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

Service Tax Appeal No. ST/76/2011-ST[DB]
[Arising out of Order-In-Appeal No. 394 (CB)/ST/JPR-II/2010 dated 21/10/2010 passed by Commissioner(Appeals) Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/s. Rajasthan State Mines & Minerals Ltd. ...Appellant

Vs.

C.C.E. Jaipur-II …Respondent

Appearance:
Ms. Rinki Arora (Advocate) for the Appellant
Mr. Sanjay Jain, (DR) for the Respondent

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

Date of Hearing/ Decision.18.01.2017

Final Order No. 52296 /2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 21.10.2010 passed by the Commissioner (Appeals) passed by the Commissioner of Central Excise and Service Tax, Jaipur. The grievance of the appellant in this appeal is that the rejection of the refund claim by the authorities below is not in conformity with the statutory provisions. Brief facts of the case are, that the appellant are a mining company which owns mines and engaged in selling of mined minerals. During the period May 2005 to May 2007, the appellant availed certain services from the service provider towards raising and extraction of mineral along with other incidental work and paid the service tax to the service provider. However, department entertained the view that the activity provided by the service provider does not attract payment of service tax. The applicant has filed the refund application before the service tax department. The refund application was rejected mainly on the ground that classification of service has never been disputed by the service provider, and as such, the appellant has no locus standi as a recipient of service to claim the refund on service tax paid by the service provider. The other ground assigned for rejection of the refund claim is that the same is barred by limitation of time inasmuch as the refund claim was filed on 03.04.2009 claiming the refund of service tax paid by the service provider during the period May 2005 to May 2007.

2. The Ld. Advocate appearing for the appellant submits that the appellant in the capacity of receiver of service is entitled to claim the refund of service tax paid to the service provider, which is ultimately deposited into the Central Government account. She further submits, that since the activities undertaken by the service provider is outside the scope and purview of any taxable service, the amount paid by the appellant cannot be retained by the department as Government Revenue. Thus, she submits that since the amount paid by the service provider is a mere payment and cannot be construed as service tax, the time limit provided in Section 11B of Central Excise Act, 1944 shall not be applicable for computation of the limitation period.

3. On the other hand, the Ld .AR appearing for the Respondent reiterates the findings recorded in the impugned order.

4. Heard both the sides and perused the records.

5. The service provider is registered with the service tax department under the taxable category of "site formation and excavation service" falling under Section 65(97a) of the Finance Act 1994. Since the activities provided by the service provider falls under such taxable category, the service provider had discharged the service tax liability on the service provided to the appellant. The service provider has never disputed that they have wrongly classified the service and never filed any refund application before the jurisdictional service tax authorities. Thus, in absence of dispute regarding the classification of service by the service provider who has discharged the service tax liability, the appellant in the capacity of recipient of service, in our opinion, has no locus standi to file the application claiming refund on a different classification of service that on what was paid by the service provider. Further, Section 11B mandates claiming of refund by any person of any duty (service tax) paid on the taxable services can claim the refund within the stipulated time frame of one year from the relevant date. Since, the service provider has paid the service tax under the taxable category of Site Formation and such service having been not disputed by the service provider, it cannot be said that the amount paid by the service provider cannot be termed as service tax and the provisions of Section 11B ibid will not be applicable for claiming such refund. Even otherwise, as per the mandates of Section 11B, any amount claimed as refund, has to pass the test provided therein and since condition of limitation is

one of the ground mentioned therein, the same cannot be overlooked for consideration of the refund application.

6. Thus, we are of the view that the refund application filed by the appellant does not survive both on the ground of merits as well as limitation. Therefore, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

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

Neha