In respect of

certain entries, although the application alerts the assessee about any entry found erroneous or inconsistent, as per the automated validation process, the assessee is still allowed to proceed further to complete data entry of the return and finally submit it electronically. But in some cases the assesseees are not allowed to proceed further unless the error indicated is corrected.

2. A return filed electronically is subject to automatic verification process by the application and defective returns are marked to the departmental officer for review and correction. While reviewing the return the officer may seek some clarification from the assessee, call for some information, records or documents which should be furnished by the assesseees. In case of review and correction of returns by the departmental officers, assesseees will receive a message from the application and they can log in to the application to view the reviewed returns online.
3. Returns, captured off-line using the Downloadable utility and uploaded later on, are further subjected to certain validation checks. Processing of uploaded returns, using the off-line versions, is done at the end of one business day and the status can be viewed by the assesseees under the 'VIEW STATUS' link under 'RET' module. Status is described as 'UPLOADED', 'FILED' or 'REJECTED' and they denote as follows:
 - UPLOADED denotes that return is uploaded and under processing (assesseees are advised to view the status after the end of a business day).
 - FILED denotes that uploaded return is accepted by system.
 - REJECTED denotes that return is rejected due to errors. (The assesseees are required to correct the return and upload it again.)
4. There is no provision in ACES application to allow assesseees to make corrections to the returns filed by them. Once the return is accepted by the system as successfully 'filed', no modification can be made by the assessee. However, if the return is rejected, the assessee can correct the errors and upload it again. The assesseees are, therefore, advised to take utmost care while fill-in in the returns. They may, however, bring it to the notice of the departmental officers.

22. The contentions advanced on behalf of the parties can now be examined.

23. According to the Department, the refund application should have been filed on or before November 13, 2006 but since it was actually filed on December 20, 2016, it was barred by time.

24. The submission of the learned Consultant for the appellant is that the application was first filed online on October 13, 2016 and so it was within time and in any view of matter, in view of the provisions of section 83 of the Finance Act, section 11B of the Excise Act would be applicable and the application for refund could be filed within one year from the relevant date. In support of this contention reliance has been placed upon a decision of a learned Member of the Tribunal in **M/s Roop Automotives Ltd. vs. The Commissioner of G.S.T. & Central Excise, Chennai Outer Commissionerate⁶**.

25. The submission advanced by the learned Consultant for the appellant regarding the applicability of section 11B of the Excise Act needs to be first addressed because if it is accepted it may not be necessary to examine whether the appellant had actually submitted the application on-line on October 13, 2016 since the hard copy of the refund application, in that case, was filed within one year.

26. As noticed above, initially by Notification dated June 20, 2012 the services provided by the appellant to Governmental authority or local authority for construction, erection, commissioning etc., were declared as exempted service. This exemption was subsequently withdrawn by Notification dated March 01, 2015 that was made effective from April 01, 2015. The appellant claims that after the withdrawal of the exemption, the appellant started paying service tax. However, in view of the

6. 2019 (7) TMI 907- CESTAT CHENNAI

provisions of section 102 of the Finance Act that was inserted by Finance Act 2016, no service tax was to be levied or collected during the period April 01, 2015 to February 29, 2016 on the aforesaid services and under sub-section (2) refund was to be made of all such service tax which was collected but which would not have been so collected had sub-section (1) been in force at all relevant times. Sub-section (3) provides that an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill receives the assent of the President. This is a special provision for exemption from service tax in certain cases and, it provides that the refund claim for service tax has to be filed within a specified time. When a specific provision has been made in section 102 of the Finance Act for claiming refund of service tax paid during the period commencing April 1, 2015 upto February 29, 2016 in respect of the specified services and it also prescribes that the application for the claim of refund of service tax shall be made within six months from the date the Finance Bill 2016 receives the assent of the President, the said time period prescribed for making the refund application has to be strictly adhered to and resort cannot be taken to the other provisions, including section 11B of the Excise Act.

27. The contention of the learned Consultant for the appellant, however, is that in view of the provisions of section 83 of the Finance Act that makes applicable section 11B of the Excise Act to service tax, the limitation for filing the application for refund of service tax would be as provided in section 11B of the Excise Act

and not that provided under sub-section (3) of section 102 of the Finance Act.

