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

**Date of Hearing/Order: 24.11.2017**

## Appeal No. ST/51652/2017-SM

(Arising out of Order-in-Appeal No. 220/ST/DLH/2017-18 dated 7.6.2017 passed by the Commissioner of Service Tax (Appeals), New Delhi)

M/s Ananda Books — Appellant

Vs.

CST, Delhi-I — Respondent

**Appearance**

Shri Ankur Jain, Advocate - for the appellant

Ms. Kanu Verma Kumar, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

## Final Order No. 58175/2017

### Per S.K. Mohanty:

The brief facts of the case are that the appellant is a merchant exporter and is registered with Service Tax Department. During the disputed period, the appellant had filed refund application, claiming refund of Rs. 42,12,189/- in terms of Notification No. 41/2012-ST dated 29.6.2012 on the service tax paid on the taxable service used/utilised for export of the goods. The adjudicating authority favourably considered the refund application and sanctioned the refund amount of Rs.37,73,065/-. However, rejected the refund claim for the balance amount of Rs.4,39,124/- on the ground that the refund application was not filed within the stipulated time frame of one year prescribed under the said notification. The Commissioner (Appeals) has upheld the adjudication order and rejected the appeal filed by the appellant.

2. The ld. Advocate appearing for the appellant submits that Notification No. 41/2012-ST dated 29.6.2012 has been issued under Section 93 of the Finance Act, 1994, which does not explicitly prescribe - any limitation period for claiming the refund amount and accordingly, the notification issued there under cannot prescribe a time limit for claim of refund. Thus, he submits that notification prescribing time limit will not be applicable for consideration of the refund application filed by the appellant. He further submits that the time limit prescribed under the notification is a procedural condition and since the appellant had complied with the statutory requirements under the said notification, the refund claim cannot be rejected on the basis of procedural infirmities. To support such stand, the appellant has relied on the decision of this Tribunal in the case of ***M/s Gran Overseas Ltd. Vs. CCE, Delhi –*** *2017 (1) TMI 234-CESTAT-New Delhi,* **M/s Ashok Granites Ltd. Vs. CCE & ST, Salem –** 2016 (7) TMI 1078 – CESTAT-Chennai and ***Oceans Connect India Pvt. Ltd. Vs. CCE, Pune-III –*** 2016 (9) TMI 377 – CESTAT-Mumbai.

3. On the other hand, ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that in respect of quarters ending June, 2014, September 2014 and December, 2014, the appellant had filed the refund claim on 27.4.2015, 21.7.2015 and 16.10.2015. It is apparent from the records that the refund claim applications were not filed within the prescribed time limit of one year provided under the Notification No. 41/2012 dated 29.6.2012. Since, the said notification is conditional and the benefit contained therein are available, subject to fulfilment of the conditions itemised therein, the assessee has to strictly comply with the requirement contained therein for availing the benefit of refund of service tax. Thus, the time limit prescribed in the notification cannot be considered as procedural in nature. On perusal of the relied on case laws, I find that the Tribunal has not decided the issue with regard to limitation aspect provided under the Notification No. 41/2012-ST dated 29.6.2012. Therefore, such decisions cannot be relied on in this case for considering the limitation period. In view of the fact that the Commissioner (Appeals), after proper analysis of the notification dated 29.6.2012, has dismissed the appeal of the appellant, I do not find any reason to interfere with the said order at this juncture.

6. Therefore, I do not find any merits in the appeal filed by the appellant. Accordingly, the same is dismissed..

(Pronounced in Court)

(S.K. Mohanty)
Member (Judicial)

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