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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 77992 of 2018

(Arising out of Order-in-Appeal No.12/SH/CE(A)GHY/18 Dated 04/05/2018 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati).

M/s. Sekhar Chandra Poddar
(Joynagar, Lane No. 3, Agartala-799001, Tripura (West))

Appellant (s)

VERSUS

Commr. of CGST & CX, Shillong Commissionerate
(Crescens Building, 3rd Floor, M. G. Road, Shillong, Meghalaya-793001)

Respondent (s)

APPEARANCE :

Shri H. K. Pandey, Advocate for the Appellant
Shri K. Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75196/2023

Date of Hearing : 30th March 2023
Date of Decision : 30th March 2023

PER R. MURALIDHAR

When the Appeal came up for hearing, the Ld. Advocate appearing for the Appellant submits that the Lower Authorities has rejected the refund claim on the ground of the same being filed belatedly. As per him, they had filed the refund claim by way of Speed Post on 08/11/2016 and another copy of the same was filed physically on 21/11/2016. As the first refund claim sent by Speed Post would have been received by the Department before 14/11/2016, the criteria of filing the refund claim within 6 months from the date of the communication as per Section 102 of Finance Bill, 2016 has been correctly followed. Therefore, he prays that the present Appeal may be allowed.

2. The Learned Authorized Representative submits that the Appeal before the Tribunal in the present case does not emanate from the OIO passed on 31/1/2017 but emanates from another OIO dated 06/12/2017. The Learned Authorized Representative submits that in respect of the Refund Claim filed on 21/11/2016 for Rs.15,85,089/- , the same was rejected vide OIO No.1/ST/REFUND/AGT/ACA/2017 dated 31/1/2017. The Appellant did not prefer any Appeal before the Commissioner (Appeals). The issue as to whether the refund claim was filed on or before the

14/11/2016 or on 21/11/2016 pertains to the proceedings taken up in this OIO dated 31/1/2017. No further Appeals were preferred by the Appellant before the Commissioner (Appeals) and therefore this issue of filing date of refund claim has no relevance to the present Appeal before the Tribunal. He also points out to the Recording of PH given in the OIO dated 31/01/2017 where the Appellant has admitted that they could not file the refund claim on 14/11/2016 and they could file only on 21/11/2016. As per Authorized Representative, the Refund Claim was filed belatedly after six moths. Hence, the Adjudicating Authority was correct in rejecting the Refund Claim on account of limitation. Ignoring this OIO, the Appellant filed another refund claim for Rs.15,85,089/- on 25/04/2017 for the same amount on the ground that no Service Tax was required to be paid, but as the same was paid under mistaken impression, they should get the refund claim of this amount. The Adjudicating Authority rejected the refund claim on the ground of limitation. On Appeal, the Commissioner (Appeals) got all the facts verified and found that the Appellant had earlier filed the refund claim for the same amount on 21/11/2016 which was rejected by the Adjudicating Authority vide his Order dated 31/1/2017 on the ground that it was filed beyond the period of 6 months allowed as per Section 102(3) of the Finance Bill,2016. These facts were not mentioned in the Second Refund Claim filed on 25/04/2017. The Commissioner (Appeals) rejected the claim and dismissed their Appeal as the Refund Claim was filed on 24/07/2017 for the Service Tax paid during 2011 to 2014.

5. Heard both sides and perused the documents.

6. The refund of this nature is required to be filed in terms of Section 102 of Finance Bill 2016, wherein, the time limit for such refund claims has been set as 6 months from the date on which the Finance Bill 2016 receives the assent of the President. The relevant portion is extracted below:-

> *3. Notwithstanding anything contained in this Chapter, an application for the <u>claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.</u>* (emphasis supplied)

7. The President's assent to the Finance Bill was received on 15/5/2016. Hence the Refund Claim was required to be filed on or before 14/11/2016. When the statute itself specifies the time limit for such refund

claims, which is six months in this case, if the same is filed after six months, the same cannot be entertained by the Adjudicating Authority. Therefore, the Adjudicating Authority has correctly rejected their Refund Claim vide OIO dated 31.01.2017.

8. After rejection of Refund Claim by the Adjudicating Authority on the ground of limitation, the Appellant cannot take the stand that the same refund should be granted to them without any time limit on the ground that Section 11B is not applicable to them, as has been done by them in their second Refund Claim. As the refund claim is specifically covered by the Clauses of Section 102(3) of the Finance Bill 2016, and was rejected once, the Appellant's attempt to get the same refund under a general category by concealing the facts is illegal. Hence, I find no merits in the Appeal filed by the Appellant and the same is dismissed.

9. Before parting, the Tribunal would like to express its displeasure for the acts of the Appellant in this case. The Appellant has not been disclosed the correct facts before the Commissioner (Appeals). The fact of claiming the same amount as refund earlier and the same being rejected has come to the knowledge of the Commissioner (Appeals) due to his diligent verification. Even before the Tribunal in their Appeal Papers submitted on 07/02/2023, the Appellant has not disclosed any details of their first refund claim of Rs.15,85,089/- being rejected by the OIO dated 31/1/2017. Because of this, the Tribunal was forced to spend precious time in trying to understand the matter. It becomes clear that the Appellant has been trying to get the refund somehow or the other by concealing several facts. Even after knowing fully well that their case was covered under the Refund falling under Section 102 (3) of the Finance Bill, 2016, still they have made attempt to get his amount as a general refund. Their submission today that the first refund claim was filed by them by way of Speed Post on 08/11/2016 is not backed up by proper evidence, is made for the first time and goes against their own PH recording before the Adjudicating Authority in the OIO dated 31/1/2017, which is reproduced below:-

> *1. That Smt. Bebi Poddar w/o Sri Shekhar Chandra Poddar is a diabetic patient. During the last week of October, 2016 her sugar level in blood was very high and was not in control and therefore Shri Shekhar Chandra Poddar took his wife to Kolkata and consulted with Dr. J. J. Mukherjee at Apollo Gleneagles Hospital, Kolkata. Doctor advised her for observation for 21 days and therefore, sri Shekhar Chandra*

> *Podder had to stay at Kolkata with his wife. After return of Sri Shekhar Chandra Poddar to Agartala the application along with necessary documents for Refund Claim was submitted on 21.11.2016. The last date for submission of application for Refund Claim was 14.11.2016. Though the Application along with necessary documents for Refund Claim U/s 102 of Finance Act, 2016 was almost ready, it could not be submitted within the time limit due to the absence of Sri Shekhar Chandra Poddar because of unavoidable circumstances.*
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> *(Emphasis supplied)*

10. These facts show that the Appellant has concealed the facts before the Commissioner (Appeals) as well as before the Tribunal, trying to mislead them which might have resulted in an erroneous Order being passed. Considering the seriousness of the acts of the Appellant, I deem it a fit case for imposing a cost of Rs.10,000/- on the Appellant, to be deposited in the Prime Minister Relief Fund. Copy of such Deposit is to be furnished to CESTAT Registry by 30/04/2023.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja
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