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

Application No. ST/S/85196, 85198, 85199 & 85200/2018

In Appeal No. ST/85471 to 85474/2018

(Arising out of Order-in-Appeal No. PK/111 to 115/MC/2017 dated 18.9.2017 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai).

Commissioner of CGST & Central Excise, Mumbai Central Commissionerate	Appellant

Vs.

M/s L'Oreal India Pvt. Ltd.	Respondent

Appearance:

Shri M. Suresh, Dy. Commissioner (AR)	for Appellant

Shri Mihir Deshmukh, Advocate with Shri Abhijit Singh, Advocate	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 20.03.2018

Date of Decision: 27.03.2018

ORDER NO. **A/85861-85864 / 2018**

Per: Ramesh Nair

The issue involved in the present case is that for the purpose of refund under Rule 5 of CENVAT Credit Rules, 2004 and notification issued thereunder, whether the relevant date is the date of invoice, date of Foreign Inward Remittance Certificate (FIRC) or the ends of the quarter for which the refund pertains. This issue has been considered by the Larger Bench of this Tribunal in the case of *Commissioner of Central Excise & Service Tax, Bengaluru Vs. Span Infotech India Pvt. Ltd. – 2018-TIOL-516-CESTAT-BANG-LB*, whereby the Larger Bench passed the following order: -

> *"8. We have heard all connected parties in great length and perused the connected records. In the interest of bringing clarity to the issue on hand, we ignore the objection raised on jurisdiction and proceed to decide the issue on merit.*
>
> *9. Rule 5 of the CENVAT Credit Rules, 2004 provides for refund of unutilized CENVAT credit, even after adjustment of the same for payment of duty of excise or service tax. The conditions, safeguards and limitations for consideration of such refund claims have been spelt out by the Government through notifications. Notification No.5/2006 (up to 17/06/2012) and Notification No.27/2012 (w.e.f. 18/06/2012) (as amended) has specified the conditions in this regard. These notifications specify that such refund claims are to be filed within the period specified in Section 11B. The relevant date specified under the above section leaves no room for doubt as far as export of goods is concerned. However as far as export of services is concerned, the various sub-sections specifying relevant date under Section 11B do not cover the case of export of services. Further the exporters of services have been given the option to file claims for such refunds once in a quarter and in respect of 100% EOUs, once in a month. The issue referred to Larger Bench is whether the time limit prescribed under Section 11B in respect of filing of refund claims is to be applied from the date of receipt of payment for export of services or can be considered from the end of the quarter in which such payments have been received.*
>
> *10. After considering the provisions of the Notifications issued under Rule 5 of the CCR, we note that there is a specific condition that the refund claims are required to be filed within the period specified under Section 11B. Consequently, we are of the view that completely ignoring the provisions of Section 11B may not be appropriate. This view is supported by the decision of Hon'ble Madras High Court in the case of GTN Engineering (supra) wherein Hon'ble High Court has disagreed with the view expressed by Hon'ble Karnataka High court in the case of mPortal (supra) that Section 11B will have no application with respect to refund under Rule 5 of CCR.*
>
> *11. The definition of relevant date in Section 11B does not specifically cover the case of export of services. Hence, it is necessary to interpret the provisions constructively so as to give it meaning such that the objective of the provisions; i.e. to grant refund of unutilized CENVAT credit, is facilitated. By reference to the Service Tax Rules, 1994 as well as the successor provisions i.e. the Export of Service Rules, 2005, we note that export of services is completed only with receipt of the consideration in foreign exchange. Consequently, the date of Foreign Inward Remittance Certificate (FIRC) is definitely relevant. The Hon'ble Andhra Pradesh high Court has held that the date of receipt of consideration may be taken as relevant date in the case of*Hyundai Motors [2015(39) STR 984 (AP)] ***= 2015-TIOL-739-HC-AP-ST***.
>
> *12. The related question for consideration is whether the time limit is to be restricted to the date of FIRC or can be considered from the end of the quarter. The Tribunal in the case of Sitel India Ltd. (supra) has observed that the relevant date can be taken as the end of the quarter in which FIRC is received since the refund claim is filed for the quarter.*

> *13. Revenue has expressed the view that relevant date in the case of export of services may be adopted on the same lines as the amendment carried out in the Notification No.27/2012, w.e.f. 01/03/2016. Essentially after this amendment the relevant date is to be considered as the date of receipt of foreign exchange. While this proposition appears attractive, we are also persuaded to keep in view the observations of the Hon'ble Supreme Court in the case of Vatika Township (supra), in which the Constitutional Bench has laid down the guideline that any beneficial amendment to the statute may be given benefit retrospectively but any provision imposing burden or liability on the public can be viewed only prospectively. Keeping in view the observations of the Apex Court, we conclude that in respect of export of services, the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis.*
>
> *14. With the above observations, we revert the matter to the regular Benches for deciding the respective appeals."*

2. In view of the above Larger Bench's judgment, for the purpose of refund under Rule 5 of CENVAT Credit Rules, the relevant date should be taken from the end of the quarter for which the refund pertains.

3. Accordingly, the Revenue's appeals are not sustainable. The impugned order to the extent of issue involved in the present case is upheld and the Revenue's appeals are dismissed. Stay applications also stand disposed of.

(Pronounced in Court on 27.03.2018)

(Raju) **Member (Technical)**	**(Ramesh Nair)** **Member (Judicial)**

Sinha