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

APPEAL NO: ST/85464/2016
CROSS-OBJECTION NO: ST/CO-91056/2016

[Arising out of Order-in-Appeal No. PUN-EXCUS-0160-15-16 dated 30/11/2015 passed by the Commissioner of Central Excise (Appeals – I), Pune.]

Commissioner of Central Excise
Pune – I …***Appellant***

versus

Mihir Enterprises ***…Respondent***

Appearance:

Shri VR Reddy, Assistant Commissioner (AR) for appellant

Shri Makrand Joshi, Advocate for respondent

Date of hearing	**12/03/2018**
Date of pronouncement	**12/03/2018**

CORAM

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

ORDER NO: **A/85665 / 2018**

This appeal is filed by Revenue against Order-in-Appeal No. PUN-EXCUS-0160-15-16 dated 30/11/2015 passed by the Commissioner of Central Excise (Appeals – I), Pune.

2. Heard both the sides and perused the record.

3. On perusal of the records, it transpires that the issue is regarding refund claim filed by the respondent in respect of service tax paid by mistake. The adjudicating authority rejected the refund claim on the questionof limitation and the first appellate authority has overturned the said order-in-original by referring and relying upon various decisions of the higher judicial forum.

4. Learned Authorised Representative submits that the refund claim has arisen out of the tax paid by the appellant on his own volition under the works contract service. The said works contract service, as per the Learned AR, is in respect of shifting of high tension and low tension cables and wires and widening of the public roads, supply of cables, etc. which were exempted under Notification No. 12/2002-ST dated 17/03/2002 as amended. It is the submission that the assessee-respondent in this case paid the service tax on 15/04/2012 and filed a refund claim on 31/12/2013 which is beyond one year from the date of payment, as per the provisions of Section 11B of the Central Excise Act, 1944. He reads the grounds of appeal elaborately and submits that the provisions of Section 11B needs to be followed scrupulously for the refund claim filed under the Act.

5. Learned Counsel submits that the Hon'ble High Court of Bombay in the case of *Parijat Construction v. Commissioner of*

Central Excise, Nashik 2017-TIOL-2170-HC-MUM-ST and in the case of *In House Productions Ltd v. Commissioner of Service Tax, Mumbai* 2017-TIOL-1242-HC-MUM-CX has held that when service tax is paid under mistake of law, the question of limitation or the time-bar as provided under Section 11B does not arise. In the entire proceedings, before the lower authorities as well as before the Tribunal, I find that the Revenue is not disputing the fact that the respondent herein is not required to discharge service tax liability on the services rendered by them of shifting of HT/LT wires and widening of public roads and the supply of cables. The first appellate authority in the impugned order has recorded the following finding which is not controverted by the Revenue in the grounds of appeal.

> "6.2 I find from the facts of the case as enumerated in Para 2 supra, that the instant case is of payment of service tax by mistake. The Appellant were not liable for payment of Service Tax as they are exempt under Notification No. 12/2012-ST dated 17.3.2012 and 25/2012-ST dated 20.6.2012. However, they paid the service tax on their own volition, by mistake, as submitted by them. On being aware of their mistake, the Appellant had filed a claim for refund of the amount paid as service tax by making an application under Section 11B of CEA, which was rejected as time barred and also on the ground of unjust enrichment as per Section 11D of the CEA. In this regard, primarily, I find that the Respondent has not disputed the eligibility of the benefit of Notification No. 12/2012-ST dated 17.3.2012 and 25/2012-ST dated 20.6.2012 to the Appellant. In other words, it can be surmised that the Respondent is in agreement with the Appellant

> claiming the benefit of Notification No. 12/2012-ST dated 17.3.2012 and 25/2012-ST dated 20.6.2012 and hence this aspect is undisputed."

6. When it is undisputed that the respondent herein is not required to discharge any service tax law on the various services rendered by them as per Notification No. 12/2012, I find that the judgment of the Hon'ble High Court of Bombay in the case of *Parijat Construction (supra)* and *In House Productions Ltd (supra)* will apply in full force. I find that the first appellate authority was correct in passing the impugned order holding that the respondent are eligible for the refund of the amount of service tax paid by mistake. I do not find any reason to interfere with such a reasoned order and uphold the same.

7. Appeal stands rejected. Cross-Objection filed by the respondent herein being only in support of the impugned order, stands disposed off.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

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