28. Section 83 of the Finance Act, on which reliance has been placed by learned Consultant for the appellant, deals with application of certain provisions of the Excise Act to service tax. It is reproduced below:

"83. Application of certain provisions of Act 1 of 1944

The provisions of the following sections of the Central Excise Act, 1994, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:-

**** 11B **** "

29. Though section 11B of the Excise Act has been mentioned in section 83 of the Finance Act, but what needs to be noticed is that the provisions of the Excise Act would apply, **so far as may be**, in relation to service tax as they would apply in relation to a duty of excise. Thus, if there is a specific provision in the Finance Act itself for claiming refund of service tax, the provisions of section 11B of the Excise Act dealing with refund would not apply. There cannot possibly be two time limits prescribed for making an application for refund of service tax. When the time limit prescribed in sub-section (3) of section 102 of the Finance Act or sub-section (3) of section 104 of the Finance Act is applicable, the time limit prescribed in section 11B of the Excise Act would not be applicable.

30. Learned Consultant for the appellant has, however, placed reliance on the decision of a learned Member of the Tribunal in **Roop Automotive**. After referring to the provisions of section 104 of the Finance Act, the learned Member held that the time

prescribed in section 11B of the Excise Act, which is one year, would be applicable to even applications made for refund of service tax under section 104 of the Finance Act. The observations are as follows.

5.1 The main crux of the arguments of the assessee through its Ld. Advocate is that Section 104 is under Chapter VA of the Finance Act, 1994, whereas Section 83 falls under Chapter V of the Finance Act, 1994, and therefore, the right of the service recipient to claim refund is governed by Section 83 read with Section 11B of the Central Excise Act, 1994 and not by Section 104(3) *ibid*. Further, it is his case that Section 104(3) does not override Section 11B since both Section 83 and Section 104(3) fall under different Chapters and it is Section 83 that makes provisions of Section 11B applicable to Service Tax matters as well.

5.2 In view of the above, **it is the case of the assessee that the refund application is required to be filed under Section 11B read with Section 83 *ibid*. and consequently, the time-limit available is one year and not six months as held by the lower authorities.**

8.2 The above Section starts with a non obstante clause operating as an exclusion clause to exclude the charging Section 66 or Section 66B. Further, Sub-Section (3) of Section 104 also starts with a non obstante clause, to exclude anything contained 'in this Chapter' i.e. Chapter VA *per se*. A possible takeaway from section 104, read as a whole, is *vide* sub-Section (1) the applicability of charging Section is excluded and that refund of service Tax paid, if any, has to be claimed per application within a period of six months from the date on which the Finance Bill, 2017 received the assent of the President. **Clearly, Section 104 does not prescribe any format for refund claim and perhaps the only recourse therefore is to file such an application under Section 11B via Section 83 of the Finance Act.** It is important to note here that the exclusion is limited to chapter VA and not chapter V and hence, the operation of section 104 (3) starting with a non obstante clause does not exclude the operation of any other provisions other than the ones coming under the same Chapter (VA).

8.3 At the cost of repetition, the Section reads that "Notwithstanding anything contained in this Chapter, an application.... shall be made within a period of six months...." and Section 104 does not prescribe the Form of application for refund and for this, the only recourse is to Section 11B *qua* Section 83. The Revenue may take a stand that Section 104 (3) does not mention about the filing of any annexures, documentary evidences, etc., along with an application for refund, but no statute contemplates filing of an empty application seeking refund, without any documents/evidences, at least to the effect that the amount claimed as refund was in fact remitted to the Government account. A cursory look at the CBIC website (<http://www.cbic.gov.in/resources//htdocs-cbec/refund-rebate/refundrebate-docs.pdf;jsessionid=E715A9021149926E0FC4240BB1DC5D13>) contains *inter alia* types of refund/rebate applications and the

list of documents to be filed along with the applications. **For an application for refund is contemplated only under Section 11B and a number of documents are mentioned to be filed along with the prescribed format.** Hence, there may not be any difficulty in mentioning that an application referred to is a complete application since filing of an 'empty' application is not an empty formality; it has to go with all enclosures and documentary evidences in support for enabling the appropriate officer to understand the issue from such a complete application and thereafter, it is for that officer to call for additional documents/evidences, if need be.

9.1 **Therefore, a harmonious reading of the provisions points to one and only conclusion that though section 104 is a special provision, it is practically dependent on section 11B and Section 83 connects both the above provisions and thus, all procedures as in Section 11B would apply.** There may be applications within six months, as contemplated in Section 104 (3), but that cannot take away the applicability of section 11B.

10. **In view of the above discussions and on the peculiar nature of facts involved, the time-limit prescribed under Section 104(3) is only directory, but however, the time as well as the procedure prescribed under section 11B applies in full.** The Adjudicating Authority is therefore required to grant refund if the refund application is within the time-limit prescribed under Section 11B and not otherwise.

