

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

Division Bench  
Court – I

**Appeal No. ST/1363/2010**

(Arising out of Order-in-Appeal No. 34/2010 (H-II) S. Tax dated  
12.04.2010 passed by Commissioner of Customs, Central Excise and  
Service Tax (Appeals-II), Hyderabad)

**M/s Nagarjuna Constructions Company  
Ltd.,**

**.....Appellant(s)**

**Vs.**

**Commissioner of Customs, Central Excise  
& Service Tax, Hyderabad - II**

**.....Respondent(s)**

**Appearance**

Shri B. Venugopal, Advocate for the Appellant(s).

Shri V.R. Pavan Kumar, Superintendent (AR) for the Respondent(s).

**Coram:**

**Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)**

**Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 19/12/2018**

**Date of Decision: 27/12/2018**

**FINAL ORDER No. A/31617/2018**

**[Order per: M.V. Ravindran]**

This appeal is directed against Order-in-Appeal No.  
34/2010 (H-II) S. Tax dated 12.04.2010.

2. The relevant facts that arise for consideration, after  
filtering out unnecessary details are appellants are rendering services  
of infrastructure under various contracts and had taken registration for

paying service tax under the category of Commercial or Industrial Construction Service, Erection and Commissioning Services & Construction of Residential Complex Services. During the period 16.06.2005 to 31.05.2007 they discharged the tax liability to Government of India. On noticing that the Higher Judicial Forum had held composite works contract are not liable to service tax prior to 01.06.2007 and on their belief that agreements entered by them being composite works contract, they filed a refund claim with the authorities on 27.11.2009 for the service tax paid by them during the period 16.06.2005 to 31.05.2007. The Adjudicating Authority rejected the refund claim after extending the principle of natural justice. Aggrieved by such an order, appeal was preferred before the First Appellate Authority who concurred with the views of the Adjudicating Authority and rejected the appeal on the ground that refund claim was preferred beyond the period as provided under Section 11B of Central Excise Act, 1944.

3. Learned Counsel draws our attention to the impugned order as also the adjudication order and submits that the said refund claims were filed beyond the period of limitation as mentioned under Section 11B of the Central Excise Act, 1944, (which is adopted for the refund claims under the Finance Act, 1994) is totally incorrect. He draws our attention to the judgment of the Hon'ble High Court of Jharkhand in the case of *GB Engineers Vs. Union Of India* [2016 (43) STR 345] decision of the Hon'ble High Court of Delhi in the case of *Mera Baba Realty Associate (P) Ltd.*, [2017 (49) STR 257], decision of the Tribunal of New Delhi in the case of *Monnet International Limited*

[2017 (3) GSTL 380] to submit that the provisions of Section 11B will not be applicable as far as the limitation is concerned on the service tax liability of composite works contracts and is not the levy are taxed under the law as has been settled by the Apex Court in the case of *Larsen & Tourbo Limited* [2015 (39) STR 913]. It is his submission that the ratio of these decisions would apply in this case in hand. The Lower Authorities were in error while dismissing the appeal on the ground of limitation.

4. Learned Departmental Representative submits that the refund claims were filed in Form - R which is prescribed under the Central Excise Act, 1944 and the rules made there under and the question of extending the period of limitation would not arise. It is his submission that the amount paid by appellant is before 01.06.2007 and the Hon'ble High Court of Punjab & Haryana in the case of *Saritha Handa Exports (P) Ltd.*, [2015 (321) ELT 434] has held that refund applications filed would be required to conform the period specified under the provisions of Section 11B, applicable and the said judgment has been affirmed by the Apex Court as reported at [2015 (321) ELT A206]. It is his submission that provisions of Section 27 were considered by the Hon'ble High Court of Bombay in the case of *CMS INFO System Ltd.*, [2017 (349) ELT 2366 (Bom.)] wherein, it was held that statutory bar contained in sub-section (1) of Section 27 of the Customs Act, 1962 for limitation cannot be ignored.

5. On careful consideration of submissions made by both sides and on perusal of impugned order, we find that the issue

involved in this case is regarding refund of the amount which has been claimed by the appellant before the lower authorities. We find that both the lower authorities have not considered the various case laws as mentioned by the appellants before the Tribunal and also the decision of the Apex Court in the case of Larsen & Tourbo Limited. In our view, the entire issue needs reconsideration by the Adjudicating Authority. This is the view expressed by the Bench in the appellant's own case on similar facts, in appeal Nos. ST/708 & 709/2009 and disposed of by Final Order No. A/31147-31148/2018 dated 11.09.2018, the matter was remanded back to the lower authorities. In our view, in this case also the matter needs reconsideration by the lower authorities in totality.

6. Accordingly, without expressing any opinion on the merits of the case, keeping all the issues open, the impugned order is set aside and the matter is remanded back to the adjudicating authority to reconsider the issue afresh after following the principles of natural justice.

7. Appeal disposed of by way of remand.

(Order pronounced on 27/12/2018 in open court)

**P. VENKATA SUBBA RAO**  
**MEMBER (TECHNICAL)**

**M.V. RAVINDRAN**  
**MEMBER (JUDICIAL)**

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