

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066BENCH-DB
COURT -III**ST/CROSS/4594/2012****Service Tax Appeal No.ST/1805/2012-CU[DB]**

[Arising out of Order-in-Appeal No.IND/CEX/000/APP/86/12 dated 27.03.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indralok Colony, Keshar Bagh Road, Indore]

M/s. Chambal Fertilisers and Chemical Ltd. ...Appellant

Vs.

C.C.E., Indore ... Respondent

Service Tax Appeal No.ST/3853/2012-CU[DB]

[Arising out of Order-in-Appeal No.177(RDN)/ST/JPR-I/2012 dated 29.08.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Jaipur]

M/s. Chambal Fertilisers and Chemical Ltd. ...Appellant

Vs.

C.C.E., Jaipur ... Respondent

Present for the Appellant : Mr.B.L.Narasimhan, Advocate

Present for the Respondent: Mr.Govind Dixit, D.R.

Coram:HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)**Date of Hearing : 01.09.2016**
Date of Pronouncement : 02.01.2017**FINAL ORDER NO. 50025-50026/2017****PER: S.K. MOHANTY**

Brief facts of the case, leading to this appeal, are as under:-

1.1 The appellant is engaged *inter alia*, in the manufacture of fertilizers and is registered with both the Central Excise and Service Tax Department. The appellant receives services of transportation of natural gas through pipeline. The transportation charges of natural gas are regulated by the Central Government through the Petroleum and Natural Gas Regulatory Board of India (for short, 'PNGRB'), in terms of the PNGRB (Determination of Natural Gas Pipeline Tariff) Regulations, 2008. Price towards the transportation

charges are provisional and are revised from time to time by PNGRB by way of its circulars. During the relevant period, the appellant received the services from GAIL (India) limited (for short, 'GAIL'), who is registered with service tax Department in Gwalior. On the basis of invoices issued by GAIL, the appellant made payment of the transportation charges along with service tax thereon to GAIL. In pursuance of revision of the charges by PNGRB, GAIL issued two nos. of credit notes for Rs. 17,62,85,114/- and Rs. 2,10,30,106/- respectively, both dated 20.09.2010, to the appellant towards the reduction in the transportation charges for the relevant period. However, the amount of service tax on such differential amount was not refunded by GAIL to the appellant.

1.2 In this background, the appellant, being the service recipient and borne the incidence of service tax, had filed the refund application for Rs. 2,04,21,679/- on 17.01.2011 before the Assistant Commissioner of Service tax, Kota. The said refund claim was denied by the Assistant Commissioner, Central Excise, Kota vide order dated 07.11.2011, holding that the appellant, being the service recipient, has no *locus standi* to claim a refund as it has not paid service tax in the Government Account. Further, it has been held that the refund application has been filed before the wrong authority. In appeal, the Id. Commissioner (Appeals), Central Excise, Jaipur vide the impugned order dated 05.09.2012 has upheld rejection of the refund claim. Feeling aggrieved with the impugned order, the appellant has filed appeal before this Tribunal, which was listed as **Appeal No. ST/3853/2012.**

1.3 In respect of the same refund amount, the appellant filed another application on 24.02.2011 before the Assistant Commissioner of Service Tax, Gwalior i.e. the jurisdictional authority for GAIL. The said claim was denied by the Assistant Commissioner vide order dated 25.10.2011. Appeal against the said order was upheld by the Id. Commissioner (Appeals), Central Excise, Indore vide impugned order dated 27.03.2012. The ground for denial of refund in respect of the said claim are that the refund claim of the appellant is barred by limitation of time, prescribed under section 11 B of the Central Excise Act, 1944; that chartered accountant certificate showing refund claim as receivable in the balance sheet is not sufficient to pass the test of unjust enrichment; that the appellant has not produced any evidence to show payment of alleged service tax by GAIL in the Government Account; that the reduction in transportation charges is a matter between GAIL and the appellant and the same has no relation with reduction of service tax liability. Against the impugned order dated 27.03.2012, the appellant has preferred appeal before this Tribunal, which was listed as **Appeal No. ST/1805/2012**.

2. Shri B.L Narshiman, the Id. Advocate appearing for the appellant submitted that a service recipient is entitled to claim refund of service tax under Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 in view of the fact that the statute empowers 'any person' to claim refund of duty/tax. In this context, the Id. Advocate has relied on the judgment of Hon'ble Allahabad High Court in the case of Commissioner vs. Indian Farmers Fertilizers Co-op. Ltd., reported

in 2014 (35) S.T.R. 492 (All.). He further submitted that the disputed service tax amount has been paid by GAIL and recovered from the appellant, the fact of which has also been accepted by the Department in the SCN dated 03.03.2011. With regard to filing of refund application before wrong jurisdictional service tax authorities, the Id. Advocate submitted that the appellant being a recipient of service and having borne the service tax liability, had the option either to file the refund application before the Commissionerate under whose jurisdiction it pursues its taxable activities; or, before the Commissionerate having authority over the provider of service. To support such argument, the Id. Advocate has relied on the decision of this Tribunal in the case of Jindal Steel & Power Ltd. vs. Commissioner, reported in 2016 (42) STR 694 (Tri.-Del.) As regards the time bar aspect raised by the authorities below for rejection of the refund application, the Id. Advocate submitted that the assessment was provisional and upon finalization of the same, since GAIL has issued the credit note on 20.09.2010, the date of issuance of such credit notes should be construed as the date of computation of the limitation period inasmuch as finalization of the transportation charges and actual liability on that count was known on the said date. Since the refund application was filed on 17.01.2011, which is within the stipulated time of one year from the date of such finalization, the same is within the time limit prescribed under Section 11 B *ibid*. To support such stand, the Id. Advocate has placed reliance on the decision of this Tribunal in the case of Commissioenr vs. Kurool Cylinders Pvt. Ltd., reported in 2007 (219) ELT 473 (Tri. Bang.). The Id. Advocate also submitted that reflecting the refund amount

in the balance sheet as 'claims receivable' together with the certificate issued by the practicing Chartered Accountant prove the fact that the incidence of duty has not been passed on by the appellant to any other person and the same has been borne by it. In this context, the Id. Advocate has relied on the judgment of Hon'ble Madras High Court, in the case of Commissioner - Vs. - Virudhnagar Textile Mills Ltd., repored in 2008 (230) ELT 411 (Mad.) and also the decision of this Tribunal in the case of Commissioner - Vs. - Sankar Printing Mills, 2015 (321) ELT 295 (Tri.-Del.) and Eveready Industries India - Vs. - Commissioner, 2015 (323) ELT 612 (Tri.-Del.).

3. On the other hand, Shri Govind Dixit, the Id. A.R. appearing for the Revenue reiterated the findings recorded in the impugned order and further submits that the test of unjust enrichment has not been satisfactorily discharged by the appellant, and thus, the refund application is not maintainable.

4. Heard both sides and perused the records.

5. The applicability of Section 11B *ibid* for claiming refund of Central Excise duty/Service Tax is not restricted only to manufacturer/service provider. The said statutory provision mandate that any person can claim refund, subject to the conditions that the tax/duty was collected from or paid by him; and the incidence of such tax/duty had not been passed on by him to any other person. Thus, in absence on any stipulation contained in the statutory provisions, the service recipient is well entitled to claim refund of service tax paid by him to the service provider. With regard to the issue, as to whether, the service recipient can

claim refund of service tax, the Hon'ble Allahabad High Court, in the case of Indian Farmers Fertilizers Coop Limited (supra), have ruled in affirmative. The relevant paragraph is extracted below:

"15. The Tribunal was clearly, in our respectful view, correct and justified in following this principle. The assessee is the recipient of the taxable service provided by RGTIL and had borne the incidence of service tax. Hence, the assessee is entitled to claim a refund of excess service tax paid consequent upon the downward revision of the transmission charges payable by the assessee to RGTIL in terms of the determination made by the Regulatory Board."

6. There is no provision exist in Section 11B *ibid*, limiting the filing of refund claim either in Commissionerate having jurisdiction over service provider or that having jurisdiction over service recipient. In such a case, the appellant is entitled to file refund application before any of these authorities. In this regard, the Tribunal in the case of Jindal Steel & Power Limited (supra) has held as under:-

6. The fact that the recipient of the service is also entitled to file a claim for refund is no longer res integra. The issue stand concluded by the Constitution Bench decision in Mafatlal Industries Limited v. Union of India - 1997 (89) [E.L.T.](#) 247 (S.C.). This decision was followed in Indian Farmer Fertilizer Co-op. Ltd., v. CCE, Meerut-II - 2014 (35) [S.T.R.](#) 422 (Tri.-Del.). If the appellant which is a recipient of a service which is admittedly not taxable files a claim for refund within the prescribed period of limitation, it is axiomatic that it is entitled to do so before the Commissionerate under whose jurisdiction it pursues its taxable activities, business or is a registrant; or before the Commissionerate having authority over the provider of the service. That would be a matter of a legitimate choice for a claimant of refund. In this case, the appellant had initially filed a claim before the Delhi Commissionerate which rejected the same on the ground that it had no jurisdiction since the appellant was pursuing business outside its jurisdiction. The Bilaspur Commissionerate also rejected the refund claim on the ground that the provider of the service is not within its jurisdiction. The rejection by both Commissionerates is in my view unsustainable.

7. Therefore, the appellant in the capacity of recipient of service, can file refund application before the authorities having jurisdiction over the service recipient or before the jurisdictional authorities of the service provider under Section 11B *ibid*. The provisions of Section 11B *ibid* are explicit to provide that such recipient-claimant is only required to prove that the tax amount was collected from him. In the instant case, it is evident from the invoices that GAIL had charged service tax from the appellant at the provisional price, which was at the higher side and upon finalization of the price, had issued the credit notes for the differential price. It is also evident from the records that GAIL had deposited the service tax, collected from the appellant into the Government exchequer and had not refunded the service tax on account of price revision to the appellant and requested the Department to process the refund claims filed by the service recipients. In this context, the letter dated 26.11.2010 addressed by GAIL to the Range Superintendent, Guna, M.P. is useful, and the relevant portions therein are extracted below:-

"6. We enclose herewith at Annexure-B, a summary listing of the credit notes issued by GAIL to customers. We wish to draw to your kind attention to the fact that these credit notes have been issued only for the difference in the base value of service i.e. the difference between the initial tariff collected by GAIL and provisional initial pipeline transportation tariff approved by PNGRB.

7. Since there has been a reduction in the value of taxable service on account of the credit notes issued by GAIL and since the service tax in relation to the initial tariff has been collected from the various recipients and deposited by GAIL with the Government, persons who have borne the incidence of service tax viz. the service recipients would be filing with the Department of Central Excise & Customs, a refund claim under the provisions of Central Excise Act in order to obtain the refund due to them.

This letter is given to enable your office to process the said refund claims filed by the service recipients."

8. On perusal of the annual accounts and Balance Sheet available in the file, we find that the subject refund had been reflected in Schedule 13 under the head "Loans and Advances" as "Receivable-Govt./Statutory Bodies". Such fact is also evident from the certificate dated 12.01.2011 issued by M/s Ritu G.P. Das, Chartered Accountants. Thus, the above established beyond any shadow of doubt that the excess paid service tax has been borne by the appellant and its incidence has not been passed on to any other person. Therefore, the legal presumption contained in Section 11B *ibid* has been rebutted in this case and the appellant's refund claim is not hit by the doctrine of unjust enrichment.

9. In the present case, the transportation charges were determined by PNGRB in terms of the 2008 Regulations, which itself provides that the prices are provisional. The appellant as well as GAIL were aware of this fact and on later revision of price by PNGRB vide its pricing circulars, the adjustment of prices was made through credit notes. Since, only on issuance of credit note by GAIL on 20.09.2010, the provisional prices were finalised, the said date in our opinion, will be considered as relevant date in terms of clause (eb) of Explanation-B to Section 11B *ibid*. The refund claim filed before the jurisdictional authorities on 17.01.2011 and subsequently filed before the authorities of service provider on 24.02.2011, will not hit by limitation of time as prescribed under Section 11B *ibid*.

10. In view of the foregoing, the appellant's eligibility for refund of service tax is *prima facie* sustainable on legal grounds. Since the appellant is located in the jurisdiction of service tax authorities of Kota, before whom the refund application was filed on 17.01.2011, the required verification of documents may be carried out by the jurisdictional Assistant Commissioner of Service Tax, who is directed to examine the claim and dispose the same in view of the findings above.

11. Appeal No. ST/3853/2012 is disposed of in above terms. Appeal No. ST/1805/2012 does not stand in view of the disposal of above appeal with directions. Cross objection stands disposed of.

. [Pronounced in the Open Court__02.01.2017_]

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita