

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL,  
EAST REGIONAL BENCH : KOLKATA**

**Appeal No. ST/75002/2018**

Arising out of Order-in-Appeal No. 58/S. Tax-II/KOL/2017 dated 29.11.2017 passed by the Commissioner of CGST & CX, (Appeal-I), Kolkata.

M/s C. B. Agarwala

...APPELLANT(S)

VERSUS

Commissioner of Service Tax, Kolkata-III

....RESPONDENT (S)

APPEARANCE

Shri K. P. Choudhary, C.A. for the Appellant (s)

Shri S. S. Chattopadhyay, Suptd. (A.R.) for the Respondent (s)

**CORAM:**

**SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER**

Date of hearing/Decision:-27.02.2018

Order No. FO/A/75225/2018

**Per Shri P. K. Choudhary :**

Briefly stated the facts of the case are that the appellant filed a refund claim of Service Tax of Rs.25,728/- under Section 11B of the Central Excise Act, 1944 on 05.09.2013 for the period December 2012 to January 2013. The appellant contended that they had wrongly paid the tax to the Government Exchequer. The Adjudicating authority rejected the Refund claim. By the impugned Order the Commissioner (Appeals) rejected the appeal filed by the appellant. Hence, the appellant filed this appeal.

2. Heard both the sides and perused the appeal records.

3. I find that the appellant requested for refund of Rs.25,728/- being the Service Tax for two months of December 2012 and January 2013 during second half year comprising the previous from 1<sup>st</sup> October 2012 to 31.03.2013 and produced the evidence of payment of tax of Rs.77,184/- as Tax under T.R. 6 /GAR-7 dated 06.10.2012. The case of the appellant is that on 19.11.2012 there was a fire resulting in excess payment of tax of Rs.25,728/- for non receipt of Rent of December 2012 and January 2013 by the Lessee. The Commissioner (Appeals) observed that the appellant has not submitted copy of the claim paper of fire insurance. I find from the records that the appellant submitted the Lease Deed dated 13.11.2009 and other documents in respect of payment of tax. The appellant stated in respect of Insurance claim as under:

“The property as a whole was insured by M/s Lok Nath & Co. (Maint.) and share of insurance premium referable to the Appellant was determined at Rs.217/- vide their letter dated 1<sup>st</sup> April, 2012 which was duly paid by receipt No.1468 dated 7<sup>th</sup> April, 2012. The aforesaid payment covered the period from 4<sup>th</sup> April, 2012 to 3<sup>rd</sup> April, 2013 period. Fire occurred during such coverage period. The premium of Rs.186/- paid during the previous year viz. 2011-12 vide receipt No.568 dated 29<sup>th</sup> April, 2011 covering the period from 4<sup>th</sup> April, 2011 to 3<sup>rd</sup> April, 2012 (copy enclosed marked as Annexure “D” at pages 34 to 35). Thus, the premises remained insured all the time.”

4. I find that these documents were placed before the lower authorities. So, the findings of the lower authorities cannot be accepted. Accordingly, the appellant is entitled to get Refund. Accordingly, the impugned Order is set aside. The appeal filed by the appellant is allowed.

(Operative part of the order already pronounced in the open court.)

**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

T.K.