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

Service Tax Appeal No. 485 of 2011

[Arising out of Order-In-Revision No. 09-10/SJS/CST (Adj)/2010 dated 29.10.2010 passed by Commissioner of Service Tax, Delhi]

Commissioner of Service Tax **Appellants**
New Delhi

Vs.

M/s. E Funds International P Ltd., **Respondent**

Appearance:

Ms. Neha Garg, AR for the Appellants
None for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 01.06.2017

FINAL ORDER NO .54665 /2017

Per S K Mohanty:

Revenue is in appeal against the impugned order dated 17.3.11 passed by the Commissioner of Central Excise, New Delhi.

2. Brief facts of the case are that the respondent had filed the refund application in terms of notification No. 5/2006 dated 4.3.06, claiming refund of un-utilized Cenvat credit available in the books of accounts. As per the CBEC Circular dated 20.4.2006, the refund sanctioning authority sanctioned adhoc interim refund of 80% of the claimed amount to the respondent. Subsequently, on scrutiny of refund application together with the relevant documents, department observed that refund claim is not maintainable as per the above referred circular. Accordingly, Show cause notices were issued, calling upon the respondent for recovery of erroneous refund amount and for rejection of balance claimed refund amount. Show cause notices dated 28.11.08 and 26.12.08 were adjudicated vide the impugned order, holding that no orders can be passed under Section 84 of the Finance Act, 1994 to revise the earlier orders dated 3.12.2007. It has further been held that Joint Commissioner has no power to revise the orders passed by the Deputy / Asstt. Commissioner of Service Tax. In the above circumstances, the adjudicating authority has held that the show cause notices dated 28.11.08 and 26.12.08 cannot be sustained under the eyes of law.

3. Heard the learned DR for the Revenue. None appeared for the respondent, despite notice.

4. On perusal of the case records, we find that refund sanctioning authority vide order dated 3.12.2007 and 16.1.2008 have sanctioned 80% of the refund amount claimed by the respondent in terms of CBEC Circular dated 24.4.2006. Since only adhoc refund was sanctioned by the authorities as per the clarifications in the CBEC circular, orders sanctioning such refund amount, in our considered view, cannot be termed as the adjudication order passed by the competent authority inasmuch as the balance sanction of refund are subject to verification of detailed records and other aspects. Thus, in absence of any final order being passed by the authorities, such interim order cannot be considered as final order, which can be reviewed by the competent authority. Since the aforesaid orders cannot be considered as final order and in view of the fact that to recover the erroneous sanctioned refund, department has issued the Show cause Notice, the same has to be properly adjudicated by the competent authority. In this particular case, since the show cause notice has not been properly adjudicated in the manner prescribed, we are of the view that the matter should go back to the learned Commissioner of Central Excise for adjudication on the proposals made in the show cause notice.

5. Therefore, after setting aside the impugned order, we remand the matter back to the Commissioner of Central Excise for proper adjudication of the show cause notice issued by the department. Needless to say that opportunity of personal hearing should be granted before adjudication of the matter.

6. Appeal is allowed by way of remand.

(dictated and pronounced in the open court)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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