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

APPEAL NO: ST/85353/2018

[Arising out of Order-in-Appeal No: PUN-CT-A[[II-000-247-17-18 dated passed by the Commissioner of Central Tax (Appeals), Pune – II.]

PVMSYS Infra Solutions Pvt Ltd **… *Appellant***

versus

Commissioner of Central Tax
Pune – II **…*Respondent***

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

Shri Darshan Runavat, Chartered Accountant for appellant

Shri Atul Sharm, Assistant Commissioner (AR) for respondent

Date of hearing 23/04/2018
Date of pronouncement 23/04/2018

<u>CORAM</u>

Hon'ble Shri Ramesh Nair, Member (Judicial)

<u>ORDER NO: A/86261 / 2018</u>

The facts of the case are that the appellant exported service. They have received the FIRC during the period October 2015 to December 2015. They filed refund claim under rule 5 read with Notification No. 27/2012-CE dated on 08/02/2017. Refund was rejected on the ground of time-bar as the same was filed beyond the period of one year from the date of FIRC. The appeal filed before the Commissioner (Appeals) was also rejected by upholding the order-in-original. Therefore, appellant is before me.

2. Shri Darshan Runavat, Learned Chartered Accountant appearing on behalf of appellant submits that the one year has passed from the invoice date but in the case of export of service it is not the relevant date as prescribed under Section 11B. Therefore, the refund should not have been rejected on the ground of time-bar. He place reliance on the judgment of the Hon'ble High Court of Karnataka in *mPortal Wireless Solutions Pvt Ltd v. Commissioner of Service Tax, Bangalore* 2011-TIOL-928-HC-KAR-Stand *Commissioner of Service Tax v. Span Infotech (India) (Pvt) Ltd.*(appeal No ST/20705/2016 Larger Bench Interim Order No. 4/2018 dated 09/02/2018)

3. Shri Atul Sharma, Learned Assistant Commissioner (AR) appearing on behalf of Revenue reiterates the findings in the impugned order. He submits that now it is settled law that in case of export of service, the relevant date should be taken form end of the quarter wherein the FIRCs are received in convertible foreign exchange. In the facts of the present case, the refund was even beyond the one year from the end of the quarter. Therefore, the refund is time-barred. He place reliance on the Larger Bench decision in *Commissioner of Service Tax v. Span Infotech (India) (Pvt) Ltd* 2018-TIOL-1516-CESTAT-BANG-LB.

4. I have carefully considered the submission made by both the sides. The limited issue involved in the present case is that the refund filed under rule 5 is time-bared or otherwise. As per the facts of the case, against export of services, the FIRC were received during the period October 2015 to December 2015. Therefore, the refund for the quarter October to December was due on 01/01/2016. The refund claim was filed on 08/02/2017 which is beyond one year. Therefore, the refund was rightly rejected on time-bar. This has been settled by the Larger Bench of this Tribunal in the case of *Span Infotech India Pvt Ltd* (supra). As regards the judgment relied upon by the Learned Counsel in the case of *mPortal Wireless Solutions India Pvt Ltd (supra)* the same is not applicable in the present case for the reason that as per Notification No. 27/2012-CE(NT) as per para 3B, Section 11B was made applicable to the refund case under Rule 5. In the case of *mPortal Wireless Solutions India Pvt Ltd* (supra) during the relevant period in that case this para 3B was not existing. Therefore, the judgment stand distinguished on this point.

5. As per my above observation the impugned order is upheld and the appeal is dismissed.

(Dictated in Court)

(Ramesh Nair)
Member (Judicial)

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