IN THE CUSTOMS, EXCISE & SERVICE TAXAPPELLATE TRIBUNAL
New Delhi – 110 066.

PRINCIPAL BENCH –COURT NO. 1

Service Tax Appeal No. 52503 of 2016 -DB

(Arising out of Order-in-Appeal No. 14-15/ST/DLH/2016-17 dated 25 May, 2016 passed by the Commissioner (Appeals-I), Service Tax, New Delhi)

M/s Louis Dreyfus Commodities India Private Limited **Appellant**
RNM Centre 68/2 Janpath,
New Delhi-110001

Versus

Commissioner (Appeals-I), Service Tax, Delhi **Respondent**
Room No. 208, 17-B,
IAEA Bhavan, M.G. Marg,
Indraprastha Estate,
New Delhi

With
Service Tax Appeal No. 52504 of 2016

(Arising out of Order-in-Appeal No. 16/ST/DLH/2016-17 dated 30 May, 2016 passed by the Commissioner (Appeals-I), Service Tax, New Delhi)

M/s Louis Dreyfus Commodities India Private Limited **Appellant**
RNM Centre 68/2 Janpath,
New Delhi-110001

Versus

Commissioner (Appeals-I), Service Tax, Delhi **Respondent**
Room No. 208, 17-B,
IAEA Bhavan, M.G. Marg,
Indraprastha Estate,
New Delhi

And
Service Tax Appeal No. 52519 of 2016

(Arising out of Order-in-Appeal No. 14-15/ST/DLH/2016-17 dated 25 May, 2016 passed by the Commissioner (Appeals-I), Service Tax, New Delhi)

M/s Louis Dreyfus Commodities India Private Limited **Appellant**
RNM Centre 68/2 Janpath,
New Delhi-110001

Versus

Commissioner (Appeals-I), Service Tax, Delhi **Respondent**
Room No. 208, 17-B,
IAEA Bhavan, M.G. Marg,
Indraprastha Estate,
New Delhi

<u>Appearance:</u>
Ms. Smruti Amin, Advocate for the appellant
Shri Sanjay Jain, Authorised Representative for the Department

<u>CORAM:</u>
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: 09/07/2019

<u>Final Order No. 50946-50948/2019</u>

Justice Dilip Gupta:

These three appeals seek to challenge the orders passed by the Commissioner (Appeals) to the extent the claims filed for a period beyond one year from the date of export of the goods for refund under Notification No. 17/2009 dated 7 July 2009 were rejected.

2. The appellant is engaged in the export of various items to overseas buyers and for the said business, the appellant utilised services such as:

(i) Clearing and Forwarding Agent Service;
(ii) Terminal Handling Service;
(iii) Customs House Agent Service;
(iv) Technical Inspection and Certification service.

3. The appellant claims to have paid service tax on the aforesaid services but the appellant could not take the credit of input services as it is engaged only in export. The appellant, however, filed a claim for refund in terms of a notification dated 7 July 2009. The said notification was issued in exercise of the powers conferred under Section 93(1) of the Finance Act, 1994, in supersession of the earlier Notification No. 41/2007 dated 6 October, 2007. The relevant portion of the notification is reproduced below:

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 41/2007-Service Tax, dated the 6th October, 2007, published in the Gazette of India, Extraordinary, vide number G.S.R. 645(E), dated the 6th October, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in column (3) of the Table below (hereinafter referred to as specified services) received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods (hereinafter referred to as said goods) pertaining to sub-clauses of clause(105) of section 65 of the said Act specified in the corresponding entry in column(2) of the said Table, from the whole of the service tax leviable thereon under section 66 and section 66A of the said Act, subject to the conditions specified in the corresponding entry in column (4) of the said Table :

Provided that-

(a) the exemption shall be claimed by the exporter for the specified service received and used by him for export of the said goods;

(b) the exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified service used for export of the said goods;

(c) the exporter claiming the exemption has actually paid the service tax on the specified service to its provider;

(d) no CENVAT credit of service tax paid on the specified service used for export of said goods has been taken under the CENVAT Credit Rules, 2004;

(2) the exemption shall be given effect to in the following manner, namely :-

(a) ………

(b) ………

(c) ………

(d) ……….

(f) the claim for refund shall be filed within one year from the date of export of the said goods."

4. The claims for refund filed within one year from the date of export of goods were allowed but claims filed beyond one year

were rejected. The details of the refund claims in the appeals are as follows:

Sr. No.	CESTAT Appeal Number	Period involved	Refund claim date	Refund applied	Refund rejected
1.	ST/52503/2016	Oct-Dec.-2010	08/12/2011	34,55,930.00	28,13,074.00
2.	ST/52504/2016	July-Sept 2011	10/07/2012	23,99,743.00	11,41,629.00
3.	ST/52519/2016	Jan-March 2011	16/03/2012	21,85,307.00	21,48,442.00
	Total			**80,40,980.00**	**61,03,145.00**

5. Ms. Smruti Amin, learned Counsel appearing for the appellants has submitted that the Commissioner (Appeals) committed an illegality in rejecting the claims for the reason that the delay in filing the refund claims was a procedural lapse and should have been condoned once it was found as a fact that the appellant was eligible for refund. In support of this contention, learned Counsel placed reliance on the decision of the Mumbai Tribunal in **Commissioner of Central Excise, Pune Vs. Chandrashekhar Export**[1]

6. The learned Authorised Representative of the Department has, however, submitted that the claim for refund has to be filed within one year from the date of export of the goods and, therefore, the Commissioner (Appeals) committed no illegality in disallowing such refunds made for a period beyond one year from the date of export of goods. In support of this contention, learned

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1. **2015-TIOL-2448-CESTAT-MUM**

Authorised Representative has placed reliance upon a decision of the Gujarat High Court in **Patel Construction Company Vs. Assistant Commissioner of Service Tax**[2]**,** and decisions of the Tribunal in **Commissioner of Central Excise, Indore Vs. K.S. Oils Ltd.**[3] **–**and **Salora International Ltd. Vs. Commissioner of Service Tax, Delhi**[4]**.**

7. The appellant is an exporter engaged in export of items such as Maize, Cotton, Coffee and Oil Seeds to overseas buyers during the relevant period. It claims to have received input services such as Clearing and Forwarding Agent Service, Terminal Handling Service, Custom House Agent Service and Technical Inspection and Certification Service in connection with the export of the aforesaid goods and paid service tax thereon. The appellant could not take the credit of input services as it was in the business of export. The Notification dated 7 July, 2009, however, enabled the appellant to claim refund. The appellant, accordingly, filed three refund applications for the period October - December, 2010, January - March, 2011 and July - September, 2011 on 8 December, 2011, 16 March, 2012 and 10 July, 2012 respectively. The Notification dated 7 July, 2009 provides that the claim for refund shall be filed within one year from the date of export of the said goods. It is not in dispute that the refund applications filed by the appellant covered both the periods namely those within one year and those beyond

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2. 2017(50) STR 257(Guj.)
3. 2017 (52) STR 261 (Tri.-Del.)
4. 2017 (47) STR 177 (Tri.-Del.)

one year. The appellant has been granted refund for claims filed within one year but refund has been disallowed for the claims filed the period beyond one year.

8. The contention of learned Counsel for the appellant is that the delay in filing the refund claim is a procedural lapse and can be condoned and in this connection, learned Counsel placed reliance upon the decision of the Mumbai Tribunal in **Chandrashekhar Exports.** The contention of learned Authorised Representative of the Department is that the delay in filing the refund claims cannot be condoned as the notification itself provides that the claim for refund has to be filed within one year from the date of export of the said goods. In this connection, has placed reliance upon a decision of the Madras High Court and the two decisions of the Tribunal, to which we shall refer to.

9. It is not possible to accept the contention of learned Counsel for the appellant that the delay in filing of the refund claim is merely a procedural lapse and can be condoned. There is nothing in the notification which may lead to such an inference. In fact, the notification categorically states that the claim for refund **"shall"** be filed within one year from the date of export of the said goods. The notification does not contain any provision for condoning the delay in filing the claim for refund. This issue was examined by the Gujarat High Court in **Patel Construction Company,** though in connection with the provisions of Section 11B of the Central Excise Act, 1944. The Court observed that no relief can be granted

contrary to the statute and, therefore, no direction can be issued to an Authority to condone the delay in filing the refund application. In **K.S Oils Limited,** the application was filed claiming refund in terms of Notification No. 41/2007 dated 6 October, 2007, which notification, as noticed above, had been superseded by the subsequent notification bearing No. 17/2009 dated 7 July, 2009. The provisions relating to claim of refund are identical in both the notifications as the claim for refund has to be filed within one year from the date of export of the said goods. The Tribunal, after considering various decisions of the High Court and the Tribunal, observed that the time limit specified in the notification to file a claim for refund has to be adhered to, since there is no provision to extend the said time limit. The observations are as follows:

