IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 25/01/2017.
DATE OF DECISION: 25/01/2017.

Service Tax Appeal No. 666 of 2010 with C.O. No. 51560 of 2016

[Arising out of the Order-in-Appeal No. IND-I/51/2010 dated 02/03/2010 passed by The Principal Commissioner (Appeals – I), Customs & Central Excise, Indore.]

CCE, Indore Appellant

Versus

M/s K.S. Oils Limited Respondent

Appearance

Ms. Neha Garg, Authorized Representative (DR) – for the appellant.

Shri Kumar Vikram, Advocate – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50516/2017 Dated : 25/01/2017

Per. B. Ravichandran :-

The Revenue is in appeal against order dated 02/03/2010 of Commissioner (Appeals-I), Indore. The dispute involved in the present case is relating to time limit applicable to the refund claim filed by the respondent in terms of Notification 41/2007-ST dated 06/10/2007. The respondent filed claim for refund of service tax amounting to Rs. 1,04,226/- on 06/02/2009 with reference to goods exported during the quarter April 2008 to June 2008. The Original Authority rejected the claim on the question of time bar as the claim has been filed after six months of the relevant date. On appeal, the Commissioner (Appeals) vide the impugned order held that the condition of limitation mentioned in the notification is only procedural and since the claim has been filed within one year, the period allowed in terms of Section 11B of Central Excise Act, 1944, the same should be allowed.

2. The Revenue contested the finding in the impugned order on the ground that Notification 41/2007-ST dated 06/10/2007 was issued in exercise of powers under Section 93 (1) of Finance Act, 1994 and contained conditions and limitations to extend the exemption which is given by way of refund. It was pleaded that the time limit prescribed in the notification cannot be simply termed as procedural and further, the provision of Section 11B which deals with refund of duty erroneously paid or excess paid cannot apply to the provision of exemption notification which has no reference to Section 11B.

3. The learned AR appearing for Revenue elaborated on the grounds of appeal and referred to various decided cases to reiterate that the time limit prescribed in the said notification cannot be ignored by the sanctioning authority.

4. The learned Counsel appearing for the respondent submits that they have fulfilled all the conditions of the notification and eligible for refund of service tax paid in connection with export of goods. The claim cannot be rejected on the technical ground of having been filed beyond six months. He further stated that the substantive provision in terms of Section 11B of the Central Excise Act, 1944 made applicable to the refund of service tax under Finance Act, 1994 cannot be over-ruled by a provision of notification. He also relied on certain decided cases to say that the delayed filing of claim is only a procedural lapse and considering the provision of Section 11B, the same has to be admitted and sanctioned.

5. We note that there is a cross appeal by respondent filed on 28/09/2016. The Department's appeal was filed in 2010. The respondent submits that there is a change of management and the connected papers could not be traced. We note that there is a long delay of 6 years in filing the cross appeal. No request for condonation of delay also has been filed. During the course of argument, the learned Counsel for the respondent mainly contested appeal by Revenue, on merits.

6. We have heard both the sides and perused the appeal records. The only dispute in the present appeal is the applicability of time limit for filing claim under Notification 41/2007-ST. The said notification is an exemption notification issued in terms of Section 93 (1) of Finance Act, 1994. It exempts taxable services

listed therein, received by an exporter and used for export of goods, from the whole of service tax leviable thereon subject to certain conditions. The exemption is to be claimed by the exporter, by way of refund claim. The time limit for filing such claim has been mentioned in para 2 (e) for the said notification. The notification does not refer to any other supporting provision, like Section 11B of the Central Excise Act, 1944 with reference to time limit. As already noted, Notification 41/2007 is dealing with exemption and Section 11B of Central Excise Act deals with refund of excess/erroneously paid duty. Notification 41/2007 is a self-contained exemption procedure which also stipulates certain time limits for claiming the said exemption by way of refund. Such time limit cannot be brushed aside as simple technical procedural requirement.

7. We have referred to various decided cases relied upon by both the sides. The respondent relied on various cases in support of the impugned order. In **CCE, Pune vs. Chandrashekhar Exports** reported in **2015 – TIOL – 2448 – CESTAT – MUMBAI, Sandoz Polymers Pvt. Ltd. vs. CST, Ahmedabad** reported in **2013 (30) S.T.R. 527 (Tri. – Ahmd.)** and **Raymond Ltd. vs. CCE, Mumbai – III** reported in **2015 (38) S.T.R. 441 (Tri. – Mumbai)**, the discussion and reference was to provision of Notification 17/2009-ST also. Admittedly, the said notification which succeeded Notification 41/2007-ST provided for time limit of one year for filing refund claim. We note that in the present case the claim was filed in February 2009 much before

the issue Notification 17/2009-ST dated 07/07/2009. Similarly, in **Gran Overseas Ltd. vs. CCE, Delhi – I** reported in **2016 – TIOL – 3373 (Cestat – Del.)**, the Tribunal relied on earlier decision in **Chandrashekhar Exports** (supra) which relied on **Raymond Ltd.** (supra). The reference is to applicability of Notification 17/2009. In **Bandedkar Brothers Pvt. Ltd. vs. CCE, Goa** reported in **2015 – TIOL – 2485 – CESTAT – MUMBAI**, the Tribunal examined the scope of amending Notification 32/2008-ST which substituted "six months" in place of "60 days" for filing claim under Notification 41/2007. Further, we note that reference was made regarding applicability of provisions of Section 11B being a substantive provision of Act which will prevail on notification which is only supplementary. We find the notification has no reference to Section 11B. This is an exemption notification issued under Section 93 (1). The procedure to claim exemption is post facto, by way of a refund with binding conditions. Non-fulfillment of any one of the conditions will put the claim for notification in *jeopardy*.

8. We have also referred to the cases relied upon by the Revenue to state that the time limit mentioned in the notification cannot be ignored by the sanctioning authority. In **Principal Commissioner of S.T. vs. R.R. Global Enterprises Pvt. Ltd.** reported in **2016 (45) S.T.R. 5 (A.P.)**, the Hon'ble High Court at Hyderabad held that :-

> "45. Once a full-fledged system is put in place, for the exercise of discretion, the compliance with the

requirements of such a system alone will remove any kind of arbitrary exercise of power. The Courts are obliged to interpret notifications of this nature, in such a manner that the power of discretion is reduced to the minimum".

9. The Hon'ble High Court was examining the question whether the conditions stipulated in an exemption notification can be said to be a mere matter of procedure, on which some amount of laxity can be given. It was held that the conditions mentioned in the notification cannot be considered as mere procedural requirements which can be relaxed. Further, in **Midex Global Pvt. Ltd. vs. CCE, Indore** reported in **2016 (41) S.T.R. 125 (Tri. – Del.)**, it was held that the exemption available will be only on fulfillment of conditions prescribed therein. The Tribunal held that Notification 41/2007 is available only on fulfillment of condition including filing of claim within time limit prescribed therein. The Tribunal noted that this is an exemption notification and not a refund within the scope of Section 11B. Similar ratio was adopted in **Spark Engineering P. Ltd. vs. CCE, Ghaziabad** reported in **2013 (31) S.T.R. 71 (Tri. – Del.)**, in **Calcutta Export Company vs. CCE, Kolkata – II** reported in **2016 (44) S.T.R. 672 (Tri. – Kolkata), Sakay Overseas vs. CCE, Ludhiana** reported in **2014 (33) S.T.R. 456 (Tri. – Del.)** and **H.R. International (Unit – II) vs. CCE, Ludhiana** reported in **2015 (37) S.T.R. 649 (Tri. – Del.)**.

10. Considering the above discussion and decided cases and on careful examination of the provisions Notification 41/2007, we

find that the condition of time limit specified in the said notification to claim the exemption by way of filing a claim has to be adhered to by the respondent. There is no provision to extend the said time limit. There is no reason to bring in the provisions of Section 11B, in the absence of any such link or reference in the said notification. Accordingly, we find the impugned order is not legally sustainable. The same is set aside. The original order is restored. The appeal by Revenue allowed. The cross objection is also disposed of.

(Order dictated and pronounced in the open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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