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

Division Bench - Court No. – I

Service Tax Appeal No. 30781 of 2018

(Arising out of Order-in-Appeal No. HYD-SVTAX-HYC-APP-127/17-18 (APP-I) dated 28/02/2018 passed by the Commissioner of Customs & Central Excise, (Appeals-I), Hyderabad)

M/s Credible Engineering Construction Projects Ltd., .. **APPELLANT**
Plot No. 32, Sagar Society,
Road No. 2, Banjara Hills,
Hyderabad-500034

VERSUS

Commissioner of Central Tax, Hyderabad – GST .. **RESPONDENT**
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

Appearance

Shri R. Muralidhar, Advocate for the Appellant.
Shri S. Hanuma Prasad, Authorised Representative for the Respondent.

Coram: Hon'ble Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30082/2022

Date of Hearing:05.09.2022
Date of Decision:05.09.2022

[ORDER PER: BENCH]

The Division Bench had agreed on the point of eligibility of the exemption under Notification no. 25/2012-ST, as regards the appellant. However, there was a difference of opinion with regard to the application of limitation under Section 11B, for the purpose of refund.

Para 46 of the Division Bench order was as follows:

> "46. In view of the difference of opinion, the following questions arise for consideration by learned 3rd Member:
>
> (1) Whether the limitation prescribed under section 11B of the Central Excise Act will not be applicable as the tax was paid erroneously though eligible to exemption and as such is in the nature of deposit and hence limitation is not attracted as held by Member(Judicial) following the ruling of Hon'ble Karnataka High Court in KVR Construction affirmed by Hon'ble Supreme Court 2018(14) STR J17.
>
> OR
>
> Limitation prescribed under section11B is applicable as held by Member (Technical) in view of the ruling of Hon'ble Supreme Court in Mafatlal Industries Vs. Union of India – 1997 (89) ELT 247."

The Third Member has expressed his opinion as follows:

> 39. The reference is accordingly, answered in the following manner:
>
> "The limitation prescribed under section 11B of the Excise Act would not be applicable if an amount is paid under a mistaken notion as it was not required to be paid towards any duty/tax."

In terms of the opinion expressed by the Learned Third Member, this appeal stands allowed in favour of the appellant assessee. The appellant assessee shall be allowed grant of refund alongwith interest, as per rules. Appeal allowed. Impugned order is set aside.

(Order dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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