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

Date of Hearing/Order: 6.12.2017

Appeal No. ST/1898/2010-SM

(Arising out of Order-in-Appeal No. 23(ST)/RPR-II/2010 dated 15.9.2010 passed by the Commissioner, Central Excise (Appeals), Raipur)

M/s Kalptraru Builders & Developers — Appellant

Vs.

CCE, Raipur — Respondent

Appearance

Ms. Rinky Arora, Advocate - for the appellant

Shri U. Sengraj, D.R. - for the respondent

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

Final Order No. 58365/2017

Per S.K. Mohanty :

Heard both sides.

2. Rejection of refund claim filed by the appellant is the subject matter of present dispute. The appellant herein, had filed the refund application in respect of service tax paid by it before the department. The refund application was sought to be denied on the ground that the same is partly barred by limitation of time inasmuch as, as per the provisions of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, the refund application was not filed within the stipulated time frame of one year for the relevant date. Further, the show cause notice has also sought to reject the application on the ground of unjust enrichment. While adjudicating the matter, the ld. adjudicating authority has not discussed the two

issues raised in the show cause notice and he has entirely travelled beyond the terms of the show cause notice to reject the claim of the appellant. The appellant 's grievance in this appeal is that since the adjudicating authority has travelled beyond the scope of the show cause notice, the same is not maintainable.

3. On perusal of the case records, I find that the adjudicating authority has in fact, travelled beyond the scope of the show cause notice. Since the appellant was not put to notice with regard to the findings recorded for the first time, which was the allegation in the show cause notice, by the adjudicating authority, I am of the view that the matter should go back to the original authority for a fresh fact finding, on the allegations made in the show cause notice and the submissions made by the appellant in reply to the show cause notice filed before him. Accordingly, after setting aside the impugned order, I remand the matter to the original authority for passing a speaking and reasoned order on the refund application of the appellant. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

4. In the result, the appeal is allowed by way or remand

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

RM