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

Service Tax Appeal No. 648 of 2011 SM

[Arising out of the OIA - 457-ST-DLH-2010, dated -13/01/2011, passed by Commissioner of Service Tax - DELHI - I]

Commissioner of Service Tax Delhi **Appellants**

Vs.

M/s. Pearl Minerals Pvt. Ltd. **Respondent**

Appearance:
Shri R K Mishra, AR for the Appellants
Shri Rajesh Mahna and Ruchir Bhatia, Advocates for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing /Decision: 10.02.2017

FINAL ORDER NO . 50840 /2017-(SM)

Per Ms. Archana Wadhwa :

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the appeal.

2. After hearing Shri R K Mishra, learned DR appearing for the Revenue and Shri Rajesh Mahna and Shri Ruchir Bhatia, learned Advocates appearing for the respondent-assessee, I find that the issue in the present appeal relates to refund of Service Tax paid on various inputs services utilized for export purposes, in terms of

Notification No. 41/2007. The period for filing the refund claim in the original Notification was 60 days from the end of quarter. Said time period was subsequently changed to 6 months vide amending Notification No. 32/08. As per the Board's Circular No. 112/6/2009 dated 12.3.2009, the amended and extended period of 6 months would apply to pending refund claims.

Apart from the above, the Revenue also entertained a view that inasmuch as some of the invoices were not having complete details, the assessee's refund claim cannot be allowed. Accordingly, after initiation of proceedings and due adjudication, six refund claims filed by the respondents were rejected.

3. On appeal against the above order, Commissioner (Appeals) took note of the fact that all the refund claims stand filed within a period of six months as prescribed in the amending notification, hence would be applicable to all pending refund claims, and held that same were within the limitation period. As regards discrepancies in the invoices, he observed that such discrepancies have been pointed out only in few cases for which, the Revenue could not reject the entire refund claims. He also took note of the details provided by the assessee wherein he found that in most of the cases, all the details were present and as such, it was not proper on the part of the adjudicating authority to reject the refund claim. Accordingly, he observed that refunds are admissible to the respondents, as no valid

and sustainable objection has been raised. He further observed that if on verification of relevant documents, the adjudicating authority is of the view that some substantive conditions have not been fulfilled, he can reject the refund claim, otherwise he allowed the appeal.

4. Being aggrieved by the order of Commissioner (Appeals), Revenue has filed the present appeal.

5. As regards time bar issue, same is no more *res integra* and stand settled by the Tribunal in the case of ***CCE Surat vs. Essar Steel Ltd. [2010 (9) TMI 334 (CESTAT-AHMD)]*** laying down that extended period of limitation of six months vide notification No. 32/08 ST dated 18.11.08 has to be given effect retrospectively and would equally apply to pending refund claims. To the same effect is another decision of the Tribunal in the case of ***Faizan Shoes (P) Ltd. vs. CST, Chennai [2012 (9) TMI 702 (CESTAT-CHENNAI***)]. As such, inasmuch as all the refund claims stand filed within a period of six months from the end of quarter for which they have been filed. I find no merit in the Revenue's contention.

6. As regards the discrepancies in the invoices, I find that the appellate authority has examined every invoice and has rightly observed that even if there are some discrepancies in the invoices, entire refund claim cannot be denied on that ground. He has also observed that all the substantiated conditions stand fulfilled by the respondent and has also examined the work sheet placed on record by

the appellant containing all the related details. Revenue in their memo of appeal have not been able to bring out any such substantiated condition, which is leading to denial of the refund claims. As such, I find no infirmity in the views adopted by the Commissioner (Appeals), thus requiring any interference. Revenue's appeal is accordingly rejected.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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