(emphasis supplied)

31. Though the learned Consultant for the appellant is correct in his submission that what was stated by the learned Member in connection with section 104 of the Finance Act would also apply to section 102 of the Finance Act, but it is not possible to accept the views expressed by the learned Member in the aforesaid decision that the time limit prescribed for making the refund application under sub-section (2) of section 102 of the Finance Act would be that as prescribed under section 11B of the Excise Act and not that as provided in sub-section (3) of section 102 of the Finance Act.

32. It would be seen from the aforesaid decision in **Roop Automotive** that much emphasis has been placed on the fact that since section 83 of the Finance Act is contained in Chapter V,

whereas section 104 is contained in Chapter VA of the Finance Act, section 11B of the Excise Act would be applicable since sub-section (3) of section 104 begins with "notwithstanding anything contained in Chapter VA." Emphasis has also been placed on the fact that section 104 does not prescribe any format for refund of claim and, therefore, the only course open is to file an application under section 11B of the Excise Act.

33. It is not possible to accept the views expressed by the learned Member in the aforesaid decision. Stipulation in section 83 of the Finance Act that the certain sections of the Excise Act shall apply **so far as may be** , in relation to service tax as they apply in relation to duties of excise have not been examined. Though section 102 or section 104 of the Finance Act do not prescribe any format but a procedure for filing an application for refund of service tax has been prescribed in the Trade Notice and the Circular. It is also not the case of the appellant that the appellant was not aware of the procedure since it is the appellant that had placed the Trade Notice and the Circular.

34. Such being the position, it is not possible to hold that the limitation for making an application for refund of service tax would be that as provided in section 11B of the Excise Act. The Application for refund of service tax has to be made within the period stipulated in sub-section (3) of section 102 of the Finance Act.

35. It now needs to be examined as to whether the appellant had submitted the application for refund of service tax online on October 13, 2016. The appellant has placed reliance upon the Trade Notice dated September 17, 2009 regarding automating

all major processes in Central Excise and Service Tax through ACES. In order to transact the business of ACES, a user has to first register through a process called "Registration with ACES". Detailed steps for taking registration have also been provided. The system generates a registration number and it is only thereafter that an assessee can transact business through ACES. The appellant has enclosed a copy of the application, which the appellant contends was submitted online. Registration Number has, however, not been indicated by the appellant. The appellant, therefore, could not have transacted any business through ACES. This procedure for registration has also been prescribed in the Circular dated March 23, 2010, which has also been relied upon by the appellant.

36. It also transpires that from a perusal of the Trade Notice that an assessee can electronically file a statutory return by either filing it online or downloading off-line return utilities which can be filled-in off-line and uploaded to the system through internet. The returns uploaded through this procedure are validated by the ACES before acceptance into the system and an assessee can track the status of the return by selecting the appropriate option in the sub-menu which would show the status as "uploaded" which means under process by ACES, or "filed" which means successfully uploaded. The appellant has not stated that the online application was successfully uploaded. It also provides that in case of any difficulty in accessing ACES application, an assessee can seek the help of the Service Desk.

37. The Circular also provides that an assessee can electronically file statutory returns of Central Excise and Service

Tax by either filing it online or downloading the online return utilities which can be filed off-line and uploaded to the system through the internet. The Circular provides that the returns uploaded are validated by ACES before acceptance into the system.

38. The Assistant Commissioner and the Commissioner (Appeals) have considered whether the online refund request said to have been filed by the appellant through ACES could be considered for determining whether the application was filed within time. A finding has been recorded that the ACES portal was accessed but the request was not found to be pending and even the helpline facility of ACES portal that was accessed did not confirm the status of such a request. The Commissioner (Appeals) has also noticed that the online print out that was submitted by the appellant also showed "off-line" against the item "off-line".

39. It is, therefore, clear that though an attempt was made by the appellant to submit the application online but the process that was required to be undertaken for making an application online was not complied to with as even the regulation was not done. The application cannot be treated to have been filed on time. If there was any difficulty in submission the application, the appellant could have sought the help of the help desk but the appellant has not stated that he made an attempt to seek help.

40. The appellant, therefore, cannot contend that the online application was actually made on October 13, 2016 as there is nothing on the record to substantiate that such an application was actually filed.

41. The appellant filed a hard copy of the application only on December 20, 2016 in the office of the Assistant Commissioner and the records do indicate that correspondence did take place between the Department and the appellant in connection with this application. This Application was filed beyond the period prescribed in sub-section (3) of section 102 of the Finance Act. In the absence of any provision for condoning the delay in filing the application, the Commissioner (Appeals), committed no illegality in upholding the order passed by the Assistant Commissioner rejecting the application filed by the appellant for refund of service tax on the ground that it was not filed within the time stipulated.

42. Thus, for all the reasons stated above, there is no merit in this Appeal. It is, accordingly, dismissed.

(Pronounced in open court on February 9, 2021)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)