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

APPEAL No. ST/85078/2017

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-267-16-17 dated 16.11.2016 passed by Commissioner of Service Tax (Appeals), Pune)

ABS Professional Services India Pvt. Ltd. **Appellant**

Vs.

Commissioner of Service Tax-I, Pune **Respondent**

Appearance:

Shri Harish Bindu Madhavan, Advocate, for appellant
Shri V.R. Reddy, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 19.4.2018
Date of Decision: 19.4.2018

ORDER No. **A/86077/2018**

The refund claim filed by the appellant under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No.27/2012-CE(NT) dated 18.6.2012 was partly rejected for an amount of Rs.24,16,855/- on the ground that the refund claim was filed beyond one year from the date of invoice raised for providing the export services. Learned Commissioner (Appeals) also disputed that the refund claim filed online through ACES portal of CBEC website shall not be taken as date of filing of refund for the reason that the refund claim in physical form along with all the documents were filed on 6.1.2016. Therefore, the refund was held to be time barred.

2. Shri Harish Bindu Madhavan, learned counsel appearing on behalf of the appellant, submits that as per this Tribunal's Division Bench judgment in the case of *Boston Scientific India Pvt. Ltd. Vs. CST, Delhi-IV – 2017-TIOL-195-CESTAT-CHD*, held that the date of filing of refund electronically through ACES should be considered as date of filing of refund, even though the physical copy of the claim along with supporting documents were filed subsequently. Therefore, the refund was filed within time. He further submits that in any case the entire amount of refund was disputed. The physical refund claim for that amount was filed on 6.1.2016 whereas as per the end of the quarter, the last date was 31.3.2016. He relied upon the Larger Bench judgment of this Tribunal in the case of *CCE&ST, Bengaluru-I vs. Span Infotech India Pvt. Ltd. – 2018-TIOL-516-CESTAT-BANG-LB*. Therefore, even though without accepting the date of filing of refund is considered as filing of refund in physical form i.e. on 6.1.2016, then also the refund is well within the prescribed time limit as held by the Larger Bench of this Tribunal.

3. Shri V.R. Reddy, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the finding of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that the refund of the appellant was disputed by the Revenue on the ground of time bar. The lower authority considered the date of filing is the date when the physical refund claim along with all the documents were filed whereas the appellant had already filed the refund claim online through ACES portal of CBEC website. I am surprised that in one hand the Revenue has allowed to file refund claim online through ACES and in other hand, they are disputing such refund claim on the ground of time bar. Learned counsel also submitted that there was no provision for filing the documents online. Therefore, they have filed a physical copy of the refund claim along with all the documents. In this case I do not see any substance in the dispute raised by the Revenue. The date of filing of refund through ACES should be reckoned as date of filing of refund claim. I further observe that the refund claim was admittedly filed within one year from the quarter ending to which the refund pertained. As per the Larger Bench judgment in the case of *Span Infotech India Pvt. Ltd.*

(supra), one year for the purpose of Section 11B should be taken at the end of the quarter and not either from date of invoice or from the date of receipt of FIRC. Therefore, on both the counts, the refund claim was filed by the appellant well within the time. Accordingly, the impugned order is set aside. The appeal is allowed.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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