

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Bench – SMB

Court – I

Appeal No. C/30219/2017

(Arising out of Order-in-Appeal No. VIZ-EXCUS-001-APP-058-16-17
dated 31.10.2016 passed by Commissioner of Customs, Central
Excise & Service Tax (Appeals), Visakhapatnam)

M/s MMTC Limited

.....Appellant(s)

Vs.

**Commissioner of Central Excise, Customs
& Service Tax, Visakhapatnam - I**

.....Respondent(s)

Appearance

Shri Srinivasa Rao, Senior Manager for the Appellant.

Shri Guna Ranjan, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. P. Venkata Subba Rao, Member (Technical)

Date of hearing: 23/04/2018

Date of decision: 26/04/2018

FINAL ORDER No. A/30503/2018

[Order per: P. Venkata Subba Rao]

The appellant is registered with Service Tax Department for rendering Business Auxiliary Services. They filed a refund claim of service tax paid on various services provided by their service

providers for export of Indian milling wheat during the months of October, 2012 to December, 2012 in terms of Notification No. 41/2012- ST dated 29.6.2012. Service tax is governed by Chapter V of the Finance Act, 1994, as amended. Section 94A of this Act, empowers the Central Government to, when goods or services are exported, grant rebate of service tax paid on taxable services which were used as input services. In exercise of these powers, the Central Government issued Notification No. 41/2012-ST granting rebate by way of refund of service tax paid on specified services and also laying down the manner claiming the rebate. Para 3(g) of this notification requires the claim to be filed within one year from the date of export. It further clarifies that the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under Section 51 of the Customs Act, 1962 (which is commonly referred to as Let Export Order).

2. The jurisdictional Assistant commissioner rejected the refund on the ground that it is time barred vide OIO No. 10/2014 (R) (VRR) dated 24.04.2014 and this order was upheld by Commissioner (Appeals) vide OIA No. VIZ-EXCUS-001-APP-058-16-17 dated 31.10.16. This is an appeal against this OIA.

3. Both the appellants and respondents gave written submissions during the hearing and forcefully presented their points their views.

4. The appellant argued that they can claim refund only after they got an invoice from the service provider on 03.12.2012 and so they can claim refund within one year from this date and not the date of export as stipulated in the notification. He relied upon the case laws of *Commissioner of Central Excise & Service Tax., Kanpur Vs. Pacific Leather Finishers* [2016 (43) STR 273 (Tri.–All)], *Sony India Pvt. Ltd. Vs. Commissioner of Customs, New Delhi* [2014 (304) ELT 660 (Delhi)] and *National Steel and Agro Industries Vs. CCE, Indore* Final Order No. 54916/2016 dated 08.11.2016 of CESTAT, Delhi.

5. Learned Departmental Representative vehemently opposed this. He argued that the Notification of 41/2012-ST dated 29.06.2012 clearly lays down the method to claim the refund including the period within which it has to be claimed. This cannot be altered. The order of the Hon'ble Delhi High Court in *Sony India Pvt. Ltd., (supra)* is not relevant to this case as it pertained to the refund of Special Additional Duty (SAD) on imported goods. The case of *Pacific Leathers (supra)* pertained to the relevant date for export

under the earlier notification of 41/2007 when the assessee could not claim credit unless the duty was first credited by the Service Provider. The situation has since changed and the service recipient can claim credit of the service tax paid without waiting for the duty to be credited. As clearly indicated under Notification No. 41/2012-ST, the claim for rebate of service tax as to be filed within one year from the date of the LEO. Learned Departmental Representative relied upon the case of *Commissioner of Central Excise, Coimbatore Vs. GTN Engineering India Limited* [2012 (281) ELT 185 (Mad.)] in which the Hon'ble High Court of Madras held that to claim refund for exports, the relevant date has to be the date of LEO. He also relied upon the case of *M/s. Banswara Syntex Ltd. Vs. Commissioner of Central Excise, Jaipur II* [2017 (345) ELT 547 (Tribunal- Del)] where it was clearly held that refund claims after one year from the date of export are clearly time-barred.

6. I have considered both the arguments and perused the records of the case. There is no disagreement on the facts of the case. The appellant exported goods and claimed refund of the Service Tax paid on the services which went into production and export of those goods. The legal provision under which such a refund can be claimed is Section 94A of the Finance Act, 1994 read with

Notification No. 41/2012-ST dated 29.06.2012 and the legal time limit is one year from the date of LEO.

7. The appellant filed their refund claim after the date and there is no provision in the notification to condone such a delay. Their refund application was rejected and so was their first appeal with the Commissioner (Appeals). Relying on the judgment of the Hon'ble High Court of Delhi in the case of Sony India (supra) and the Order of the Hon'ble CESTAT in the case of *Pacific Leather Finishers* (supra) the appellant argues that since they received invoices from their suppliers late, that date should be reckoned for calculating one year and not the date of Let Export Order as laid down in the Notification. On the other hand, the Ld. Departmental Representative argued that once a time limit has been laid down in the statute it cannot be modified.

8. I find that the key issue to be decided by me is whether the limitation of time imposed by the notification for claiming the refund of Service Tax on inputs which went into export of goods can be altered by reckoning the date on which the appellant received the invoices instead of the date of Let Export Order as laid down in the notification. Firstly, the Notification is a subordinate legislation made

by the Government in exercise of the powers delegated by the Parliament. This power is given to the Government and not to the officers or to this Tribunal. Hence, the provisions of this notification including the time limit and the date of reckoning the time limit cannot be modified by the officers or by this Tribunal. It has been laid down in a catena of judgements by the Hon'ble Supreme Court and High Courts that a statutory time limit has to be adhered to and the Courts cannot modify them. Of course, the Hon'ble Supreme Court and High Courts can and do examine the validity of the laws and subordinate legislations and pass judgments annulling or modifying them but the Tribunal, as a creation of the statute cannot do so. This has been explained clearly by the Hon'ble Supreme Court in the case of *UOI Vs. Kirloskar Pneumatics Company* [1996 (84) ELT 401 (SC)] in which it was held

*“According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr. Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. Learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. **Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to***

law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. May be the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law.”

In the case of *IOCL Vs. UOI* [2012 (281) ELT 209 (Guj)], the Hon’ble High Court of Gujarat held

“With respect to the question of limitation, we have by a separate order passed in the case of this very petitioner in Special Civil Application No. 12072 of 2011 held against the petitioner making following observations :

“We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11E, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.

Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 had the occasion to deal with the question of delayed claim of refund of Customs and Central Excise. Per majority view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.

The decision of the Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a different factual background. It was a case where the refund claim was filed beyond the period of six months which was the

limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under:

“32. In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May 1999 and 10th June 1999, the due date for application of rebate of duty was 20th November 1999 and 10th December, 1999 respectively. However, both the applications were made belatedly on 28th December 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May 2000, wherein the limitation for applying for refund of any duty was enlarged from ‘six months’ to ‘one year’. Although the amendment came into force with effect from 12th May, 2000, the question is whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May 2000?”

In the case of *Collector of Central Excise Vs. Doaba Co-operative Sugar Mills Ltd.*, [1988 (37) ELT 478 (SC)] Hon’ble Supreme Court held

“This Court observed that the Customs Authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefore in the relevant provisions of the Customs Act, 1962”.

In the case of *Everest Flavours Ltd., Vs. The Union Of India And Others* on 29 March, 2012 Hon’ble High Court of Bombay held

“Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law.”

Thus, it is evident that the time limit laid down in the statute or notification for claiming a refund is sacrosanct and this cannot be

modified either by the officers or by the Tribunal when the statute itself does not provide for any such relaxation.

9. The judgment of the Hon'ble High Court of Delhi in the case of *Sony India Pvt. Ltd.*, (supra) modifies the date of reckoning to calculate the time limit for claiming SAD refund under the relevant notification. The judgement does not empower the officers or the Tribunal to make such modification to other notifications (including the present Notification No. 41/2012-ST) also. The other case laws relied upon by the appellant also do not modify the Notification No. 41/2012-ST.

10. Consequently, I find no force in the arguments of the appellant that they should be granted refund of Service Tax paid on services used in the goods exported by them beyond one year from the date of LEO as specified in the Notification No. 41/2012-ST. The appeal is therefore, dismissed.

(Order pronounced on 26/04/2018 in open court)

(P. VENKATA SUBBA RAO)
MEMBER(TECHNICAL)

Lakshmi....