IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Service Tax Appeal No. 308 of 2012

(Arising out of Order-in-Appeal No. 41/JSR/2012 dated 30.03.2012 passed by Commissioner of CGST & Central Excise, Jamshedpur.)

Commissioner of CGST & Central Excise, Jamshedpur.
143, New Baradwari, Sakchi, Jamshedpur-831001.

...Appellant (s)

VERSUS

M/s Rungta Mines Ltd.,
Rungta House, Chibasa, West Singhbhum Jharkhand-833201.

. ..**Respondent(s)**

APPERANCE :
Shri S. S. Chattopadhyay, Authorized Representative for the Appellant
Shri Kartick Kurmy, Advocate for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...76710/2023

DATE OF HEARING : 14.09.2023

DATE OF PRONOUNCEMENT: 20.09.2023

PER K. ANPAZHAKAN :

The present appeal has been filed by Commissioner of Central Excise, Jamshedpur Commissionerate against the impugned order dated 30.03.2012 passed by the Commissioner (Appeals), wherein he has allowed the service tax refund of Rs.56,71,926/- claimed by the Respondent. Aggrieved against the impugned order, the Department has filed this appeal.

2. Briefly stated facts of the case are that the Respondent has filed their refund application dated 30-05-2008 before the Deputy Commissioner, Division-I, Jamshedpur for refund of service tax amounting to Rs.2,86,25,465/- under Notification No.41/2007-S.T dated 06-10-2007, as amended, for the quarter ending January 2008 to March 2008. The said service tax was paid on various taxable services received and used by them for export of Iron Ore fines to their overseas buyers. The Deputy Commissioner issued a Show Cause Notice dated 26-08-2008 proposing to

reject the refund claim as the Respondent has failed to substantiate their claim properly. The Dy. Commissioner adjudicated the case vide Order-in-Original dated 07-04-2010, wherein he rejected the refund of Rs.59,05,214/- and allowed the balance refund of Rs.1,22,53,754/-. The department has accepted the sanctioning of refund of Rs.1,22,53,754/- and no appeal was filed. Out of the total disallowed refund of Rs.59,05,214/-, Rs.56,71,926/- was rejected on the ground that the refund claim was filed beyond the period of limitation of 60 days as provided under Para 2(e) of the said notification which is the subject matter of dispute in the present appeal. The remaining refund claim amounting to Rs.2,33,288/- rejected by the adjudicating authority was not disputed by the Respondent.

3. In the Order-in-Original, the refund claim of Rs.56,71,926/- was rejected on the sole ground that the services against the invoices in question were used in respect of goods exported during the quarter ending December, 2007 and the refund application dated 30-05-2008 filed by the Respondent was barred by limitation of 60 days prescribed under Para 2(e) of Notification No.41/2007-S.T. On appeal, the Ld. Commissioner (Appeal) vide the impugned Order-in-Appeal dated 30-03-2012 held that the refund of Rs.56,71,926/- was not time barred, in view of substitution of the period of limitation from 60 days to 6 month by Notification No.32/2008-ST dated 18-11-2008 and as clarified by the Board vide Circular No.112/6/2009-ST dated 12-03-2009. However, the Ld. Commissioner (Appeal) upheld the rejection of refund of Rs.2,33,288/-. Aggrieved against allowing the refund of Rs.56,71,926/-, the department has filed the present appeal.

4. The Respondent has filed cross objection against the appeal filed by the Department, wherein they made the following submissions:

(i) Rejection of Refund on the ground of limitation in the Order-i-Original is outside the purview of the show cause notice and hence, denial of refund on grounds of limitation is bad in law. Accordingly, they contended that the Order-in-Appeal cannot be interfered with.

(ii) The Respondent relied on the judgment of the Hon'ble Supreme Court in the case of *CCE Vs. Shital International reported in (2011) 1 SCC 109)*, wherein it has been held that Revenue cannot be allowed to raise a fresh plea, which has not been raised in the show cause notice.

