

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

Division Bench
Court - I

APPEAL No. ST/967/2009

*(Arising out of **Order-in-Appeal** No. 30/2009(V-II)ST, dated 29.09.2009 passed
by CCE, C&ST, Visakhapatnam)*

KODURI ENTERPRISES PVT. LTD.	..	APPELLANT
	Vs	
CCE, C&ST, VISAKHAPATNAM-I	..	RESPONDENT

Appearance

None for the appellant

Shri Guna Ranjan, Superintendent/AR for the Respondent.

Coram:

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

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

Date of Hearing: 05.02.2019

Date of Decision: 05.02.2019

FINAL ORDER No. A/30191/2019

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Appeal No. 30/2009(V-II)ST, dated 29.09.2009. None appeared on behalf of the appellant despite notice. Since the matter is in a narrow compass, we take up the appeal for disposal even in the absence of any representation.

2. Heard Ld. DR and perused the records.

3. On perusal of records, it transpires that the issue is regarding refund of an amount of Rs. 37,400/- which, according to the appellant, has been paid under mistake of law.

4. It is seen from the records that appellant had applied for and got Registration Certificate under the category of "Authorised Service Station"; he was visited with the Officers of Revenue and it was noticed that he has not paid the service tax liability which was subsequently paid by him on being directed. It is his claim that for the first term i.e. 01.04.2005 to 30.09.2005, he is liable to be taxed but is eligible for small scale service provider exemption notification which if applied, he would get the refund of Rs. 37,400/-. It is the case of the appellant before the Tribunal also.

5. We find that the first appellate authority in the impugned order on this point has given a detailed findings which we concur with and reproduce the relevant para.

"I have carefully gone through the above submissions and considered the rival contentions. As per Section 65(9) of the Finance Act, 1994, "Authorised service station" means any service station, or centre authorised by any motor vehicle manufacturer, to carry out any (service, repair, reconditioning or restoration) of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer. Here, the appellants are the authorised dealers for 'Honda' two wheelers and also have the authorised serviced station. As could be seen from the impugned order and the submissions made by the appellants, appellants are not doing servicing of any other brand vehicles. From this, it is evident that the activity of the appellants is not that of a simple service station which renders the two wheeler servicing for any brand vehicle under the name of M/s Koduri Enterprises, but an authorised service station which take up

the servicing of Honda two wheelers exclusively and the activity relate to the use of "Honda " brand name. Hence, I am of the opinion that the appellants are not eligible for the benefit of notification no. 6/2005-ST. Further, the appellants have discharged their tax liability both for the period prior to April 2005 and for the period April 2005 to September 2005 subsequently only. As pleaded by the appellants, may be the amount paid by the appellants is in pursuance of a demand for payment of service tax in respect of service rendered by "authorized service station". As could be seen from the facts of the case, at the time of demand, there is no reference to either the eligibility or non-eligibility of the notification No. 6/2005-ST and this could not be attributed to be the mistake of law by the department. By the time the appellants pay the service tax for the period April 2005 to September 2005 i.e. 29.05.2006, notification No. 6/2005-ST came into existence and the appellants could have avoided the payment by saying that they are eligible for the benefit of notification. Or else, the appellants could have filed refund claim within a period of one year i.e. on or before 29.05.2007 on the ground that they have paid the service tax by mistake. Instead of these two options, filing of refund claim on 29.12.2007 on the ground that the amount was paid by mistake of law is not correct. Hence, the case laws cited are not applicable to the facts of the impugned case. Thus, the refund needs rejection both on merits and on limitation clause."

6. In our view, the above findings are correct and legal and does not require any interference.

7. In view of the foregoing, the appeal stands rejected.

(Dictated and pronounced in open Court on 05.02.2019)

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

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