IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. ST/1850/2010-CU[SM]

[Arising out of Order-in-Appeal No. IND/317/2010 dated 07.10.2010, passed by the Commissioner of Customs, Indore]

C.C.E. Indore **...Appellants**

Vs.

Medgel Pvt. Ltd **.....Respondent**

Appearance:
Sh. Dharam Singh, AR for the Appellant
Sh. Manish Saharan, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 16.01.2017

FINAL ORDER NO. 50401 **/2017-CU(SM)**

Per V. Padmanabhan

The appeal filed by Revenue is directed against the Order-in-Appeal dated 07.10.2010 passed by the Commissioner (Appeals), Indore.

2. The respondent is a unit in Special Economic Zone, Pithampura. They filed a refund claim under Notification No. 09/2009 dated 03.03.2009 and claimed refund of Service Tax paid on input services used in authorized operation in SEZ for manufacture and export of specified goods. The Original Adjudicating Authority vide his order dated 15.04.2010, rejected the refund claim, on the ground that the same has been filed beyond the period of six months from the date of payment of

Service Tax. When the issue was challenged before the Commissioner (Appeals), he remanded the matter for denovo decision by the Adjudicating Authority. He expressed the view that though the notification provides that refund claim needs to be filed within six months; it will be open to the respondent to file a request for condonation of delay. Revenue has challenged this order on the following two grounds:

i. Commissioner (Appeals) does not enjoy the power of remand.

ii. The time limit of six months is specified in the relevant notification. Hence any refund claim filed beyond the period of six months is to be considered and hit by time bar.

2. With the above background, I heard Shri Dharam Singh, ld. DR as well as Shri Manish Saharan, Ld. Counsel for the respondent.

3. Ld. DR reiterates the grounds of appeal, the ld. Counsel submits that the Tribunal has allowed refund claims under the same notification even in cases where the claim has been filed beyond the period of six months but within the period of one year as specified in Section 11B of the Central Excise Act. He relied upon the following judgments to press the point:

i) M/S EXL Service SEZ BPO Solutions Pvt Ltd Vs. Commissioner of Central Excise and Service Tax, Noida- 2015-TIOL-702-CESTAT-DEL.

ii) Tata Consultancy Services Ltd Vs. Commissioner of Central Excise & ST (LTU), Mumbai-2012-TIOL-1034-CESTAT-Mum.

He also submitted that the Show Cause Notice issued for rejection of refund claim did not cite the ground of time bar.

4. Heard both sides and perused the records. The Revenue has objected to the remand made by the Commissioner (Appeals). Admittedly, the Tribunal enjoys such powers of remand. Accordingly, I remand the issue for a denovo decision by the Original Adjudicating Authority. He will keep in view, the submissions made by the ld. Counsel as well as the case laws and pass denovo order within a period of two months from the date of receipt of this order.

[Dictated and Pronounced in the Open Court]

(V. Padmanabhan)
Member (Technical)

RS