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

Date 04/06/2010

Appeal No. ST/292 & 294 / 2010 -SM[BR] & ST / STAY / 512 & 516 / 2010 -SM[BR]

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :

M/S BANK OF RAJASTHAN LTD.
BRANCH KOTE GATE, BIKANER, PIN-334001
(RAJASTHAN)

[2] M/S BANK OF RAJASTHAN LTD.
BRANCH KOTA CITY, RAMPURA BAZAR,
KOTA, PIN-324006, RAJASTHAN

M/S BANK OF RAJASTHAN LTD.

Appellant
Vs
Respondent

C.C.E. JAIPUR I

am directed to transmit herewith a certified copy of **Final order No**.596 -597/2010-SM[BR]& S/199-200/2010 dated 1.6.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

   C.C.E. JAIPUR I

   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult SHRI A.K. GOYAL, SR. MANAGER
   M/S APPELLANTS;---------------------

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Service Tax Stay Application Nos. ST/S/512 & 516/10-SM in Service Tax Appeal Nos. ST/ 292 & 294/10-SM

[Arising out of Order-in-Appeal No.208(DK)ST/JPR-I/2009 dated 09.12.2009 passed by Commissioner of Central Excise (Appeals), Jaipur-I (in Appeal No.ST/292/10/SM) & Order-in-Appeal No.189 (DK)ST/JPR-I/2009 dated 30.11.2009 passed by Commissioner of Central Excise (Appeals), Jaipur-I (in Appeal No.ST/294/10/SM)].

M/s. Bank of Rajasthan Ltd. ...Appellants

Vs.

CCE, Jaipur-I ... Respondent

Present for the Appellant :Shri.A.K.Goyal, Sr. Manager
Present for the Respondent:Shri.S.N.Srivastava, SDR

Coram: HON'BLE MR.DN.PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:24.05.2010

Final **ORDER NO.** 596-597/2010 SM(Br) &
S-199-200/2010 SM(Br) **DATED: 24.05.2010**

PER: D.N.PANDA

Although both the matters were considered to be a case of public sector on first impression and passed order to adjourn the matters to 13.9.2010 to get COD clearance, Shri Anil Kumar Goel appearing for the appellant submits that this Bank is not a public sector for which no COD clearance is required. He clarifies that there is no shareholding by the Govt. of India to call this bank as public sector. Taking the averment of the authorised representative, both appeals are taken together for disposal in view of common issue involved.

2. While filing the appeal, the appellants have filed stay applications in both the cases. In appeal case No.ST/292/2010 there is a service tax demand of Rs.7,136/- and in respect of appeal No.294/2010 there is service tax demand of Rs.34,011/- followed by penalty under section 76 and interest under section 75 of the Finance Act 1994. The demand in appeal case No.292 of 2010 relates to the period October 2005 to March, 2005 & in appeal No. 294/10 the demand relates to the period April 2006 to March, 2006. In both cases common issue involved is that excess service tax paid for a period whether can be adjusted against service tax payable for the impugned periods. Revenue having disagreed for adjustment, the demand arose.

3. Ld. DR supports the order of the authorities below.

4. Heard the ld. DR and also examined the records. He agreed that no one shall be called upon to pay any amount which is not due to the State and as that is not required by law to be paid. Similarly, what that is due to the State cannot be sacrificed. When the excess amount paid becomes refundable to the assessee, there is no bar to adjust the same against the demand that may rise for a subsequent period. Law not being made to cause impediment to the process of justice, the forum should try to find out ways and means to mitigate the hardship and come to the rescue of aggrieved, where there is any adjustment permissible. Rules are subordinate to law and subserve interest of justice, without being tyrant. Therefore, dispensing pre-deposit in both the cases, the matters are

disposed sending back the same to the ld. Adjudicating Authority to re-examine the issue of adjustment whether permissible under law if there is any excess amount paid during a return period against the demand arising against different such period. While doing so, Tribunal's Order in the case of Bharat Cellular Ltd. vs. CCE, New Delhi passed vide final order No.A/1393/05-iv (SM) (PB) dated 6.6.2005 in appeal No.ST/27/04 NB(S) reported in 2006 (1) STR 39 (Tri-Delhi) dealing with such a situation may be looked into.

5. It may be stated that procedural law should not dominate or over power substantive rights and substantial justice. Hon'ble Supreme Court in the case of Shaikh Salim Haji Abdul Khayumsab Kumar & Ors. Reported in 2006 Supreme Court 396 held in para 13, 14, 15 & 16 as under:-

> *"13. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex-debito justiciae where the tragic sequel otherwise would be wholly inequitable. – Justice is the goal of jurisprudence – processual, as much as substantive. (See Sushil Kumar Sen v. State of Bihar (1975 (1) SCC 774).*
>
> *14. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to*

the altered mode. (See Biyth v. Blyth (1966 (1) All ER 524 (HL). A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See Shreenath and Anr. V. Rajesh and Ors. (AIR 1998 SC 1827).

15. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

16. It is also to be noted that though the power of the Court under the proviso appended to Rule 1 of Order VIII is circumscribed by the words – "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form."

6. When the rules are subordinate to the legislation, that should not act as master to deprive the deserved, who may be considered for grant of appropriate adjustment of the excess tax paid. The Adjudicating authority shall workout the modality as permissible under law to settle the dispute at its level in both cases.

7. Consequently, both appeals are remanded to the ld. Adjudicating authority disposing both the appeals and stay applications.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita