IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:17.05.2017

Service Tax Appeal No.56419/2013-ST(SM)

[Arising out of Order-in-Appeal No.01/S.Tax/Appl D-II/13 dated 4.1.2013 passed by the Commissioner (Appeals), Central Excise, Delhi-II]

M/s.Emerson Process Management Power & Water Solutions India Pvt. Ltd. — Appellants

Vs.

CST, Delhi-II — Respondent

Appearance

Rep. by none for the appellant.
Rep. by Shri G.R. Singh, AR for the respondent.

Coram: Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.53355/2017

Per B. Ravichandran:

The appellant is aggrieved by the order dated 4.1.2013 of Commissioner (Appeals), Delhi-II. The said order upheld the original order of rejection of refund claims filed by the appellant under Rule 5 of Cenvat Credit Rules, 2004 read with Notification no.5/2006-CE (NT) dated 14.03.2006. The claims for the period April, 2008 to March, 2009 were filed on 23.05.2011. Both the lower authorities held that the claims are clearly hit by time bar in terms of Section 11 B of the Central Excise Act, 1944.

2. When the case was called, none appeared on behalf of the appellant, in spite of notice. It is seen that on earlier occasions (24.04.2017 and 23.03.2017) also none appeared on behalf of the appellants in spite of notices. Accordingly, the appeal is taken up for decision based on the appeal records and the submissions of

the ld. AR, as adequate opportunities, for presenting representation of the case, were already given to the appellant.

3. The factual position regarding the period of refund claims and the date of filing of these claims are not in dispute.

4. The appellant pleaded that the provisions of Central Excise Act, 1944 have no application to the present case.

5. I have perused the appeal records and heard the ld. AR for the Revenue.

6. Admittedly, the claims in the present case were filed well beyond one year from the relevant date. These claims are clearly hit by limitation in terms of Section 11B of the Central Excise Act, 1944. The time limit mentioned in the said section is applicable to the refund claim under Rule 5 of the Cenvat Credit Rules, 2004, which has been upheld by the Hon'ble Madras High Court in the case of **GTN Engineering (I) Ltd. – 2012 (281) ELT 185 (Madras)**. The claim of the appellant that the provisions of Central Excise Act has no application to the refund claim under Rule 5 is without any basis. Accordingly, I find no merit in the present appeal. The same is dismissed.

[Order dictated & pronounced in open court]

(B. Ravichandran)
Member (Technical)

Ckp.