> **"6.** We have heard both the sides and perused the appeal records. The only dispute in the present appeal is the applicability of time limit for filing claim under Notification No. 41/2007-S.T. The said notification is an exemption notification issued in terms of Section 93(1) of Finance Act, 1994. It exempts taxable services listed therein, received by an exporter and used for export of goods, from the whole of service tax leviable thereon subject to certain conditions. The exemption is to be claimed by the exporter, by way of refund claim. The time limit for filing such claim has been mentioned in para 2(e) for the said notification. The notification does not refer to any other supporting provision, like Section 11B of the Central Excise Act, 1944 with reference to time limit. As already noted, Notification No. 41/2007 is dealing with exemption and Section 11B of Central Excise Act deals with refund of excess/erroneously paid duty. Notification No. 41/2007 is a self-contained exemption procedure which also stipulates certain time limits for claiming the said exemption by way of refund. Such time limit cannot be brushed aside as simple technical procedural requirement.
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> **7.** We have referred to various decided cases relied upon by both the sides. The respondent relied on various cases in support of the impugned order. In CCE, Pune v. Chandrashekhar Exports reported in 2015-TIOL-2448-CESTAT-MUMBAI, Sandoz Polymers Pvt. Ltd. v. CST, Ahmedabad reported in 2013 (30) S.T.R. 527 (Tri.-Ahmd.) and Raymond Ltd. v. CCE, Mumbai-III reported in 2015 (38) S.T.R. 441 (Tri.-Mumbai), the discussion and reference was to provision of Notification No. 17/2009-S.T. also. Admitted, the said notification which succeeded Notification No. 41/2007-S.T. provided for time limit of one year for filing refund claim. We note that in the present case the claim was filed in February, 2009 much before the issue of Notification No. 17/2009-S.T., dated 7-7-2009. Similarly, in Gran Overseas Ltd. v. CCE, Delhi-I

reported in 2016-TIOL-3373 (CESTAT-Del.), the Tribunal relied on earlier decision in Chandrashekhar Exports (supra) which relied on Raymond Ltd. (supra). The reference is to applicability of Notification No. 17/2009. In Bandedkar Brothers Pvt. Ltd. v. CCE, Goa reported in 2015-TIOL-2485-CESTAT-MUMBAI, the Tribunal examined the scope of amending Notification No. 32/2008-S.T. which substituted "six months" in place of "60 days" for filing claim under Notification No. 41/2007. Further, we note that reference was made regarding applicability of provisions of Section 11B being a substantive provision of Act which will prevail on notification which is only supplementary. We find the notification has no reference to Section 11B. This is an exemption notification issued under Section 93(1). The procedure to claim exemption is *post facto*, by way of a refund with binding conditions. Non-fulfilment of any one of the conditions will put the claim for notification in jeopardy.

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 :-

> "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."

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.).

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."

10. The same view was expressed by the Tribunal in **Salora International Limited and K.S. Oils.** The Mumbai Bench of the Tribunal in **Chandrashekhar Exports,** on which reliance was placed by the learned Counsel for the appellant referred to the decision of the Tribunal in **Raymond Limited Vs. Commissioner of Central Excise, Mumbai-III[5].** In the said decision itself, the Bench observed that the refund claims had been filed within a period of one year from the date of the export of the goods. The issue was whether the time period would be covered by the Notification No. 41/2007 or the amended Notification No. 17/2009. It is not the case of the appellant that by any subsequent notification a different time period was prescribed. The aforesaid decision, therefore, does not come to the aid of the appellant.

11. Thus, for all reasons stated above, the Commissioner (Appeals) committed no illegality in rejecting the claim for refund made beyond the period of one year from the date of export of the goods. The appeals are, accordingly, dismissed.

(Dictated & pronounced in open Court)

(Justice Dilip Gupta)
President

(Bijay Kumar)
Member (Technical)

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5. 2015 (38) STR 441 (Tri.-Mumbai).