(iii) The Respondent further submits that period of limitation of "<u>sixty days</u>" under Para 2(e) has been "*<u>substituted</u>*" by "<u>six months</u>" by Notification No.32/2008- S.T dated 18-11-2008 which is retrospective in effect which is also clarified by the Board vide <u>Circular No.112/6/2009-S.T dated 12-03-2009</u>

and the said circular is binding on the departmental authorities and the authorities under the Act cannot take a stand contrary to their own Circular till it is withdrawn as held by the Hon'ble Supreme Court in the case of *CCE Vs. Maruti Foam Pvt. Ltd., reported in (2004) 164 ELT 394 (SC)* . The Respondent submits that in view of extension of limitation for filing refund from 60 days to 6 months by *Notification No.32/2008-ST dated 18-01-2008*, the Board vide *Circular No.112/6/2009-ST dated 12-03-2009 (Sl.No.1)*, has applied extended period of limitation to six months to refund claims pertaining to quarter ending March, 2008 and quarter-ending June, 2008. Hence, the refund claim is otherwise also not barred by limitation.

(iv) In the case of *Suchitra Components Ltd., Vs. CCE reported in (2007) 208 ELT 321 (SC) (Para 2)*, it is held by the Hon'ble Supreme Court that beneficial circular is to be applied retrospectively while oppressive circulars is to be applied prospectively.

(v) Different benches of the Tribunal following the said clarificatory *Circular No.112/6/2009-ST dated 12-03-2009,* has held that extended period of 6 months would apply to quarter-ending March, 2008 and quarter-ending June, 2008. In support of their claim, the Respondent relies on the following decisions of the Tribunal:-

(i) *CCE Vs. Essar Steel Ltd., reported in (2010) 20 STR 769 (Tri.-Ahmd.) (Para 4.5);*

(ii) *Shankar Packaging Ltd. Vs. CCE reported in 2013 (31) STR 303 (Tri.-Ahmd.);*

(iii) *Moenus Textile Pvt. Ltd. Vs. CCE 2010 reported in (19) STR 787 (Tri.-Del.) (Para 6);*

(vi) The Respondent submits that Under Section 37B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, Board is empowered to issue circulars to mitigate the rigors of law and to grant administrative reliefs which it has granted by issuing Circular No.112/6/2009-ST dated 12-03-2009. They relied on the following judgments in support of their contention on Board's power to issue such circulars:

(i) Catholic Syrian Bank Ltd. Vs CIT reported in (2012) 3 SCC 784 (Para 23, 24);

(ii) State of Kerala Vs. Kurian Abraham Pvt. Ltd. reported in 2008 (224) ELT 354 (SC) (Para 18, 19);

(vii) They submitted that the said Circular No.112/6/2009-S.T dated 12-03-2009 is a beneficial circular and hence it is to be applied retrospectively. Accordingly, they contended that period of limitation of "sixty days" under

Para 2(e) has been "*substituted*" by "six months" by *Notification No.32/2008-S.T dated 18-11-2008* which is retrospective in effect.

(viii) It is a case of exemption by way of refund. In the instant case, the factum of export is not disputed meaning thereby the eligibility to exemption is not in dispute. But, the dispute is limited to procedural/adjectival part of exemption *Notification No.4/2007-ST* as amended by *Notification No.32/2008-ST Dated 18-11-2008*. In the case of *CC Vs. M. Ambalal and Company reported in (2011) 2 SCC 74,* it is held by the Hon'ble Supreme Court that a promotional notification should be liberally construed, this is the special rule. In this case, the Board has accordingly issued the clarificatory Circular to extend the benefit of *Notification No.41/2007-ST*, the purpose of which is to promote export, make Indian exporter competitive and to earn valuable foreign exchange.

