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

APPEAL NO: ST/88101/2017

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-119-17-18 dated 20/06/2017 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Commissioner of Central GST
Pune – II …***Appellant***

versus

ITS Digitech Pvt Ltd. ***…Respondent***

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

Shri V.R. Reddy, Assistant Commissioner (AR) for the appellant

Shri Makrand Joshi, Advocate for the respondent

Date of hearing	14/03/2018
Date of pronouncement	14/03/2018

<u>CORAM</u>

Hon'ble Shri M V Ravindran, Member (Judicial)

ORDER NO: A/85679 / 2018

This appeal is filed by Revenue against Order-in-Appeal No: PUN-EXCUS-001-APP-119-17-18 dated 20/06/2017 passed by the Commissioner of Central Excise (Appeals), Pune – I.

2. Heard both the sides and perused the records.

3. The issue in this appeal is whether the respondent have filed the refund claims under Rule 5 within the period of one year from the expiry of the quarter for which refund claim is preferred. Both the lower authorities have held that the period of one year as per the provisions of Section 11B needs to be calculated from the day of the export invoice and not quarter for which the refund has been preferred.

4. The issue is no *res integra*. The Larger Bench of the Tribunal in the case of *Commissioner of Central Excise and Service Tax, Bangalore – I v. Span Infotech Pvt Ltd* [2018–TIOL-516-BANG-LB] in paragraph No. 13 has held as under:

> "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.”

5. In view of the foregoing, I find that the impugned order is correct and does not require any interference.

6. Impugned order is upheld and the appeal is rejected.

(Dictated in Court)

(M V Ravindran)
***Member (Judicial*)**

as/*