CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51513 of 2022 [SM]

[Arising out of Order-in-Appeal No. 346(SM)/ST/JPR/2020 dated 02.07.2020 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Consulting Engineers Group Ltd. **...Appellant**
CEG Tower, B-11,
Malviya Industrial Area,
Jaipur, Rajasthan

VERSUS

Commissioner of Central Excise
& CGST, Jaipur-I **...Respondent**
NCR Building, Statue Circle,
C-Sheme,
Jaipur-302005

APPEARANCE:

Mr. Anurag Basu, Advocate for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION: 28.11.2022

FINAL ORDER No. 51180/2022

DR. RACHNA GUPTA

The appellant herein is engaged in providing services as that of "Consulting Engineer Services". The appellant filed a refund claim on 22.11.2018 praying for the refund of service tax of an amount of Rs.4,99,800/-. Vide Show Cause Notice No. 10795 of 19.12.2018, the claim was proposed to be rejected on the ground that the same has not been filed within the prescribed time period i.e. before the expiry of one year from the relevant date in terms of Section 11B(1) of the Central Excise Act, 1944. The said proposal was initially confirmed vide Order-in-Original No. 51/2019 dated 26.06.2019. The appeal there against has been dismissed vide Order-in-Appeal No. 346/2020 dated 02.07.2020. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Anurag Basu, learned Advocate for the appellant and Ms. Tamanna Alam, learned Authorized Representative for the department.

3. Learned Counsel has submitted that the invoice for providing the service to their client was issued on 09.01.2017, however, the payment was to be received from the recipient only after the approval of the said invoice. It is further mentioned that the invoice could not be approved during the reasonable period to avoid any liabilities. The appellant deposited the service tax for an amount of Rs.4,99,800/- (Rs.4,66,480/- + 16,660/-). Rs.4,66,480/- was adjusted from the Cenvat credit for the month of January, 2017 and Rs.16,660/- was paid in cash on 06.02.2017. It is submitted that prior the approval of the said invoice could be received that the Central Goods & Service Tax (CGST) Act was rolled out on 01.07.2017. Post approval, new invoice was issued, the GST liability thereupon stands already discharged.

3.1 Learned Counsel has further mentioned that in the given facts the appellant was entitled to claim the refund of the aforesaid amount of service tax, however, the same has wrongly been rejected on the ground of being barred by time. Reliance has been placed upon the Board's Circular No. 144/2011-ST dated 18th July, 2011 and also on Section 142(5) of Goods and Service Tax Act,

2017. Impressing upon that there was no time limit applicable for the refunds eligible under erstwhile Excise Act after coming into operation of the CGST Act. The order under challenge is accordingly prayed to set aside and appeal is prayed to be allowed.

4. While rebutting these submissions learned DR has laid emphasis upon the findings of the Commissioner (Appeals). The decision of Hon'ble Supreme Court has rightly been relied upon by Commissioner (Appeals) while holding that period of limitation prescribed in the Central Excise Act and the Rules framed there under must be adhered to. Impressing upon no infirmity in the impugned order, appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the records, it is observed and held as follows:

5.1 There is no denial to the fact that duty with respect to the impugned invoice stands discharged. The only issue that has been raised is as to whether Section 11B, as far as time limitation therein, is concerned will be applicable to the given sets of circumstances or not. No doubt under Excise Act, Section 11B is the only provision for claim of refund and the proviso thereof prescribes one year period of limitation to claim the said refund which has to reckon from the relevant date. In the present case, there is also no denial that the invoice in question is of January, 2017 and prior the payment of said invoice could have been received from the client that the GST Act came into effect. This particular admission is sufficient for me to hold that prior the erstwhile Excise Act was taken over by the GST Act, the impugned service provided by the appellant had not completed. The Circular as relied upon by the appellant clarifies the same. The relevant provision thereof reads as follows:-

> *'Completion of service' would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. The test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. However, such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice."*

6. In the present case the date of approval of invoice was agreed to be considered as date of invoice. The said approval was awaited till 01.07.2017 when CGST Act comes into effect. It is, hence, clear that the service was not completed till the new law was given effect to. In fact, the period of one year, even if, calculated from the date of the impugned unapproved invoice had not expired by 1st July, 2017 i.e. till coming into effect of GST Act.

7. Section 142 of the said new act contains such miscellaneous provisions as are meant to take care the issues arising out of transitional phase arrangements. Section 142(5) thereof reads as follows:-

> (5) *Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise, Act, 1944 (1 of 1944).*

8. In terms of above discussed circular, this provision is duly applicable to the given circumstances. Resultantly, I am of the opinion that Section 11B of erstwhile Central Excise Act has wrongly been invoked by the Commissioner (Appeals). He is observed to have miserably failed to observe the transition provisions and the mandate of the new CGST law that the entitlement of the assessee have mandatorily to be returned/refunded to the assessee irrespective of any limitation of time, though in cash. This Tribunal in earlier decision titled as **Punjab National Bank Vs. Commissioner of CGST and Central Excise, Jaipur, vide Final Order No. 50414/2022 dated 04.05.2022**, has been held that where there is no controversy regarding the quantum of amount refundable and no allegation nor any finding by the authorities below with regard to unjust enrichment, Section 142 of GST Act prescribes no time limit for refund in such case. I find no reason to differ from the said decision.

9. Resultantly, the order under challenge is held to have wrongly invoked the time bar of Section 11B of the erstwhile Central Excise Act. Order accordingly is hereby set aside. Consequent thereto, appeal stands allowed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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