IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/85978/2017

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APP/275/14-15 dated 4th February 2015 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.]

WNS Global Service Private Limited …*Appellant*

versus

Commissioner of Customs, Central Excise & Service Tax
Nagpur ***…Respondent***

<u>*Appearance*</u>*:*

Shri Mihir Deshmukh, Advocate for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**04/12/2017**
Date of decision:	**09/03/2018**

ORDER NO: ____________________________

M/s WNS Global Service Private Limited are exporters of 'business auxiliary service' and on 27th June 2013 claimed refund of a total amount of ₹ 1,05,98,545/- availed as credit of tax paid on input services from April 2005 to July 2007. The claim was in consequence of orders of the Tribunal dated 6th November 2012 and 7th November 2012.

2. The claim for refund had arisen under rule 5 of the CENVAT Credit Rules, 2004, read with notification no. 5/2006-CE (NT) dated 14th June 2006, enabling monetization of credit accumulated on input services used for exporting 'business auxiliary services' which they were not in a position to utilize in the absence of any domestic clearance. The original authority allowed refund of an amount of ₹ 69,13,833/- and rejected the remaining claim of ₹ 36,84,611/- on the ground that the dates of export stretched beyond the permitted one year from the date of claim. According to the original authority, the relevant date for the purpose of determining eligibility under section 11B of the Central Excise Act, 1944 is the date on which invoices were issued and thus claim relating to invoices issued prior to one year before the date of filing of the claim could not be allowed. It was held in impugned order-in-appeal no. NGP/EXCUS/000/APP/275/14-15 dated 4th February 2015 of Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur that, for the quarter April 2005 to July 2005 the claim should have been filed by 31st March 2006 and for the quarter July 2005 to March 2006 the deadline was 30th June 2006 whereas in the former the claim had been filed on 27th April 2006 and in the latter on 31st July 2006. The appeal of Revenue was allowed to the extent of further denial of refund of ₹ 20,40,226/-

out of the ₹ 69,13,933/-. The impugned order relies upon the decision of the Tribunal in *Affinity Express India Pvt Ltd v. Commissioner of Central Excise, Pune – I [2014-TIOL-1035-CESTAT-MUM]* which, being a latter decision, was held by the first appellate authority to prevail over the decisions cited on behalf of the appellant.

3. The primary submission of the appellant is that it is settled law that the relevant date should be one year from the last date of quarter to which the refund claim pertains in view of the restriction in the notification *supra* limiting the claims to one per quarter. It is also their submission that in *Bichtel India Pvt Ltd v. Commissioner of Central Excise, Delhi [2014 (34) STR 437 (Tri.-Del.)],* the date of receipt of foreign exchange was held to be relevant for computing the period of limitation. Likewise, in appeal of Commissioner of Customs & Central Excise, Hyderabad – IV against the final order of the Tribunal in *Hyundai Motor India Engineering (P) Ltd v. Commissioner [2015 (39) STR 1019 (Tri.Bang.)],* which was dismissed, the Hon'ble High Court of Andhra Pradesh has held that date of receipt of consideration is appropriate for computation of relevant date. It is further submitted that the reliance placed by the first appellate authority on the decision of the Tribunal in re *Affinity Express India Pvt Ltd* is incorrect in view of the decision of the Larger Bench in *Commissioner of Service Tax, Goa v. Ratio Pharma India Pvt Ltd [2015 (39) STR 31 (Tri.-LB)]* which had taken notice of the decision in *re Affinity Express India Pvt*

Ltd and *re Bechtel India Pvt Ltd* and held that former is *per incurium.* Likewise, reliance is placed on the decision of this Tribunal in *Oceans Connect India Pvt Ltd v. Commissioner of Central Excise, Pune – III [2016 (46) STR 858 (Tri.-Mumbai)]*.

4. It is the submission of the Learned Counsel that the disputed amount of refund sanctioned by the original authority but denied by the first appellate authority was well within the period of one year from the last date of the quarter to which the refund pertains. Learned Authorised Representative reiterated the order of the first appellate authority.

5. In view of the above, it is clear that the refund claims have been filed within the period of one year from the last date of the quarter to which the claims pertains and that it was not correct on the part of the first appellate authority to accept the plea of Revenue that the date should be computed from the date of invoice.

6. Accordingly, for the above reasons the impugned order is set aside and the appeal is allowed.

(Pronounced in Court on 09/03/2017)

(C J Mathew)
Member (Technical)

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