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

Date of Hearing/Order : 25.10.2017

Appeal No. ST/120-122/2010-DB

(Arising out of Order-in-Appeal No. 126-128-CE/MRT-I/2009 dated 30.9.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I)

M/s Sterlite Technologies Ltd. Appellant

Vs.

CCE, Meerut-I Respondent

Appearance

Shri Udit Jain, Advocate - for the appellant

Shri N. Garg, A.R. - for the respondent

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

Final Order No. 58406-58408/2017

Per S.K. Mohanty :

These appeals are directed against the impugned order dated 30.9.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut, whereby, refund applications filed by the appellant were rejected on the ground that the same were filed beyond the prescribed time limit of 60 days provided under the Notification No. 41/2007-ST dated 6.10.2007.

2. The ld. Advocate appearing for the appellant submits that the time limit of one year prescribed under Section 11B of the Central Excise Act, 1944 should be applicable for entertaining the refund application claim should be filed within one year from the relevant date. He further submits that since the statute provides the time limit of one year for filing the refund application, the Central Govt. through the Notification dated 6.10.2007 cannot prescribe a different period for filing and entertaining refund application. Thus, he submits that since the refund application was filed within the stipulated time frame of one year from the relevant date, the same is not barred by limitation of time and the appellant should be entitled for refund of service tax paid by it. The ld. Advocate further submits that the appellant is entitled for refund of service tax paid during the quarter April 2008 to June 2008, inasmuch as, the refund claim was filed within six months from the date of issuance of the amending Notification No. 32/2008-ST dated 18.11.2008.

3. On the other hand, the ld. DR appearing for the Revenue submits that the Notification dated 6.10.2007 grants exemption from payment of service tax and such exemption is provided by way of refund. Since the Notification dated 6.10.2007 clearly provides that refund application should be filed on a quarterly basis, within 60 days from the end of the relevant quarter, such time limit provided in the notification has to be strictly adhered to for consideration of

the refund application. Thus, she submits that since the refund application was not filed within the stipulated time as prescribed under the Notification dated 6.10.2007, the same is clearly barred by limitation of time. Accordingly, rejection of the refund applications by the authorities below is in conformity with the terms and conditions provided in the said notification. To support such stand, the ld. DR has relied on the decision of this Tribunal in the case of ***CCE Indore Vs. K.S. Oils Ltd. -*** 2017 (52) STR 261 (Tri.-Del.).

4. Heard both the sides and examined the case records.

5. It is an admitted fact on record that the refund claim in respect of the period October, 2007 to Dec. 2007, Jan. to March 2008, and April 2008 to June 2008 were filed by the appellant on 27th June 2008. As per the provisions of Notification dated 6.10.2007, the same were required to be filed on 29.2.2008 and 30.5.2008. Thus, it is evident that the refund claims were filed beyond the stipulated time frame, provided in the Notification dated 6.10.2007. With regard to consideration of the time limit of one year for filing of the refund application as provided under Section 11B ibid, we are of the view that the time limit prescribed therein is not applicable under the facts and circumstances of the present case, inasmuch as, the Notification dated 6.10.2007 grants exemption from payment of

service tax and such exemption is monitored/administered by way of filing the refund application. Since the present refund application is in relation to availment of the exemption, and is no way, connected with the erroneous payment of service tax, the time limit provided under Section 11B of the Act is not applicable and the time frame prescribed in the Notification dated 6.10.2007 is strictly applicable for consideration of the refund application. In context with the present dispute, this Tribunal in the case of ***K.S. Oils*** (supra) has held that the time limit provided under Notification No. 41/2007 dated 6.10.2007 is strictly applicable for consideration of refund of service tax. The relevant paragraphs in the said decision is extracted herein below.

> "**8.** We have also referred to the cases relied upon by the Revenue to state that the time limit mentioned in the notification cannot be ignored by the sanctioning authority. In *Principal Commissioner of S.T.* v. *R.R. Global Enterprises Pvt. Ltd.* reported in 2016 (45) S.T.R. 5 (A.P.), the Hon'ble High Court at Hyderabad held that :-
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> > "45. Once a full-fledged system is put in place, for the exercise of discretion, the compliance with the requirements of such a system alone will remove any kind of arbitrary exercise of power. The Courts are obliged to interpret notifications of this nature, in such a manner that the power of discretion is reduced to the minimum."
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> **9.** The Hon'ble High Court was examining the question whether the conditions stipulated in an exemption notification can be said to be a mere matter of procedure, on which some amount of laxity can be given. It was held that the conditions mentioned in the notification cannot be considered as mere procedural requirements which can be relaxed. Further, in *Midex Global Pvt. Ltd.* v. *CCE,*

> *Indore* reported in 2016 (41) S.T.R. 125 (Tri.-Del.), it was held that the exemption available will be only on fulfilment of conditions prescribed therein. The Tribunal held that Notification No. 41/2007 is available only on fulfilment of condition including filing of claim within time limit prescribed therein. The Tribunal noted that this is an exemption notification and not a refund within the scope of Section 11B. Similar ratio was adopted in *Spark Engineering P. Ltd.* v. *CCE, Ghaziabad* reported in 2013 (31) S.T.R. 71 (Tri.-Del.), in *Calcutta Export Company* v. *CCE, Kolkata-II* reported in 2016 (44) S.T.R. 672 (Tri.-Kolkata), *Sakay Overseas* v. *CCE, Ludhiana* reported in 2014 (33) S.T.R. 456 (Tri.-Del.) and *H.R. International (Unit-II)* v. *CCE, Ludhiana* reported in 2015 (37) S.T.R. 649 (Tri.-Del.).
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> **10.** Considering the above discussion and decided cases and on careful examination of the provisions of Notification 41/2007, we find that the condition of time limit specified in the said notification to claim the exemption by way of filing a claim has to be adhered to by the respondent. There is no provision to extend the said time limit. There is no reason to bring in the provisions of Section 11B in the absence of any such link or reference in the said notification. Accordingly, we find the impugned order is not legally sustainable. The same is set aside. The original order is restored. The appeal by Revenue allowed. The cross objection is also disposed of."

6. In view of above settled position of law, the refund claims filed in respect of quarter ending October to Dec. 2007 and Jan. to March 2008 are barred by limitation of time and thus, there is no infirmity in impugned order, in rejecting the refund claims filed by the appellant.

7. However, with regard to the refund claim filed for the quarter ending April 2008 to June 2008, in terms of the notification dated

18.11.2008, the same is not barred by limitation of time, having been filed within six months from the relevant date. However, since this limitation aspect has not been dealt with by the authorities below, we are of the view that the matter should go back to the original authority for proper verification of the refund applications to ascertain, whether such applications were filed within the prescribed time limit prescribed under Notification No. 32/2008-ST dated 18.11.2008. The original authority should also record his findings with regard to entitlement of the claim on merits. Therefore, with regard to the refund application filed for the quarter April to June, 2008, the matter is remanded to the original authority for deciding the issue afresh, in line with our above observations.

8. The appeals are disposed of in above terms.

(Dictated & pronounced in open Court)

(B. Ravichandran)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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