

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76142 of 2018

(Arising out of Order-in-Appeal No.365/ST-I/KOL/2017 Dated 13.12.2017 passed by Commissioner of CGST & CX (Appeal-I), Kolkata.)

M/s. Orga Systems India Pvt. Ltd.

(DLF IT Park, II, Plot No. IIF/1, Action Area-II, Block IC, 5th Floor,
Rajarhat, Kolkata-700156)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Kolkata South
Commissionerate**

(GST Bhawan, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Mr. B. R. Datta, FCA for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76019/2023

Date of Hearing : 10 July 2023

Date of Decision : 10 July 2023

PER R. MURALIDHAR

The Appellants are SEZ Unit exporting their services. In respect of the inputs fully consumed towards the output services exported by them during the period April 2014 to March 2015, the Appellants filed a refund claim for Rs.2,60,000/- on 26/11/2014 for the quarter ending September 2014. The Adjudicating Authority vide OIO No. 04/Refund/ST-I/North Div/Kol/2014-15 dated 08/12/2014 sanctioned the refund of Rs.2,60,000/-. Being aggrieved, the Department filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), held that out of four Invoices mentioned in the refund claim for Rs.2,60,000/-, two Invoices pertained to April 2014. Accordingly, he held that the Appellant was not eligible for refund of Rs.2,47,389/- in respect of these invoices. Being aggrieved, the Appellant is before the Tribunal.

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2. The Appellant submits that the Commissioner (Appeals) is in error in holding that the refund claim filed by them does not fulfill the condition of Notification No. 12/2013-ST dated 01/07/2013. The Commissioner (Appeals) has taken the view that only one claim of Refund for every quarter should be made, whereas in their case, as per the Commissioner (Appeals), the Invoices pertained to two different quarters.

3. The Appellant submits that as per Notification No.12/2013-S.T, there is no condition that the refund claim should be filed for Invoices pertaining to that quarter only. They also rely on the case law of **SRF Ltd Vs. CCE & ST (LTU) Delhi-2017 (3) GSTL 347 (Tri-Del.)**, wherein the Tribunal held that the refund cannot be rejected on the basis of the claim being pertaining to Invoice in respect of another quarter. Accordingly, they pray that the present Appeal may be allowed.

3. The Learned AR reiterates the findings of the Commissioner (Appeals).

4. Heard both sides and perused the documents and the submissions made.

5. On going through the Notification No. 12/2013-ST dated 01/07/2013, wherein the procedure for refund claim has been specified, it is seen from Para 3 of (iii) (e) and (f), the conditions towards filing of the refund claim are as under;-

3 (iii) The refund of service tax on (i) the specified services that are not exclusively used for authorized operation, or (ii) the specified services on which ab initio exemption is admissible but not claim, shall be allowed subject to the following procedure and conditions, namely:-

(e) The claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy

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Commissioner of Central Excise, as the case may be, shall permit;

(a) The SEZ Unit or the Developer shall submit only one claim of refund under this notification for ever quarter;

Explanation-For the purposes of this notification "quarter" means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

6. From the above Provisions and Explanations thereto, it is seen that the only condition imposed is that the Appellant should file one refund claim per quarter. This means that within the same quarter, the Appellant should not file more than one refund claim. This Notification nowhere mentions as to which of the Invoices pertaining to each quarter can be considered or not considered. Therefore, there is no condition about non-inclusion of the previous quarter invoices in the next quarter refund claim. In fact, this condition has been placed so that the assessee does not make more than one claim per quarter by resorting to monthly refund claims.

7. Therefore, I see there is no error in the Appellant filing the refund claim by adding the Invoices of the previous quarter which were not used for claiming the refund claim during the previous quarter. The other condition as per Para 3 (iii) (e) is that the refund claim shall be filed within one year from the end of the month in which actual payment of Service Tax was made by SEZ Unit. In the present Appeal, it is not the case of the Department that the Appellant has filed the Appeal after one year.

8. In the case law of SRF Ltd, cited supra, the very issue was before the Tribunal which has held as under:-

4. *Notification No. 12/2013, dated 1-7-2013 provides exemption to taxable services provided in SEZ unit or the developer of SEZ unit for*

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authorized operation. The refund procedure under the said notification is contained in Paragraph III(e) therein, which provides that the refund claim shall be filed within one year from the end of the month, in which actual payment of Service Tax was made by the developer or the SEZ unit to the registered service provider. The Clause (f) in Paragraph III also provides that the SEZ unit or the developer shall submit only one refund application under the notification for every quarter. It is an admitted fact on record that within one year from the date of actual payment of Service Tax to the service provider, the appellant had filed the refund application. However, the refund application for Rs. 4,64,114/-, has not been considered by the authorities below on the ground that Service Tax paid during the particular quarter, has not been claimed for that quarter. On a conjoint reading of Clauses (e) and (f) contained in the Notification, it transpires that the statutory requirement of time limit for filing the refund application is contained in Clause (e), which has to be strictly adhered to by the assessee for the purpose of claiming refund. The condition in Clause (f) is to facilitate the Department to scrutinize or to process the refund application. Thus, the condition for filing the claim on quarterly basis has been provided therein.

5. *Since Clause (f) is procedural in nature and the appellant in this case has complied with the statutory provisions of filing the refund application within one year from the date of payment of Service Tax to the service provider, in my opinion, rejection of refund claim of Rs. 4,64,114/- by the authorities below is not in conformity with the conditions laid down in Notification dated 1-7-2013. [Emphasis Supplied]*

9. Since there is no violation of the conditions imposed under Notification No. 12/2013-S.T. dated 01/07/2013 and as the present issue is squarely covered by the decision of the Tribunal in the case of SRF cited supra, I set aside the impugned OIA and allow the Appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja