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

APPLICATION Nos. ST/Stay/93012-93016/2017
APPEAL Nos. ST/87590-87594/2017

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/119-123/16-17 dated 7.6.2017 passed by Commissioner of Service Tax (Appeals-I), Mumbai)

Commissioner of CGST, Mumbai Central **Appellant**

Vs.

KKR India Advisor Pvt. Ltd. **Respondent**

Appearance:

Shri Dilip Shinde, Assistant Commissioner (AR), for appellant
Shri S. Thirumalai, Advocate, for respondent

CORAM:

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

Date of Hearing: 24.4.2018
Date of Decision: 24.4.2018

ORDER No. **A/86140-86144/2018**

The issue involved in the present case is, for filing of refund claim under Rule 5 read with Notification No.27/2012-CE(NT) dated 18.6.2012, whether the relevant date should be taken from the date of invoice or date of FIRC or end of the quarter wherein the FIRC is received.

2. Shri Dilip Shinde, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the grounds of appeal.

3. Shri S. Thirumalai, learned counsel appearing on behalf of the respondents, submits that the issue is no longer *res integra* in terms of the Larger Bench judgment of the Tribunal in the case of *CCE& SST, Bengaluru ST-I vs. Span Infotech (India) Pvt. Ltd. – 2018-VIL-107-CESTAT-MUM-ST-LB.* He also relied upon the judgment in the case of *Commissioner, CGST vs. Morgan Stanley India Services Pvt. Ltd. – Order No.A/85150-85151/2018 dated 29.1.2018*.

4. On careful consideration of the submissions made by both the sides and perusal of the records, I find that the Larger Bench of this Tribunal finally decided that the relevant date for the purpose of refund under Rule 6 and Notification No.27/2012-CE(NT) issued thereunder is the end of the quarter wherein FIRCs are received. The facts of the present case are that the respondents filed refund claim for the quarter July 2012 to September 2012 on 9.7.2013, for April 2013 to June 2013 on 4.3.2014, for July 2013 to September 2013 on 24.6.2014, for October 2013 to December 2013 on 25.9.2014, for April 2014 to June 2014 on 28.3.2014 and for July 2014 to September 2014 on 30.6.2015. From this fact, it can be seen that the respondents have filed refund claim for each quarter within one year from the end of the quarter. Therefore, the refund is well

within the prescribed time limit in terms of Section 11B of the Central Excise Act, 1944 and the issue is no longer *res integra* in terms of the Larger Bench judgment in the case of *Span Infotech (India) Pvt. Ltd.* (supra).

5. Accordingly, the impugned order is upheld. Appeals are dismissed. Stay applications also stand disposed of accordingly.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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