

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

COURT NO. II

DATE OF HEARING : 25/04/2018.

DATE OF DECISION : 14/05/2018.

Service Tax Appeal No. 50357 of 2018 (SM)

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-296-17-18 dated 28/09/2017 passed by The Commissioner (Appeals), Customs, Central Excise & CGST, Bhopal.]

M/s MDP Infra (India) Pvt. Ltd.

Appellant

Versus

CCE, Bhopal

Respondent

Appearance

Ms. Vibha Narang, Advocate – for the appellant.

Shri K. Poddar, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**

Final Order No. 51822/2018 Dated : 14/05/2018

Per. Archana Wadhwa :-

After hearing both sides fully represented by Ms. Vibha Narang, Advocate for the appellant and Shri K. Poddar, learned AR for the Revenue, I find that the appellant was registered with the service tax department under the category of Works Contract Service. As the appellant was providing construction services to various Government authorities, they were availing the benefit of

exemption in terms of Sl. No. 12 of Notification 25/2012-ST dated 20/06/2012.

2. The above exemption to be withdrawn by Notification No. 6/2015-ST dated 01/03/2015. Accordingly, the appellant deposited an amount of Rs. 25,49,317/- for the period 01/03/2012 to 30/09/2012.

3. Under the Finance Bill, 2016, the above exemption was restored by incorporation of Section 102 under the Finance Act, wherein it has been provided that the no service tax shall be levied or collected during the period commencing from the **1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive)**, in respect of taxable services provided to the Government, a local authority or a Government authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of civil structures etc. under a contract entered into before 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date. The Section further provided that :-

“(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected has sub-Section (1) been in force at all the material times ;

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of

service tax shall be made within six months from the date on which the Finance Bill, 2016 receives assent of the President".

4. The Finance Act, 2016 received assent from the President on 14/05/2016 and accordingly, the Assessee was required to file refund under above provision of Section 102 by 13/11/2016.

5. The appellant applied for refund of the said amount on 24/03/2017 i.e. beyond the period of 60 days and with a delay of 131 days. Accordingly, they were issued a show cause notice dated 01/05/2017 proposing to reject the claim on the ground of time bar, having been filed beyond the period of one year from the date of payment of tax in terms of Section 11B of the Central Excise Act, 1944. The refund was also beyond the period of 60 days from the date of receipt of the assent of the president in terms of Section 102 of the Finance Act, 2016.

6. The said show cause notice culminated into a order passed by the Assistant Commissioner rejecting the refund claim as barred by limitation and upheld by Commissioner (Appeals). Hence, the present appeal.

7. Commissioner (Appeals) in his impugned order observed that Section 102 of the Finance Act, 2016 is a self-contained provision for refund of any tax paid during the impugned period. As the said section provides the time limit of six months for filing refund claim from the date of enactment of the Finance Act,

2016, the claim having been filed beyond the said prescribed period of six months is barred by limitation.

On the other hand, the appellants have argued that time limit is a procedural aspect and the retrospective exemption having been granted by the legislative, the Revenue has no authority to retain the amount, in question. The same has to be considered as a deposit in which case time limitation would not apply. Accordingly, a prayer is made to allow the substantial right of the appellant to claim the refund, which should not have been denied on the procedural grounds.

8. Having carefully heard the submissions of both the sides, I find that there is no dispute on the facts. The retrospective exemption having been granted by the legislative, there was a clause for refund of the tax paid during the intervening period subject to the condition that such refund claim are filed within the period of six months. Admittedly, the refund stands filed beyond the said period, thus, contravening the condition. There is no power with the Central Excise Authorities to legislate or to travel beyond the statutory limitations provided by the legislature. Similarly, neither the Tribunal has such powers to go beyond the provisions of the Act. The issue is well settled. Reference can be made to Hon'ble Supreme Court decision in the case of **Porcelain Electrical Mfg. Co. vs. CCE, New Delhi – 1998 (98) E.L.T. 583 (S.C.)**, wherein it was observed that the refund claim filed before departmental authorities are to be

governed by the time limit provided under the statute and the general law of limitation invoked by various High Courts under their extra-ordinary jurisdiction is inapplicable to the cases where the refund obligations has been moved before the Revenue authorities.

9. As the law on the issue is settled, I find no reasons to interfere in the impugned orders of authorities below. Accordingly, the appeal filed by the appellant is rejected.

(Order pronounced in open court on 14/05/2018.)

(Archana Wadhwa)
Member (Judicial)

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