CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Service Tax Appeal No. ST/51196/2017-ST [SM]

[Arising out of Order-in-Appeal No. 212/ST/DLH/2017-18 dated 31.05.2017 passed by the Commissioner (Appeals I) S.T., New Delhi .]

M/s. Kujjal Builders (P) Ltd. ...Appellant

Vs.

Commissioner (Appeals I) S.T., New Delhi …Respondent

Appearance:

Mr. Anil Sood, (Advocate) for the Appellant
Mr. G.R. Singh, DR for the Respondent

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

Date of Hearing/ Decision.17.11.2017

Final Order No. 58315 /2017

Per S.K. Mohanty:

Rejection of refund of claim on the ground of limitation, is the subject matter of present dispute.

2. In this case, the appellant had filed the application, claiming refund of Rs. 12,48,796/- on 15.07.2016 before the jurisdictional service tax authorities on the ground that service tax was erroneously paid during the period from 01.07.2013 to 14.03.2014. Since the refund application was filed beyond one year from the relevant date, the same was rejected by the

original authority in terms of Section 11 B of the Central Excise Act, 1944, as made applicable to Section 83 of the Finance Act, 1994.

3. On appeal the ld. Commissioner (Appeals), Service Tax, New Delhi has upheld the adjudication order. During the course of hearing, the ld. Advocate for the appellant has submitted a date chart to show that the refund application was filed within the stipulated time and rejection of the same by the authorities below is not proper and justified. The date chart is extracted here in below:

Date	*Particulars*
30/03/2009	*Registration of Lalit, New Delhi.*
04/11/2011	*Last amendment of registration certificate of Lalit, New Delhi.*
11/04/2013	*Registration of Lalit, Chandigarh.*
	Unit at Chandigarh was in project stage for part of month of December 2013, hence the service tax liability related to the projects was discharged at New Delhi under New Delhi Registration.
	Once the Chandigarh Unit became operational, the Service Tax liability upto the months of February 2014, instead of being discharged under Chandigarh Registration No., due to clerical error was discharged under Delhi Registration.

30/03/2014	*Appellant wrote letter to Chief Commissioner, Delhi Requesting to transfer the excess amount paid to its Chandigarh Registration for adjustments against future liabilities.*
	No response was received from the Office of Chief Commissioner as well as the jurisdictional officers.
19/07/2014	*Appellant wrote another letter to Chief Accounts Officer, O/o Chief Commissioner, New Delhi.*
	Additional Commissioner, Office of Chief Commissioner, New Delhi responded to the letter dated 30th March 2014 advising to contact the jurisdictional officer.
29/07/2016	*A reminder letter was sent to Chief Accounts Officers along with copies of earlier letters.*
	No communication was received from the Department.
15/07/2016	*Appellant filed a Refund Claim of Rs. 12,48,796/- with the jurisdictional officer claiming refund of service tax paid erroneously.*

4. On the other hand, the ld. DR appearing for the Revenue submitted that since the refund application was filed in the proper

format on 15.07.2016, the said date should be considered for the purpose of computation of limitation period for entertaining the refund application. Thus, he submitted that since such application was filed beyond the period of one year from the relevant date, the same is clearly barred by limitation of time.

5. Heard both sides and perused the records.

6. Perusal of the above date chart makes the position clear that due to inadvertence, the service tax was deposited with the jurisdictional service tax authorities at Delhi and that explaining the situation and circumstances of the case, the appellant had requested the Chief Commissioner of Delhi to transfer/ adjust the excess amount paid by it into the Chandigarh Registration Account. However, after lot of persuasion, since the Department did not consider the request of the appellant, a formal refund application was filed by it on 15.07.2016. It further transpires from the above date chart that the appellant was diligently pursuing with the authorities for the transfer of the excess paid Service Tax amount at Delhi into the Chandigarh account. The Department never responded to the letters of the appellant and also never advised the appellant for filing the proper refund application within the stipulated time frame provided under the statue. Thus, for the lapses on the part of the Department, the appellant should not be held responsible and should not be deprived of its legitimate right to claim refund of service tax as provided under the statue. Therefore, under the facts and the in the circumstance of the case, the initial letter dated 30.03.2014

filed before the Chief Commissioner of Central Excise and Service Tax, requesting for transfer/ adjustment of excess paid amount into the Chandigarh Account, should be considered as the application for refund in terms of Section 11 B of the Act. Since the said application was filed within one year from the relevant date i.e. payment of Service Tax, the claim of the appellant, in my considered view, is not barred by limitation of time.

7. Therefore, I do not find any merits in the impugned order, in the rejecting the appeal of the appellant for refund claim on ground of limitation. Accordingly, after setting aside the same, I allow the appeal in favor of the appellant.

(Operative Portion pronounced in open court)

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

Sakshi