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

APPEAL NOS: ST/89840 & 89887/2014
CROSS-OBJECTION NO: ST/CO-91005/2015

[Arising out of Order-in-Appeal No: AV(174)180/2014 dated 12/08/2014passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad.]

APPEAL NO: ST/89840/2014

Radico NV Distilleries Maharashtra Ltd … ***Appellant***

versus

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

APPEAL NO: ST/89887/2014

Commissioner of Central Excise & Customs
Aurangabad … ***Appellant***

versus

Radico NV Distilleries Maharashtra Ltd ***…Respondent***

Appearance:

Shri Sumeet Tholle, Chartered Accountant for the assessee-appellant

Shri M P Damle, Assistant Commissioner (AR) for the respondent

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Hon'ble Shri S K Mohanty, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 02/04/2018
Date of decision: 02/04/2018

ORDER NO: A/85856-85857/2018

Per: S K Mohanty:

Feeling aggrieved by the impugned order dated 12/08/2014, both the assessee-appellant and Revenue have preferred these appeals before the Tribunal.

2. Brief facts of the case are that the assessee-appellant had filed refund application on 12/02/2014, claiming refund of service tax of ₹ 34,24,939/- on the ground that it had wrongly deposited the service tax amount under reverse charge mechanism. The refund application filed by the appellant-assessee was rejected by the original authority on the ground that the assessee-appellant was liable to pay service tax under reverse charge mechanism in respect of taxable service of 'manpower recruitment and supply agency service' received by it. The refund application was also dismissed on the ground that the same is barred by limitation of time, as per Section 11B of the Central Excise Act, 1944, as made applicable to Section 83 of the Finance Act, 1994. On appeal against the adjudication order dated 30/04/2014, the Learned Commissioner (Appeals) vide the impugned order, has held that the services received by the appellant from the contractor is not confirming to the definition of taxable service under the category of 'manpower recruitment and supply agency service'. However, the Learned Commissioner (Appeals) has upheld the adjudication order, so far as it rejected the refund application on the

ground of limitation. Vide the impugned order; the Learned Commissioner (Appeals) has held that amount paid by the assessee-appellant before 13/02/2013 is clearly barred by limitation of time. On merits, the impugned order has accepted the appeal filed by the assessee-appellant, holding that the amount paid by it on or after 13/02/2013 should be available for refund.

3. The grievance of assessee-appellant is that it was under no statutory obligation to pay service tax on the 'manpower recruitment and supply agency service' and that since the said amount was deposited inadvertently, the same should be refunded by the department, without insisting for the time-limit, provided for under Section 11B of the Act. On the contrary, Revenue has assailed the impugned order on the ground that the work order issued by the appellant clearly provides that the contractor should be paid for extra workmen per day and accordingly, there is correlation of payment to labourers on man-day basis. Thus, the department contended that the services received by the appellant from the contractor should appropriately be classifiable under 'manpower recruitment and supply agency service'.

4. Heard both the sides and perused the case records.

5. We find that the refund application, in this case, was filed by the assessee-appellant on 12/02/2014, claiming refund of service tax

amount paid during the period July 2012 to January 2014. It is an admitted fact on record that the said refund application was filed by the assessee-appellant and entertained by the department under Section 11B and Central Excise Act, 1944, made applicable to Section 83 of the Finance Act, 1994. Since the said statutory provision mandates that refund claim has to be filed within one year from the relevant date (i.e. from the date of payment of service tax amount), the statutory authorities cannot interpret the language of the statute otherwise, in order to decide the issue differently. Since the Commissioner (Appeals) has rejected the refund application on the ground that part of the claim was filed beyond the stipulated time-limit, we do not find any infirmity in the impugned order, so far as it rejected the appeal on the ground of limitation. In this context, we find that the Larger Bench of this Tribunal in the case of *M/s Veer Overseas Ltd.,* vide Interim order No. 37/2018 dated 27/03/2018 has held that the statutory time limit cannot be extended by any authority. For arriving at such conclusion, the Larger Bench has referred to and relied upon the judgement of Hon'ble Supreme Court, in the case of *Mafatlal Industries Ltd v. Union of India* [1997 (89) ELT 247 (SC)], *Miles India Limited vs. Assistant Colector of Customs [1987 (30) ELT 641 (S.C.)] and Assistant Collector of Customs vs. Anam Electrical Manufacturing Co. [1997 (90) ELT 260 (S.C.)].* The ratio laid down in those judgments is to the effect that the refund claim filed beyond the statutory time limit cannot be entertained by the statutory authorities, including the Tribunal.

6. On perusal of the work order placed in the case records, we find that the appellant had entrusted the assigned task to the contractor for undertaking the job of bottling and other activities. The work orders also stipulated that in case, the contractor fails to achieve the target, service charges would be deducted as penalty from its bills. Thus, it is evident from the terms and conditions provided in the work order that the contractor was not providing any 'manpower recruitment and supply agency service'. Therefore, the assessee-appellant, in the capacity of recipient of services, will not be liable to pay service tax on reverse charge mechanism on such category of service provided by the contractor.

7. In view of above, we do not find any infirmity in the impugned order passed by the Commissioner (Appeals). Accordingly, we dismiss both the appeals filed by the assessee-appellant as well as the Revenue.

8. Cross appeal also stands disposed off.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

(S K Mohanty)
Member (Judicial)

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