IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. ST/86597 & 86598/2017

(Arising out of Order-in-Appeal No.PUN-EXCUS-001-APP-527 to 529-16-17 dt. 27.03.2017 passed by the Commissioner of Central Excise (Appeals), Pune-I)

Commissioner of Central Excise, Pune-I : **Appellant**

VS

M/s. Sciformix Technologies Private Ltd. : **Respondent**

Appearance

Shri M.P. Damle, Asstt. Commr. (A.R.) for Appellant

Shri Udyan Chokshi, Advocate for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Date of hearing : 16/02/2018
Date of decision: 16/02/2018

ORDER NO. A/85761-85762/2018

These appeals are directed against the Order-in-Appeal passed by Commissioner (Appeals) whereby he sanctioned the refund of Rs.18,04,189/- and Rs.36,33,985/-. The said refund claims were filed by the respondent in terms of the Notification NO. 12/2013-S.T. dt. 1.7.2013. The Learned Commissioner (Appeals) has allowed the refund on the ground that as regard the limitation for filing the refund claim in terms of Section 11B of Central Excise Act, 1944, the period of 1 year should be reckoned from the next date of the quarter ends. In the present case the respondent had filed refund claim within 1 year from the end of the quarter. The Revenue's appeal is on the ground that the refund was claimed under Notification and the Condition (e) prescribed time limit for filing the refund i.e. from the end of the month in which month the actual payment of service tax is made by the SEZ. However the Commissioner (Appeals) has not dealt with this provision and decides the limitation issue on the basis of Section 11B of the Central Excise Act, 1944.

2. Shri M.P. Damle, Learned Assistant Commissioner (A.R.) appearing on behalf of the Revenue submits that since the refund is under Notification No. 12/2013-S.T., all the conditions laid down in the notification should be followed. As regard limitation for filing the refund there is a statutory provision under clause (e) of sub-clause (iii) of para 3 of the Notification, according to which, the refund claim should be filed within 1 year from the end of the month in which the actual payment of service tax was made by the SEZ unit, whereas the respondent filed the refund claim within 1 year from the end of the quarter. Therefore it is beyond 1 year as per period prescribed under clause (e) therefore the refund is not admissible to the respondent.

3. Shri Udyan Choksi, Learned Counsel appearing on behalf of the respondent submits that as per clause(f) refund should be filed only once in quarter, therefore the period should be reckoned from the end of the quarter and not from the month end on monthly payment of service tax is made. He relied upon the following judgments:

(i) *Commissioner of Service Tax, Mumbai-II Vs. M/s. Sitel India Ltd. 2016-TIOL-818-CESTAT-MUM*

(ii) *Principal Commissioner of Service Tax Vs. Prodair Products India Pvt. Ltd. 2016-TIOL-1931-CESTAT-MUM*

(iii) *Commissioner of Central Excise & Service Tax Vs. M/s. Span Infotech India Pvt. Ltd. 2018-TIOL-516-CESTAT*-BANG-LB

4. I have carefully considered the submissions made by both the sides I find that the refund claims filed by the respondent under Notification No. 12/2013-ST wherein as regard limitation there specific clauses (e) and (f) in the notification which reads as under:

> "(*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 Commissioner of Central Excise, as the case may be, shall permit;"*
>
> *(f) the SEZ Unit or the Developer shall submit only one claim of refund under this notification for every 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".*

As per the reading of the above clause it is provided that the refund under the notification should be filed within 1 year from the end of the month in which the actual payment of service tax is made by SEZ unit to the service provider. However as per clause (f) it is provided that the refund claim to be filed only once for a quarter. From the perusal of the impugned order, I find that the Learned Commissioner has not touched upon any of the clause(e) or (f) provided in the notification and he has held that the period of 1 year should be reckoned from the end of the quarter, applying the provisions of Section 11B. Therefore the Learned Commissioner should not have decided a case only on Section 11B of the Act, particularly when the specific provisions for limitation is provided under Notification No. 12/2013-ST. Since the Learned Commissioner (Appeals) has not dealt with the provisions of condition of the notification No. 12/2013-ST, the matter needs re-consideration. Accordingly, the impugned order is set aside. The Ld. Commissioner (Appeals) shall pass a fresh order after considering all the submissions made by the respondent and the provision of Notification No.12/2013-ST. The appeal is disposed of by way of remand to the Commissioner (Appeals).

(Pronounced & Dictated in court)

(Ramesh Nair)
Member (Judicial)

SM.