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

Application No. **ST/Stay/85541/2018**
ST/Stay/85514/2018

in

Appeal No. **ST/86369/2018**
ST/86370/2018

(Arising out Order-in-Appeal No. PK/281 & 282/MC/2017 dated 06.12.2017 passed by the Commissioner of CGST & Central Excise, Mumbai)

CCGST, Mumbai Central — Appellant

Vs.

M/s. TA Associates Advisory Pvt. Ltd. — Respondent

Appearance:

Shri Dilip Shinde, AC (AR) for the appellant
Shri Ankit Nagela, CA with Ms. Aparna Shah, CA for the respondent

CORAM:
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 20.06.2018
Date of decision : 27.06.2018

O R D E R No: A/86796-86797/2018

These two appeals are taken up together for passing of common order as issue involved in both the appeals are identical in nature.

2. The narrow compass in which the department has taken up the issue to this Tribunal stage centers on the admissibility of refund claim of the respondents on the consideration that relevant date of refund claim for the purpose of limitation is the "date of payment received in foreign exchange by the service provider" and not the "date of export of service." Findings of first adjudicating authority and the Commissioner (Appeals) are based on the judicial precedent prevailing during the relevant time and they have allowed such refund to the respondent company against its claim made between April 2012 and March 2014 for four different quarters. It is noteworthy to mention here that the conflict is resolved now in view of Larger Bench decision of CESTAT South Branch, Bengaluru which has held in Bengaluru Service tax vs. Span Infotech Pvt. Ltd. reported in 2018-TIOL-516-CESTAT-I-LB in which it has been held that export of service is completed only on receipt of consideration in "Foreign exchange and therefore the date in Forward Inward Remittance Certificate (FIRC) is relevant" in view of Notification no. 27/2012 with effect from 01.03.2016 [14/2016 (NT) refers]. The Larger Bench also had made it clear that any beneficial amendment to the statute may be given effect retrospectively provided the same does not impose a burden on the public (decision of the Hon'ble Supreme Court in the case of Bhatika Township

2014-TIOL-78-SC-IT-CB referred). In the conclusion, it was held that the relevant date for purpose of deciding the time limit for consideration of refund claims under Rule 5 of Cenvat Credit Rules in respect of export of services may be taken as the end of the quarter in which the FIRC is received, in cases where refund claims are filed on a quarterly basis.

3. In view of above proposition of law, I am of the view that Order-in-Appeal No. PK/281 & 282/MC/2017 dated 06.12.2017 passed by the Commissioner of CGST & Central Excise, Mumbai in the case referred above confirming the refund orders passed by the respective adjudicating authority holding refund date as the date of receipt of payment in foreign exchange by the service provider (respondent) needs no interference by this Tribunal. Hence the order –

4. Both appeals bearing no. ST/86369/2018 & ST/86370/2018 are dismissed and the orders passed by the Commissioner (Appeals) are hereby confirmed.

(Pronounced in Court on 27.06.2018)

Dr. Suvendu Kumar Pati
Member (Judicial)

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