

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76375 of 2018

(Arising out of Order-in-Appeal No.17/S.Tax-I/KOL/2018 dated 23.01.2018 passed by Commissioner (Appeal I) of CGST & Excise, Kolkata)

M/s Fi-Tech Private Limited

Bengal Intelligent Park, Omega Building, 10th Floor, Block-EP & GP, Sector V, Salt Lake, Kolkata-700091

Appellant

VERSUS

Commissioner of CGST & Excise, Kolkata North

180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPEARANCE :

S/Shri Dibyendu Das & Bikash Gupta, both Chartered Accountants for the appellant

Shri K.Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.75532/2022

DATE OF HEARING : 22.06.2022

DATE OF PRONOUNCEMENT : 27 SEPTEMBER 2022

PER P.K.CHOUDHARY :

The present appeal has been filed by the appellant being aggrieved by the rejection of refund of service tax on input services used for export of services without payment of service tax for the period from October, 2010 to December, 2010 for Rs.3,61,389/-. The Appellant was issued Show-cause Notice dated 02.01.2012 proposing to reject the claim of refund on the ground of improper address in the invoice, non-mention of address in the invoice, etc. The Ld. Adjudicating authority passed the order rejecting the refund claim on the above

grounds which was further confirmed by the Ld. Appellate authority. Hence the present appeal.

2. Heard both sides and perused the appeal records.

3. The short issue to be decided in the present case is whether just because of procedural error in the invoices for input services with regard to the address of the Appellant, can the substantive benefit of refund be denied to the Appellant.

4. I find from the records that the error in address can at best be termed to be a clerical error for which the Appellant has also produced certificate from the Service provider clarifying the error in the floor number. Hence, when the receipt of services is not in dispute, the benefit of refund should not be denied to the Appellant as per the settled jurisprudence in this regard.

5. I gainfully refer to the judgment of Sambhaji Versus Gangabai 2009 (240) E.L.T. 161 (S.C.) wherein it has been held that :-

"The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

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6. Thus, by respectfully following the judgment of the Hon'ble Supreme Court, the appeal succeeds and the Order-in-Appeal and the Order-in-Original are set aside. The department is directed to process the refund claim within 8 weeks from the submission of the order copy as per the process of law.

7. Thus, the appeal is allowed with consequential benefits if any.

(Pronounced in the open court on **27.09.2022**)

Sd/

(P. K. Choudhary)
Member (Judicial)

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