CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. III

SERVICE TAX APPEAL No. 52815 OF 2018

(Arising out of Order–in-Original No. 36-37-CKJ-ST-UDR-2018 dated 29.01.2018 passed by COMMISSIONER OF CENTRAL EXCISE-Udaipur)

M/s. Ridhi Sidhi Developer **... Appellant**
J.D. Arcade, L A-103, 2nd Floor,
Shastri Nagar, Jodhpur,
Rajasthan

Versus

Commissioner of Customs, **.... Respondent**
Central Excise, Udaipur
142-B, Hiran Magari, Sector-11
Near Shahi Bagh, Udaipur,
Rajasthan

And

SERVICE TAX APPEAL No. 53070 OF 2018

(Arising out of Order–in-Original No. 36-37-CKJ-ST-UDR-2018 dated 29.01.2018 passed by COMMISSIONER OF CENTRAL EXCISE-Udaipur)

M/s. Ridhi Sidhi Developer **... Appellant**
J.D. Arcade, L A-103, 2nd Floor,
Shastri Nagar, Jodhpur,
Rajasthan

Versus

Commissioner of Customs, **.... Respondent**
Central Excise, Udaipur
142-B, Hiran Magari, Sector-11
Near Shahi Bagh, Udaipur,
Rajasthan

APPEARANCE:

Mr. Pradeep Jain, Advocate for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Date of Hearing/ Decision: **02.08.2019**

FINAL ORDER No.: 51209-51210/2019

ASHOK JINDAL

The appellant is in appeal against the impugned orders wherein the refund claims have been rejected as time barred.

2. The facts of the case are that the appellant started business of construction and received certain advances from the clients. On advances received from the clients, the appellant paid service tax under Commercial and industrial construction services. Later on, the project started by the appellant was not feasible and consequently closed, therefore, they refunded the advance received from the clients along with service tax and filed the refund claim of service tax paid on advance to the Department. The said refund claims were rejected on the ground that the appellant has filed refund claim beyond the period of one year of payment of service tax to the Department. Against these orders, appellant is before me.

3. Heard the parties.

4. Considering the fact that in this case it is to be decided what is the date of filing the refund claim in terms of section 11B of Central Excise Act 1944. The relevant date of cause of action for filing the refund claim. In the case in hand the relevant date is the date when the project was abundand and refund of advance received from clients were paid by the appellant to them. Admittedly, from the said date the appellant has filed refund claim within one year. Therefore, I hold that the

refund claims filed by the appellant are within time and they are entitled for refund claim.

5. In that circumstances, I set aside the impugned orders and direct the adjudicating authority to give the refund of the service tax paid by the appellant within one month from receipt of this order. Appeals are disposed of in above manner.

(order dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Bhanu