CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 50648 OF 2020

[Arising out of Order in Appeal No. 846 (CRM) ST/JDR/2019 dated 11.10.2019 passed by the Commissioner (Appeals), CGST, Jodhpur]

M/S BCC DEVELOPERS AND PROMOTERS PVT LTD. **....APPELLANT**
A-13, Indra Vihar, Kota, Rajasthan-324009

Vs.

COMMISSIONER, CGST & CENTRAL EXCISE-UDAIPUR **.....RESPONDENT**
142-B, Sector-11, Hiran Magri,
Udaipur, Rajasthan-313002

Appearance:
Present for the Appellant : None
Present for the Respondent: Shri Rakesh Kumar, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51123 /2026

Date of Hearing/Decision: 30/06/2026

BINU TAMTA

1. Challenge in the present appeal is to the order in appeal No. dated 11.10.2019, rejecting the refund claim filed by the appellant under section 11B of Central Excise Act, 1944 on the ground of limitation.

2. The appellant had filed a refund claim amounting ₹10,97,558/- on 30.11.2011 on the ground that excavation and construction of

intercepting drain, bridge/culvert are not taxable under the provisions of the Finance Act, 1994. The Assistant Commissioner vide OIO dated 17.03.2012 rejected the entire refund claim on the ground that the service of excavation and construction of drain and bridge/culvert over the drain is taxable under the commercial or industrial construction as defined under section 65(25b) of the Act and the refund of ₹9, 91,708 was time barred. The issue of taxability of the job of excavation and construction of intercepting drain, bridge/culvert was finally decided by the Tribunal vide Final Order dated 5.12.2017 and remanded the matter to the adjudicating authority for examining the availability of refund to the appellant for the period covered within the limitation. The adjudicating authority held that the appellant has shown the amount of ₹6,68,168 as time barred and for the remaining amount of ₹5,21,367, the appellant failed to produce any documentary evidence and therefore, the refund of the entire amount of ₹9,91,708 was rejected. By the impugned order, the Commissioner (Appeals) agreed with the findings of the adjudicating authority and held that the appellant is not entitled to claim the refund of the said amount. Hence, the present appeal has been filed.

3. The provisions of section 11B of the Central Excise Act (as applicable to service tax by virtue of section 83 of the Finance Act) provides for the limitation period for making refund application, which is one year from the relevant date. In the present case, the appellant had filed the refund claim of ₹10,97,558, out of which the refund of ₹1,05,850 was held to be admissible and the remaining amount of

₹9,91,708 was held to be time barred. It is an admitted position, that on remand, the appellant had submitted that on the basis of the running bills sum of ₹6, 68, 168 was time barred and the remaining amount of ₹5,21,364 was within time, which he prayed to be refunded. We find that the authorities below have considered various challans amounting to ₹19,31,913 and found that in the absence of any evidence the amount utilised for payment of service tax on non-taxable services cannot be ascertained.

4. Shri Rakesh Kumar learned AR has relied on the decision in the case of **Mafatlal Industries Limited** versus **Union of India**[1] where the Apex Court has held that no claim for refund of any duty or tax shall be entertained, except in accordance with the statutory provisions and every claim for refund must be made in accordance with section 11B. Since in the present case, the appellant has not been able to substantiate that the claim has been made within the limitation prescribed under section 11B, we do not find any error in the decision taken by the authorities below.

5. There is no reason to interfere with the impugned order and the same is hereby affirmed. The appeal is, accordingly dismissed.

(Order pronounced in open court)

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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