CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/203/2009-ST [DB]

[Arising out of Order-in-Appeal No. 78/AC/DLH/2008 dated 31.12.2008 passed by the Commissioner (Appeals), Central Excise, New Delhi-I.]

M/s. ITC Ltd. (Hotel Division) …Appellant

Vs.

C.C.E.- Delhi-I … Respondent

Appearance:
Mr. Ravinder Narain, (Advocate) for the Appellant
Mr. Amresh Jain, DR for the Respondent

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

Date of Hearing.28.11.2017
Date of Decision.__21.02.2018

Final Order No. 50715/2018

Per S.K. Mohanty:

Rejection of refund claim on the ground of limitation, is the subject matter of present dispute. In this case, the appellant had filed the refund claim on 12.11.2007 in respect of the Service Tax paid by it prior to the period 11.11.2006. Since the refund application was filed beyond the stipulated time frame of one year from the relevant date, the authorities below have rejected the same in terms of Section 11 B of the Central Excise Act, 1944, as made applicable to the Finance Act, 1994.

2. The ld. Advocate appearing for the appellant submitted that the appellant was not liable to pay the service tax on the service provided by it and since the amount was paid and retained by the Department, the limitation provided under Section 11 B *ibid* would not be applicable for consideration of the refund application. To support the stand that the time limit prescribed under Section 11 B of the Act will not be applicable to the refund claim of the appellant, the ld. Advocate has relied the following judgment delivered by the judicial forums:-

Indo Nippon Chemicals Company Ltd. Vs. UOI 2005 (185) ELT 19(Gujrat), Assistant Commissioner Vs. Indo Nippon Chemical Co. Ltd 2006 (186) ELT A117 (SC), Hind Agro Industries Ltd Vs. Commissioner of Customs 2008(221) ELT 336 (Delhi), In House Production Ltd. Vs. Commissioner of Service Ta, Mumbai 2007 (3) G.S.T.L 97 (Bom.), Monnet International Ltd. Vs. Commr, C. Ex. New Delhi 2017 (3) G.S.T.L 380 (Tri.- Del.) & Commissioner Vs. KVR Construction 2012 (26) STR 195 (Kar.)

3. On the other hand, the ld. DR appearing for the Revenue reiterated the finding recorded in the impugned order and further submitted that since the appellant had filed the refund application under Section 11 B *ibid*, the time limit prescribed in the Central Excise statue has to be strictly adhered to and the authorities functioning under the statue cannot relax the time frame for consideration of the refund application filed beyond the limitation period. He has relied on the judgment of Hon’ble Supreme Court

in the case of *Miles India Limited Vs. Asstt. Collector, Customs- 1987 (30) ELT 641 (S.C.), Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills- 1988 (37) ELT 478 (S.C.) and Assistt. Collector of Customs Vs. Anam Electrical Manufacturing Co. 1997 (90) ELT 260 (S.C.)*, to state that the authorities functioning under the statue are bound by its provisions.

4. Heard both sides and perused the records.

5. The fact is not under dispute that the appellant had filed the refund claim for refund of service tax beyond the period of one year from the date of payment. The refund claim, in this case, was filed by the appellant in the prescribed format as provided under Section 11 B of the Act. The statutory provisions contained in Section 11 B *ibid* provides the time limit of one year for filing the refund application. In this case, as per the explanation (B) (f) appended to Section 11 B, the relevant date should be reckoned from the date of payment of the Service Tax. Since, the refund application was filed by the appellant beyond one year from such relevant date, as per the mandates of Section 11 B, the refund application is clearly barred by limitation of time.

6. In Context with the mandatory time limit for filing the refund application, the Hon'ble Supreme Court in the case of *Doaba Co-operative Sugar Mills (*supra), held that if proceedings have been taken under the statue by the Department, the provision of limitation, prescribed under that statute will alone

prevail with regard to applicability of the time limit for filing the refund claim. The Hon'ble Supreme Court in the said case have also held that when the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed there-under have no application, the decision will be guided by the General Law and the date of limitation would be the starting point, when the mistake or the error comes to light; whereas, in making claims for refund before the Departmental Authority, an assessee is bound within the four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed there-under must be adhered to. Further, the Hon'ble Supreme Court in the case of *Anam Electrical Manufacturing Co.* (supra) have also held that the period prescribed under the statue for filing a refund application in the case of illegal levy cannot be extended by any authority or court. Furthermore, the Hon'ble Supreme Court in the case of *Miles India Limited* (supra), while endorsing the views expressed by the Tribunal, have held that the customs authority acting under the Act were justified in disallowing the Claim of refund, as they were bound by the period of limitation provided under Section 27 of the Customs Act, 1962. In view of the above settled position of law that the authorities are bound to obey provisions contained in the statue, we are of the considered opinion that rejection of refund application by the authorities below is in conformity with the statutory provisions.

7. In view of the law laid down by the Hon'ble Supreme Court in the above referred cases, which have the direct bearing on the issue involved in this case, there is no need of going through the decision/orders relied on by the appellant for deciding the issue differently. Even otherwise, it is clear that the amount, now claimed as refund, has been deposited to Government account as service tax. Return of such amount is prayed for with the service tax Department under the provisions of Finance Act, 1994 read with Section 11 B of Central Excise Act, 1944. The authority examining the said claim is bound by the legal provisions of these Acts in discharging his duties.

8. Therefore, we do not find any infirmity in the impugned order. Accordingly, the appeal filed by the appellant is dismissed.

(Pronounced in the open court on ___21.02.2018_)

(**B. Ravichandran**)
Member(Technical)

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

Sakshi