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

MA (COD) -75249/2018
AND
Service Tax Appeal No.75580/17, C.O.-75248/2018

(Arising out of the Order-in-Appeal No.154/DGP/2016-17 Dated-07/12/2016 passed by the Commissioner of Customs, Central Excise & Service Tax, Durgapur)

CCE&ST, Durgapur

...APPELLANT(S)

VERSUS

M/s. Vasavi Industries Ltd.

...RESPONDENT(S)

APPEARANCE

Sri A. Roy, Supdt. (A.R.)

FOR APPELLANT(S)

Sri Partha Samaddar (A.R.)

FOR THE RESPONDENT(S)

CORAM:

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

DATE OF HEARING: 14/02/2018 **Date of Pronouncement:14/02/2018**

FINAL ORDER NO. : F/O 075774/18

Per SHRI P.K. CHOUDHARY

Shri Partha Samaddar, representative for the respondent mentioned that the copy of appeal was received by them only on 20th November, 2017.

2. Misc. application for condoning the delay in filing the cross objection is allowed. The appeal is also taken up for hearing.

3. Brief facts of the case are that the appellant manufactured and exported "High Carbon Ferro Chrome". They received taxable services under the category of "Foreign Exchange Sales Services provided by Broker". They paid the Service Tax of Rs.4,22,403/- under reverse charge mechanism. The appellant submitted first Refund claim on 12/12/2008 for the amount of Rs.5,71,322/-. The said refund claim was modified and submitted on 27/01/2009 for Rs.4,22,403/- . A show cause notice dated-23/03/2009 was issued proposing to reject the refund claim. The Adjudicating Authority rejected the refund claim submitted on 27/01/2009 as time barred. By the impugned order, the Commissioner (Appeal) set aside the Adjudication Order and allowed the appeal filed by the appellant. Hence, Revenue filed this appeal.

4. Heard both sides and perused the appeal records.

5. Learned D.R. for the Revenue reiterates the grounds of appeal. It is contended that the first application was filed for Rs.5,71,322/-for G.T.A. and other port expenses. The second application submitted on 27/01/2009 for Rs.4,20,403/- for service of Foreign Exchange Sales services provided by broker, which is clearly barred by limitation. For the purpose of proper appreciation of the case, the relevant findings of the Commissioner (Appeal) are reproduced below:

> *" 9.From the copies of both of the above refund claims submitted by the appellant, I find that annexure to both the refund claims mentions the same set of service, i.e. 'commission' service apart from other services as mentioned in the refund claim submitted on 12/12/2008 and refund claim of service tax of Rs.4,22,403/- was related to service tax on 'commission' service and the said 'commission' service mentioned therein was taken out of services mentioned in the first refund claim on 27.01.2009.*

> *10. In view of the above, I find that the lower authority 's observation that both of the above refund claims submitted by the appellant are not identical is not based on facts, rather I find that both of the above refund claims submitted by the appellant are identical except second refund claim involves reduced amount of Rs.4,22,403/- and services against which both of the above refund claims were submitted are same.*
> *11. Thus I find that the appellant had submitted their first refund claim on 12.12.2008 very much within stipulated period of six months in terms of the said notification as amended vide notification No.32/2008-ST dated-18.11.2008 and clarified vide circular no.112/6/2000-ST dated-12/03/2009 contrary to the observation of the lower authority./ Therefore, I find that the instant refund claim is not time barred and the rejection of the instant refund claim by the lower authority on the ground of bring time barred is not based on facts and law.*
>
> *12. In view of the above discussion, I set aside the order of the lower authority and allow the appeal filed by the appellant."*

It is seen that the Revenue had not disputed the submission of the first Refund claim which is within the period of limitation. The appellant modified the refund claim and filed on 27/01/2009 for Rs.4,20,403/- which is in continuation of the earlier refund claim. The Tribunal in various decisions held that re-submitted claim was in continuation to earlier claim and not hit by limitation and followed the decision of the Hon'ble Gujarat High Court in the case of United Phosphorus Ltd. Vs. Union of India as reported in 2005 (184) ELT 240 (Gujrat). Hence, there is no reason to interfere in the order of the Commissioner (Appeal).

6. In view of the above discussion, MA (COD) for filing Cross Objection is allowed. The appeal filed by the Revenue is dismissed. Cross objection gets disposed of.

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

Sd/-27/3/18

(P.K. CHOUDHARY)
JUDICIAL MEMBER

k.b/-