(ix) The Respondent further submits that in the case of *Gottumukkala Venkata Krishamraju Vs. UOI reported in (2019) 17 SCC 590*, it is held by the Hon'ble Supreme Court under Para 18 in the following lines-

> ***18.*** *Ordinarily wherever the word "substitute" or "substitution" is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment" having a prospective effect. Therefore, we do not think that it is a universal rule that the word "substitution" necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that the legislature intended otherwise. Insofar as present case is concerned, as discussed hereinafter, the legislative intent was also to give effect to the amended provision even in respect of those incumbents who were in service as on 1-9-2016.*

(x) Similar views have been expressed in the case *Government of India Vs. Indian Tobacco Association reported in 2005 (187) ELT 162 (SC) .*

(xi) I*n view of the above submissions, the* Respondent prays that the instant appeal filed by Department may be rejected with consequential relief(s) to them.

5. The Ld. A.R submitted that it is an admitted fact that a portion of the claim was relatable to goods exported during the quarter ending December 2007 and the claim was filed beyond 60 days from the end of the relevant quarter during which the said goods have been exported as stipulated in the said notification. Accordingly, the adjudicating authority has rightly rejected the refund claim amounting to Rs.56,71,926/-. He cited the decision of the Hon'ble Apex Court in the case of UOI Vs Uttam Steel Ltd, wherein it has been held that a dead claim cannot be revived by a subsequent amendment in the Notification. It is an undisputed fact that the refund claim was filed beyond the 60 days as stipulated in the notification 41/2007-ST well before the amendment on 18-11-2008. Hence, it was a dead claim which cannot be revived as per the decision of the Hon'ble Supreme Court cited above. Accordingly, he prayed for setting aside the impugned order passed by Commissioner (Appeals), which allowed the refund.

6. Heard both sides and perused the appeal records.

7. From the facts on record, we observe that the respondent filed a refund claim of service tax amounting to Rs.2,86,25,465/- under Notification No.41/2007-S.T dated 06-10-2007, for the quarter ending January 2008 to March 2008. The Deputy Commissioner sanctioned refund of Rs.1,22,53,754/- and disallowed the claim of refund amounting to Rs.59,05,214/-. Out of this, refund claim amounting to Rs.2,33,288/- rejected by the adjudicating authority was not disputed by the Respondent. Rs.56,71,926/- which was rejected by the adjudicating authority was on the ground that the refund claim was filed beyond limitation of 60 days as provided under Para 2(e) of the said notification which is the subject matter of dispute in the present appeal. On appeal, the Commissioner (Appeals) vide the impugned Order-in-Appeal dated 30-03-2012 held that the refund of Rs.56,71,926/- was not time barred, in view of substitution of the period of limitation from 60 days to 6 month by

Notification No.32/2008-ST dated 18-11-2008 and as clarified by the Board vide Circular No.112/6/2009-ST dated 12-03-2009. For the sake of ready reference, the Notification No.32/2008-ST dated 18-11-2008 and the Board vide Circular No.112/6/2009-ST dated 12-03-2009, are reproduced below:

Circular: 112/6/2009-S.T. dated 12, March, 2009

Refund of Service Tax under Notification No. 41/2007-S.T, dated 6.10.2007 for specified taxable service used in export of goods – Clarifications.

Circular No. 112/6/2009-S.T., dated 12.3.2009

F. No. 137/84/2008-CX.4

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi.

Subject:- Filing of claim for refund of service tax paid under Notification No. 41/2007-S.T., dated 6.10.2007- Regarding Notification No. 41/2007-S.T., dated 6.10.2007 allows refund of service tax paid on specified services used for export of goods. To resolve the procedural difficulties arising in implementation of this refund scheme the Board has earlier issued Circulars No. 101/4/2008-S.T., dated 12.5.2008 [2008 (10) S.T.R. C22] and No. 106/9/2008-S.T., dated 11-12-2008 [2009 (13) S.T.R. C3].

2. The Board has received further reference from field formations and trade seeking clarification on other procedural issues. These issues and the clarification are discussed in the following Table.

