CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court - I

Appeal No.	Appellant(s)	Respondent(s)	Orders-in-Appeal No.
ST/30284/2016	FactSet Systems India Pvt Ltd	CCCE & ST, Hyderabad – IV	HYD-EXCUS-004-APP-0249 to 0251-15-16 dated 29.01.2016 passed by CST (Appeals), Hyderabad

Appearance
Ms. Shikha Singhania, Chartered Accountant for the Appellant.
Shri C. Mallikarjun Reddy, Superintendent/AR for the Respondent.

Coram:
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 05.11.2018
Date of Decision: 20.11.2018

FINAL ORDER No. A/31484/2018
[Order per: P.V. Subba Rao.]

1. This appeal is directed against Order-in-Appeal No.HYD-EXCUS-004-APP-0249 to 0251-15-16 dated 29.01.2016.

2. The appellant herein is a holder of service tax registration and have been rendering services. They claimed refund of input Cenvat Credit in terms of Notification No. 12/2013-ST dated 01.07.2013. After following due process the lower authority examined their application in detail and allowed refund of Rs.1,93,853/-. This sanction has not been disputed by the revenue. He also rejected an amount of Rs.6,55,298/- on the ground that the refund application was filed after the period of one year specified in the Notification No. 12/2013-ST. He further rejected the claim of Rs.8,80,140/- on the ground that these services were not approved by the Development Commissioner. Thus, in all, an amount of Rs.15,35,438/- has not been allowed as refund to the appellant. Aggrieved, they appealed to the first appellate authority who, vide the impugned order, upheld the order of the lower authority and rejected the appeal. Hence, this appeal.

3. Learned counsel for the appellant takes us through the facts of the case that they are engaged in providing debtor management services to their group banks located outside India and they have claimed refund of Cenvat Credit on various input services utilized by them for providing output services in terms of Notification No. 12/2013-ST dated 01.07.2013. The relevant period is October, 2013 to December, 2013. The refund application was filed by them on 03.10.2014. As per Notification No. 12/2013-ST, "The claim for refund shall be filed within one year from the end of the month in which the actual payment of service tax was made by such developer or SEZ unit to the registered service provider or such extended period as the Asst. Commissioner or Dy. Commissioner of Central Excise as the case may be shall permit". It is the submission of the counsel that the time limit to file the refund claim can only commence from the 1st of November, 2013 and end at 31.10.2014 and their application was filed within the time limit. He draws our attention to Sec.9 of General Clauses Act, 1897 which reads as follows.

> *"<u>Commencement and termination of time:</u>*
>
> *(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".*
> *(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."*

4. Therefore, he submits that for the purpose of calculating the period in question viz., October, 2013 cannot be reckoned for calculating one year. He relies on case laws of Haru Das Gupta Vs State of West Bengal [1972-AIR-1293], Rollatainers Ltd vs CCE, Meerut-II [2002 (144) RLY 649 (Tri-Del)], LML Ltd Vs CCE, Kanpur [2003 (152) ELT 375 (Tri-Del)], Collector of Central Excise Vs SAIL [1992 (61) ELT 732 (Tribunal)], Punjab Breweries Ltd Vs

CCE, Chandigarh [1985 (20) ELT 420 (Tribunal)] and Econ Antri Ltd Vs Rom Industries [Criminal Appeal No. 1079 of 2006 dated 26 August 2013].

5. Learned counsel argued that in view of the provisions of General Clauses Act as confirmed in various decisions cited above, the period of one year must commence from November, 2013 only in this case and not from October, 2013 (which is the period in question) and accordingly, refund application filed by them is not time barred. On the second question of rejection of refund on the ground that those services were not approved by the Development Commissioner, learned counsel would argue that the taxes and duties should not be exported and if the refund claim is disallowed it would amount to forcing them export the taxes on services. He, further argued that substantive benefit of the taxes cannot be denied on technical grounds when there is substantial requirement under the notification. He, therefore, prayed that impugned order may be set aside to the extent it is prejudicial to the interest of the appellant and allow the refund in its entirety along with consequential relief.

6. Learned departmental representative agrees with the facts of the case and reiterates the orders of the lower authorities. He submits that the refund was denied on two grounds.

(a) On the ground that it was filed after one year and

(b) On the ground that the services which were provided were not approved by the Development Commissioner, both of which are the requirements under the notification.

7. He would further argue that any exemption notification must be strictly construed as has been settled by the Constitutional Bench of the Supreme Court in the case of CC, Mumbai Vs M/s Dilip Kumar & Co and

others [Civil Appeal No.3327/2007] and therefore the exemption notification must be strictly construed and read as it has been drafted. There is nothing on record to show that the services for which the appellant was denied refund on the ground that they were not approved were actually approved by the Development Commissioner. He prays that the appeal may be rejected.

8. I have gone through the records of the case and considered the submissions on both sides. The two short points to be decided is whether the refund application filed by the appellant in October, 2014 for the period ending October, 2013 should be treated as time barred in terms of the notification. The notification as it has been drafted requires the application to be filed within one year from the period for which the refund has been claimed. In this case, the refund application was filed for the period ending October, 2013 and in view of the General Clauses Act, this month cannot be reckoned while calculating the period of one year. It has to begin from November, 2013 and ends in October, 2014. Therefore, the refund application has been filed within time limit and rejection of refund to the extent of Rs.6,55,298/- on this account is incorrect and needs to be set aside. Even otherwise, the notification itself provides for extension of this time by the Asst. Commissioner/ Dy. Commissioner. The second question is whether the appellant is entitled to refund of Rs.8,80,140/- on account of services for which they had not permission of the Unit Approval Committee of the Development Commissioner. This approval being an essential requirement of the Exemption Notification No. 12/2013-ST needs to be fully complied with if the appellant seeks to claim refund under the notification. There is nothing on record to show that the approval which is said to have not been obtained by the lower authority which fact has been reconfirmed

by the first appellate authority has actually been obtained. Therefore, the refund on this account needs to be disallowed.

9. The impugned order is modified to the extent that the amount of Rs.8,80,140/- denied to the appellant on the account of limitation in filing the refund claim is set aside and this refund is allowed.

10. Appeal is disposed of as indicated herein above.

(Pronounced in the Open Court on 20.11.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Veda