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

**Date of Hearing: 24.11.2017
Date of Pronouncement: 11.12.2017**

Appeal No. ST/51473/2017-SM

(Arising out of Order-in-Appeal No. 222/ST/DLH/2017-18 dated 9.6.2017 passed by the Commissioner, Service Tax, New Delhi)

M/s C.J. International Hotels Ltd. — Appellant

Vs.

CST, Delhi-I — Respondent

Appearance

Shri Rajveer Singh, Advocate - for the appellant

Shri G.R. Singh, D.R. - for the respondent

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

Final Order No. 58368/2017

Per S.K. Mohanty:

Rejection of refund claim under Section 11B of the Central Excise Act, 1944 on the ground of limitation, is the subject matter of present dispute.

2. The brief facts of the case are that the appellant sub-licensed its premises to different parties on receipt of interest free security deposits for a period of 9 years and 11 months. The agreement entered into for that purpose were subject to renewal on the same terms of conditions. The audit team of the service tax department, during the course of audit of the records of the appellant, observed

that the appellant is liable to pay service tax on Notional Interest earned on amount of security deposit received by it. On the basis of such audit objection, the appellant had deposited the service tax into the Central Government account. Thereafter, the appellant had filed the refund application dated 12.8.2009, claiming refund of Rs.31,32,562.75. The refund application was filed in Form-R, mentioning as under :

> ***"Notional Interest on the interest free deposit taken from sub licenses cannot be treated as deemed rent and cannot form the part of the gross value received for the purpose of levy of Service Tax under the category of Renting of Immovable Property."***

3. The said refund application was rejected by the refund sanctioning authority vide order dated 17.8.2012, holding that the claim application was filed beyond the prescribed time limit provided under Section 11B of the Act and hence, not maintainable. On appeal, the ld. Commissioner (Appeals) vide the impugned order has upheld the rejection of the refund application.

4. The ld. Advocate appearing for the appellant submitted that the provisions of Section 11B of the Act is not applicable to the facts of the present case, inasmuch as, the amount deposited by the appellant pursuant to the audit objections cannot be considered as service tax. Further, he also submitted that the Hon'ble Delhi High Court in WP(C) 1659 of 2008, in the case of ***Home Solution Retail***

India Ltd. & Ors. Vs. Union of India & Ors. have held that renting of immovable property for usage in the course of furtherance of business and commerce cannot be regarded as service for the purpose of levy of service tax. Thus, the appellant submitted that since the amount deposited by the appellant cannot be considered as service tax, the time limit prescribed in Section 11B of the Act cannot be applied for rejection of the same. To support such stand, the ld. Advocate has relied on the following decisions rendered by the judicial forums:

(i) ***Shravan Banarasilal Jejani Vs. CCE, Nagpur*** – 2014 (35) STR 587) (Tri.-Mumbai);

(ii) ***CCE, Pune-III Vs. Shankar Ramchandra Auctioneers*** – 2010 (19) STR 222 (Tri.-Mumbai);

(iii) ***Jubilant Enterprises P. Ltd. Vs. CCE, Mumbai*** – 2014 (35) STR 430 (Tri.-Mumbai);

(iv) ***Hexacom (I) Ltd. Vs. CCE, Jaipur*** – 2003 (156) ELT 357 (Tri.-Del.);

(v) ***Natraj and Venkat Associates Vs. Assistant Commissioner of Service Tax, Chennai-II*** – 2010 (17) STR 3 (Mad.);

(vi) ***CCE (Appeals), Bangalore Vs. K.V.R. Construction*** – 2012 (26) STR 195 (Kar);

(vii) ***CCE, Bangalore-III Vs. Motorola India Pvt. Ltd.*** – 2006 (206) ELT 90 (Kar.);

(viii) ***Ebiz.com Pvt. Ltd. Vs. CCE & ST, Noida*** – 2017 (49) STR 389 (All);

5. On the other hand, the ld. DR appearing for the Revenue submitted that since the appellant had deposited service tax under the category of renting of immovable property service and claimed such refund under Section 11B of the Act, the time limit prescribed

under such statutory provision is strictly applicable for consideration of such refund application. He also submitted that the authorities functioning under the statute are not competent or empowered to relax the limitation period prescribed in the statute for entertaining the refund application. In this context, the ld. DR has relied on the judgement of the Hon'ble Supreme Court in the case of ***Miles India Ltd. Vs. Assistant Collector of Customs*** – 1987 (30) ELTG 641 (SC), ***Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills*** – 1988 (37) ELT 478 (SC) and ***Asstt. Collector of Customs Vs. Anam Electrical Manufacturing Co.*** – 1997 (90) ELT 260 (SC), to state that the authorities functioning under the statute are bound by its provisions.

6. Heard both sides and perused the case records.

7. In this case, the undisputed and admitted facts are that the appellant had paid service tax under the taxable category of renting of immovable property service, pursuance to the objections raised by the Audit Wing of the Service Tax Department and such amount paid by the appellant was claimed as refund in the prescribed format provided under Section 11B of the Central Excise Act. Since, the appellant has filed a refund application under Section 11B of the Act, the said application was considered and entertained by original authority in terms of the statutory provisions and rejected the

application, on the ground that the claim application was filed beyond the prescribed limit of one year from the relevant date.

8. With regard to time limit for filing the refund application, the Hon'ble Supreme Court in the case of ***Doaba Co-operative Sugar Mills*** (supra) held that in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the rules famed there under should be adhered to. It has further been held that the authorities functioning under the Act are bound by the provisions of the Act. Further, in the case of ***Miles India Ltd.*** (supra) and ***Anam Electrical Manufacturing Co.*** (supra) the Hon'ble Apex Court have ruled that if the proceedings are taken by the authorities under the Act, the provisions of limitation prescribed in the Act will alone prevail and the authorities functioning thereunder, cannot take contrary view to decide the limitation aspect differently.

9. In view of the settled position of law, and in view of the fact that the refund application was filed by the appellant and decided by the authorities under Section 11B of the Act, the time limit prescribed therein should be strictly followed in entertaining the refund application. The law is well settled that the adjudicating/appellate authorities being the creature under the

statute, are duty bound to obey the provisions of statute contained therein. Therefore, I am of the view that the refund application rejected by the authorities below is in conformity with the statutory provisions. On perusal of the case laws relied on by the ld. Advocate for the appellant, I find that the ratio laid down by the Hon'ble Supreme Court (referred supra) has not been discussed or referred to in the said cited decisions. Thus, in absence of contrary judgement on the subject issue by the competent Court, the decisions cited by the ld. Advocate cannot be relied upon to hold the subject issue differently.

10. Therefore, I do not find any infirmity in the impugned order. Accordingly, dismiss the appeal filed by the appellant.

(Pronounced in Court on 11.12.2017)

(S.K. Mohanty)
Member (Judicial)

RM