TABLE

Sl. No.	Issue Raised	Clarification
1.	Notification No. 41/2007-S.T. has been amended by notification Nos. 32/2008-S.T., dated 18.11.2008 and 33/2008-S.T., dated 7.12.2008 to (i) extend the limitation period from 60 days from the end of quarter to six month; (ii) to omit the condition of non-availment of drawback. Whether, in view of amended conditions, refund for the quarter Mar-June, 08 would be allowed to be filed till Dec.,08?	It is clarified that consequent upon revision of limitation period, any refund claim that is filed within such revised limitation period would be admissible if it is otherwise in order. Therefore, refund claims of service tax on specified taxable services used for exports of goods made in the quarter Mar-June, 08 could be filed till 31st December, 08.

12. From the Notification No.32/2008-ST dated 18-11-2008 cited above, we observe that the notification has extended the time limit for filing of refund claims under Notification 41/2007 dated 06.10.2007, from 60 days to 6 months. Board Circular No.112/6/2009-ST dated 12-03-2009 has clarified the doubts with specific examples. The Circular categorically states that in view of the extended time limit, the refund claim for the quarter March-June 2008 can

be filed till 31st December 2008. In the present case, the Appellant has filed the refund for the quarter January 2008 to March 2008, within the stipulated period of 60 days. However, on verification of the documents, the adjudicating authority observed that a portion of the claim was relatable to goods exported during the quarter ending December 2007 and only for that portion, the claim was filed beyond 60 days from the end of the relevant quarter during which the said goods were exported. Accordingly, the adjudicating authority has rejected part of the refund claim amounting to Rs.56,71,926/- as time barred. Thus, we observe that the refund claim filed within the time limit prescribed in the Notification 41/2007 was not a dead claim. Only a part of that claim was rejected as time barred. When Notification 32/2008 dated 18/11/2008 was issued extending the time limit from 60 days to 6 months, with retrospective effect, this Notification has validated the entire claim, as if it was filed within the revised time limit. Accordingly, the Commissioner (Appeals) has rightly allowed the refund of Rs.56,71,926/- which was rejected by the adjudicating authority on the ground of tame bar.

13. In his submission, the Ld. A.R. cited the decision of the Hon'ble Apex Court in the case of UOI Vs Uttam Steel Ltd, and contended that a dead claim cannot be revived by a subsequent amendment in the Notification. It is his submission that the refund claim was filed beyond the 60 days as stipulated in the notification 41/2007-ST, well before the amendment on 18-11-2008. Hence, according to him it was a dead claim which cannot be revived as per the decision of the Hon'ble Supreme Court cited above. We do not agree with the interpretation of the decision of the Hon'ble Apex Court by the Ld. A.R. As per the decision of the Hon'ble Apex Court in Uttam Steel Ltd, only a dead claim cannot be revived by a subsequent amendment in the Notification. In the present case, the refund claim filed by the respondent was not a dead claim. The claim was filed well within the time limit permitted in the Notification 41/2007-ST. Only a part of the claim was held as time barred by the adjudicating authority based on his findings that a portion of the claim was relatable to goods exported during the quarter ending December 2007 . We observe that Notification No.32/2008-ST dated 18-11-2008 extended the time limit for filing the refund claim from 60 days to 6 months and validated that portion the refund claim which was filed beyond 60 days. Thus, we observe that there is no merit in the contention of the Ld.A.R that it was a dead claim that cannot be revived. Accordingly, we hold that there is no infirmity in the impugned order, which has rightly allowed the refund of Rs.56.71.926/-, as

per the Notification No.32/2008-ST dated 18-11-2008 and the clarification issued by Board vide Circular No.112/6/2009-ST dated 12-03-2009.

14. In view of the above discussion, we uphold the impugned order and reject the appeal filed by the department.

(Pronounced in the open court on……20.09.2023.…)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar