CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

<u>BENCH-DB</u>

<u>COURT –III</u>

<u>Service Tax Appeal No. ST/2708/2012-ST [SM]</u>

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/146/12 dated 28.05.2012 passed by the Commissioner (Appeals), Customs, Central Excise, & Service Tax, Indore.]

M/s. Bharat Sanchar Nigam Limited ...Appellant

Vs.

C.C.E. & S.T.,- Indore …Respondent

Appearance:
Mr. Chandan Kumar,(Advocate) for the Appellant
Mr. Dharam Singh, AR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing.28.12.2016
Date of Decision.26.04.2017

<u>Final Order No. 53013 /2017</u>

<u>Per S.K. Mohanty</u>:

This appeal is directed against the impugned order dated 28.05.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore.

2. Brief facts of the case are that the appellant is registered with the service tax Department for providing the taxable service under the category of "Telecommunication Services". The

appellant had filed the refund application on 27.05.2011 before the jurisdictional service tax authorities, claiming refund of excess deposit of service tax of Rs. 2, 79,033/- for the months of March 2010. The refund application was rejected by the original authority on the ground of limitation. On appeal, the Ld. Commissioner (Appeals) has upheld the adjudication order.

3. The ld. Advocate appearing for the appellant submitted that there was no statutory obligation on the appellant to deposit such excess amount into the Central Government account and accordingly, the amount paid should not be considered as service tax. Thus, he submitted that the limitation period of one year provided in Section 11B of the Central Excise Act, 1994 will not have any application for refunding the excess deposited amount by the Department. The ld. Advocate has relied on the judgment of Hon'ble Karnataka High Court in the case of Commissioner of Central Excise (Appeals), Bangalore Vs. KVR Construction, reported in 2012 (26) S.T.R. 195 (Kar.) and also the final order no. 8/2003-NB (A) dated 26.06.2003 of this Tribunal passed in the case of Hexacom (I) Ltd. Vs. CCE, Jaipur.

4. On the other hand, the ld. DR appearing for the respondent reiterated the findings recorded in the impugned order and further submitted that since the appellant had deposited the service tax under the taxable category of service of Telecommunication services, the time limit prescribed in Section 11B *ibid* should be strictly applied for claiming refund of service tax. In the present case, since the refund application has been filed beyond the

prescribed period of one year from the date of deposit of service tax, the same is clearly barred by limitation of time.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that the appellant had deposited an amount of Rs. 2,79,033/- towards service tax during the month of March 2010 and filed the refund application on 27.05.2011. Section 11B of the Central Excise Act, 1944 deals with claim of refund of duty of excise/ service tax. The said statutory provision mandates that an application for refund of duty/service tax shall be filed before the expiry of one year from the relevant date. In this case, the refund application was filed beyond the period of limitation prescribed under Section 11B *ibid*. In absence of any specific power conferred under the statue empowering the authorities to condone the delay in late submission of refund application, the refund claim filed beyond the period of one year from the date of payment of service tax will be clearly barred by limitation of time. Therefore, the authorities below have rightly rejected the refund application field by the appellant.

7. The amount in question deposited by the appellant cannot be considered as mere deposit, for the reason that said amount was deposited into the Central Government Account in the Major Head 0044 (Service Tax) and Sub-Head 00440398 (services provided by a telegraph authority in relation to telecommunication services tax collection). Thus, for claiming refund of such amount, the procedure and the limitation prescribed under

Section 11B have to be strictly adhered to by the appellant. Since the refund application was filed beyond one year from the date of deposit of service tax, the same is not maintainable in terms of the provisions of Section 11B *ibid*.

8. The judgment of Hon'ble Karnataka High Court in the case of KVR Construction (supra) is distinguishable from the facts of the present case inasmuch as them in the said case has held that the amount lying with them is not a service tax but is in the nature of deposit with the Government. Therefore, under the circumstances of such case, the Hon'ble High Court held that for claiming refund of mere deposit, provisions of Section 11B *ibid* will not have any application. Similarly the decision of this Tribunal in the case of Hexacom (I) Ltd. (supra) has not dealt with the issue of time bar and confined the findings only to the aspect of unjust enrichment. Hence the said decision is also distinguishable from the facts of this case.

9. Therefore, I do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals). Accordingly, the appeal filed by the appellant is dismissed.

(Pronounced in the open court on 26.04.2017)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi