

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

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50406 of 2021-SM

(Arising out of order-in-appeal No. BHO-EXCUS-001-APP-065-20-21 dated 13.10.2020 passed by the Commissioner (Appeals), Central Goods and Service Tax, Central Excise, Bhopal (M.P.).

M/s M. B. Construction

Sunny Guest House, SBI Road,
Sarni, Distt – Betul (M.P.)-460449.

Appellant

VERSUS

**Commissioner, Central Goods and
Service Tax, Central Excise**

GST Bhawan, Jail Road, Bhopal (M.P.).

Respondent

APPEARANCE:

Sh. Abhilash Kumar, Consultant for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 52109/2021

DATE OF HEARING/DECISION: 17.12.2021

ANIL CHOUDHARY:

This is the second round of litigation. The appellant is claiming refund for the amount, the credit on which was not allowed by the Department at the stage of processing of their application for one time settlement under SVLDR scheme.

2. In the earlier round, the appellant as per the order of the Commissioner (Appeals) made a pre-deposit of Rs.5,00,530/- vide e-payment being challan No. 20007 dated 09.02.2018. However, in the

body of the challan, the appellant has shown Rs. 2,50,265/- under the accounting code 00440290 and also matching amount under accounting code 00441399. The said payment was duly accepted by the Commissioner (Appeals) towards pre-deposit. Being unsuccessful before the Commissioner (Appeals) the appellant had preferred the appeal before this Tribunal, which was registered as Appeal No. ST/52009/2018. During the pendency of the appeal before this Tribunal, the appellant applied for 'one time settlement' under the SVLDR Scheme, 2019 on 13.11.2019. In form SVLDRS-I the appellant reflected that the tax payable under the scheme the appellant was required to pay Rs. 5,19,441/-. Against which they have already paid by way of pre-deposit of Rs. 5,00,530/-.

3. Thereafter, the revenue issued form SVLDRS-2, reflecting the amount of pre-deposit at the truncated amount of Rs. 2,50,265/- and showing the balance amount payable as Rs.2,69,176/-. The appellant again requested the Department – the Adjudicating Authority pointing that they have already paid Rs.5,00,530/- and they need to pay the only balance amount of Rs.18,911/- and such request was made in form SVLDRS-2A. The appellant had also prayed for oral hearing. Pursuant to hearing the appellant, the designated Committee issued form SVLDRS-3 dated 26.12.2019, refusing to give credit for the full amount of pre-deposit of Rs. 5,00,530/- and again insisted that the pre-deposit amount will be Rs.2,50,265/- and further directed the appellant to pay balance amount of Rs.2,69,176/-. Thus, Revenue refused to the consideration the other amount of Rs. 2,50,265/- paid under accounting code 0441399.

4. The appellant as advised, in order to avail the scheme, deposited the balance amount by challan of Rs.2,69,176/- as directed and thereafter they were issued SVLDRS-4 dated 04.03.2020, in full and final settlement of dues relating to the tax dues for the period 01.04.2013 to 01.03.2016.

5. The appellant applied for refund of the amount of Rs.2,50,265/-, which was paid under account code 00441399 vide refund application dated 17.03.2020. The said refund was rejected by the Court below on the ground of time bar – observing that the appellant have deposited Rs.2,50,265/- inadvertently under wrong accounting code. Further, observing that any pre-deposit amount that has existed in excess, than the amount payable under SVLDRS, as indicated in the statement issued by the designated Committee, will not be refunded under the scheme. It was further observed that the refund application is subject to provisions of Section 11B (limitation) as prescribed, being one year from the relevant date. In the instant case, the tax was deposited on 09.02.2018 and accordingly the limitation expired on 08.02.2019.

6. Assailing the impugned order-in-appeal the learned Counsel states that under the facts and circumstances as the Department has refused to recognise the said deposit as tax, the said amount partakes the character of revenue deposit. Admittedly, the amount was deposited as pre-deposit during pendency of appeal before the Commissioner (Appeals). Under such circumstances, learned Counsel refers to Board Circular No. 984/08/2014-CX dated

16.09.2014, wherein para 5.2 the Board has clarified that – ‘the pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Act or Section 27 of the Customs Act’.

7. Learned Counsel states that under such facts and circumstances the Revenue cannot take advantage of its own wrong doing, first by refusing the credit and or recognise the tax deposited, and then refused the refund of the same treating it tax by way of change of opinion. Accordingly, he prays for allowing the appeal with consequential benefits.

8. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

9. Having considered the rival contentions, I am surprised and amazed at the attitude of the Revenue. This is nothing but a callous attitude of the Department in giving the rightful refund to the assessee, which is highly undesirable. Accordingly, I hold that the amount of Rs. 2,50,265/-, which was deposited under wrong head by a common challan, should have been credited to the appellant at the time of processing of SVLDRS application. In such facts and circumstances, I hold that the said amount remains with the Department by way of Revenue deposit. Accordingly, I allow the appeal and direct the Department to refund the said amount of Rs.2,50,265/- with interest @ 12% p.a. as prescribed under Section 35FF of the Act, read with the ruling of Division Bench order of this Tribunal in **Parle Agro (P) Ltd.**, from the date of deposit till the date

of refund of the said amount. Such refund alongwith interest shall be granted to the appellant within 45 days from the date of receipt or service of the copy of this order. Accordingly, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant