

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

Date of Hearing/Order: 15.6.2018

Appeal No. ST/50422/2018-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-371-17-18 dated 24.10.2017 passed by the Commissioner (Appeals), GST, Customs, Central Excise, Bhopal)

M/s Standard Auto Agencies

Appellant

Vs.

CGST & CE, Bhopal

Respondent

Appearance

Shri Rakesh Khandelwal, C.A.

- for the appellant

Shri P. Junega, DR

- for the respondent

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

Final Order No. 52465/2018

Per Archana Wadhwa:

After hearing both the sides duly represented by Shri Rakesh Khandelwal, Id. Counsel appearing for the appellant and Shri P. Junega, Id. AR appearing for the respondent, I find that the appellant, who is engaged in providing business auxiliary services, was paying service tax on the same during the year 2012-2013 to 2014-2015. Subsequently, VAT department demanded VAT on the same by treating the same as a part of the sale price of motor vehicles. The appellant contested the payment of VAT but simultaneously filed a refund claim of service tax before the Service Tax jurisdictional Central Excise officer on the ground that VAT as well as service tax

cannot be paid in respect of the same transactions as they are mutually exclusive. The said refund claim was filed by them on 5.5.2016 to the extent of Rs. 30.95 lakhs approximately.

2. The lower authorities has rejected the refund claim on the issue of time bar. It was also seen by the authorities that the VAT has been charged only on the value of the cars and not on the value of the logistics and there was only a demand by the VAT department to include the logistic charges in the value of the cars for the purpose of VAT. The order of the original adjudicating authority rejecting the refund claim was upheld by Commissioner (Appeals) and hence the present appeal.

3. For better appreciation, the reasoning adopted by the Commissioner (Appeals) for rejection of the refund claim is reproduced below:

“9 Section 11B of Central Excise, Act, 1944 is a self contained provision governing the refund of Central Excise duty and which have been made applicable to service tax matter. The said section provides for time limit within which a refund claim has to be filed. The said section nowhere stipulates that time taken by the court will be excluded. In fact Section 11B(3) provides that all cases would be governed by this section which read as under:

(3)Notwithstanding anything to be contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the

time being in force, no refund shall be made except as provided in sub-section(2)

10 Hon'ble Supreme Court in the case of Mafatlal Industries Limited has held that all claim for refund are to be preferred and adjudicated upon under Section 11B of the Act. The Limitation Act has no applicability in the issue at hand and the same shall be governed by the section 11B of the Act. Reliance is placed on the Apex Court's decision in the case of Porcelain Electrical Mfg. Co. Versus Collector of C. Ex., New Delhi-1998 (98) E.L.T. 583 (S.C.) wherein it was held as under:-

Refund-Limitation-Refund claim filed before Departmental authorities to be governed by the time limit provided under the statute-General Law of Limitation not available-Decisions where assessee has invoked extraordinary jurisdiction of the High Court and the Courts have applied the period of limitation of 3 years- Inapplicable to cases where the refund application has been moved before the Revenue authority."

4. Ld. Advocate appearing for the appellant has not disputed the fact that the refund claims stand filed by them after the period of one year. He has however argued the matter on merits that since there is a proposal by VAT department to levy VAT on logistic charges, no service tax would be payable by them. For the above proposition, he has relied upon various decisions of the Courts.

5. I find that there is no dispute about the fact that VAT and service tax are mutually exclusive levies. If VAT is paid on anything, the same would not attract service tax. However, in the present case, it is seen that the appellants have not paid VAT on the logistic

charges and it is only on the basis of a proposal by the VAT Department to levy VAT on logistic charges, they have approached the Service Tax Department for refund of the service tax.

In any case and any view of the matter, the refund claims stands filed after a period of one year from the relevant date in terms of Section 11B of the Act. As rightly observed by Commissioner (Appeals), the Apex Court's decisions, referred in the said order are fully applicable to the facts of the present case. All the refund claims are governed by the provisions of Section 11B and the time limit prescribed therein is required to be adhered to by the Revenue authorities. Tribunal being a creature of the law and working under the Act, is bound by the provisions of the Act and has no extraordinary jurisdiction to dilute the limitations prescribed under the law. The Hon'ble Supreme Court in the case of ***Porcelain Electrical Mfg. Co. Vs. Collector of Central Excise, New Delhi*** - 1998 (98) ELT 583 (SC) has observed that all departmental authorities are bound by the limitations prescribed under Section 11B and cannot exercise the extraordinary jurisdiction, exercised by the High Courts and the Hon'ble Supreme Court.

6. Inasmuch as admittedly the refund claims stand filed beyond the normal period of limitation of one year, I find no justifiable

reason to interfere in the impugned order of the authorities below.

Accordingly, appeal is rejected.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

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