

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

**Appeal No. ST/87029 & 87045/2017**

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-44 & 45-2017-18 dated 22.05.2017 passed by Commissioner of Service Tax (Appeals), Pune I)

**M/s Loft Quality Process Delivery Center                      Appellant  
India Pvt. Ltd.**

Vs.

**Commissioner of Central Excise & ST                      Respondent  
Pune I**

Appearance:

|                                   |                |
|-----------------------------------|----------------|
| Shri M.P. Joshi, Advocate         | for appellant  |
| Shri M.P. Damle, Asst. Commr (AR) | for respondent |

**CORAM:**

**Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Date of Hearing & Decision : 12.06.2018

FINAL ORDER NO. A/86825-86826/2018

**Per: S.K. Mohanty**

These appeals are directed against the impugned order dated 22.05.2017, passed by the Id. Commissioner (Appeals), Pune-I.

2. Brief facts of the case are that the appellant herein is engaged in providing taxable services, which are exported outside the country. The appellant availed CENVAT Credit of

service tax paid on 'input services' used for exportation of the 'output services'. Since the appellant exported the entire output services, there was no scope for utilization of CENVAT Credit of service tax paid on the input services. Therefore, the appellant claims refund of service tax paid by it on the input services, in terms of Rule 5 of the Cenvat Credit Rules, 2004, read with the notification issued by the Government of India. In the present case, the appellant had filed two numbers of refund applications, claiming refund of service tax paid by it during the quarter / period from October 2014 to December 2014 and January 2015 to March 2015. The said refund applications were electronically filed before the jurisdictional Service Tax authorities on 17.10.2015 and 22.01.2016 respectively. The relied upon documents in respect of the said refund applications were submitted by the appellant before the jurisdictional authorities on 25.02.2016 and 15.04.2016 respectively. On receipt of the relied upon documents, the department disputed that the refund applications were filed beyond the statutory time limit prescribed under the Notification No. 27/2012 dated 18.06.2012 read with Section 11B of the Central Excise Act, 1944. Accordingly, while adjudicating the matter, the department had rejected the refund applications filed by the appellant on the ground of limitation. On appeal, the learned Commissioner (Appeals) vide impugned order dated 22.05.2017 has upheld rejection of refund applications by the adjudicating authority. Feeling aggrieved

with the impugned order, the appellant preferred these appeals before the Tribunal.

3. Learned Advocate appearing for the appellant submits that filing of refund applications electronically was accepted by the CBEC as proper mode of claiming the refund. Thus, he submits that since the appellant had filed the refund applications within one year from the relevant date, subsequent filing of additional documents should not be considered as relevant date for the purpose of computation of the limitation period. To support the stand that the refund applications filed by the appellant electronically should be considered as relevant date and not filing of the relied upon documents subsequently, the Learned Advocate has relied upon the judgement of the Hon'ble Delhi High Court in the case of *Commissioner of Central Excise, Delhi-I v. Arya Exports and Industries – 2005 (192) ELT 89 (Del.)*.

4. On the other hand, learned D.R. appearing for Revenue reiterates the finding recorded in the impugned order. He further submits that since the Notification dated 18.06.2012 read with Section 11B *ibid* clearly prescribes the time limitation for filing the refund applications, the same cannot be ignored and supporting documents based on which the refund applications were adjudicated by the department should be considered as proper and relevant for consideration of the period of limitation.

Thus, he contended that since the relied upon documents were submitted by the appellant after the prescribed limitation period, rejection of refund claims by the authorities below is proper and justified.

5. Heard both sides and perused the case records.

6. It is an admitted fact on record that the refund applications in respect of the period in dispute were filed by the appellants within one year from the relevant date. However, the relied upon documents in support of such refund claim applications were filed by the appellant after the limitation period prescribed under the Notification dated 18.06.2012 read with Section 11B *ibid*. On perusal of the statutory provisions, it reveals that the statute mandates filing of refund applications within the stipulated time frame. In the present case, since the refund applications were filed by the appellant within the prescribed statutory time limit, documents in support of such claim submitted later-on should not be considered as the date of filing of fresh application for the purpose of consideration of the limitation period. Therefore, I am of the considered view that the refund applications rejected by the authorities below are not in consonance with the statutory provisions. I find in an identical situation, the Hon'ble High Court of Delhi in the case of *Arya Exports and Industries (supra)*, while upholding the views

of the Tribunal in support of allowing the refund application, has held that the date of filing of applications initially should be considered for the purpose for determination of the limitation period. The relevant paragraphs in the said judgement are extracted herein below:-

*“4. Before parting with the file we may also notice here that the order passed by the Appellate Tribunal dated 17th July, 2001 does not suffer from any patent, legal or other infirmity. The assessee had filed an application under Rule 57F(4) for refund of the excise duty wrongfully recovered from him. This application was declined on the ground that it was not made in the prescribed form and necessary documents were not annexed thereto. Thereafter another application was filed by the assessee which again was dismissed being beyond the period of limitation. Both these arguments were rejected by the Appellate Tribunal which held as under :-*

*“Subsequently, when they realised the correct position of law as mentioned in Rule 57F(4) they had, through letter dated 31-7-95, requested the Asst. Collector to refund the amount which was reversed by them as well as the amount which was lying unutilised with them. The refund claim cannot be denied to them merely on the ground that the same was not filed in the prescribed form. If the refund claim has not been filed on proper form or without necessary documents the Department can direct the appellants to file the same in proper prescribed form along with supporting documents. But as far as the time for filing the refund claim is concerned, it has to be considered from the date the refund claim was filed initially in the form not prescribed or without documents. This was the view taken by the Tribunal in the case of A. P. Pager Mills Ltd., in which an earlier decision of the Tribunal in the case of Amrit Paper Mills Ltd. - [1991 \(54\) E.L.T. 293](#) was relied upon wherein it was held that a letter written by the assessee to the Suptd. pointing out the excess payment made by them and requesting for refund of the same constitute a valid refund claim. The Tribunal held that formal claim filed subsequently was continuation of the original claim, and therefore, not hit by the*

*time-bar under Section 11B. Accordingly, I hold that in both these appeals the refund claim cannot be denied on the ground of time-bar. I, therefore, set aside the impugned Order and allow both the appeals.”*

*5. The above approach of the Appellate Tribunal is in consonance with the settled principles of law and we see no reason to interfere, even if for the sake of argument it is assumed that we should have condoned the delay in filing the present appeal. The assessee had admittedly submitted the application within the prescribed time and if it suffers from any procedural irregularity the Department was under an obligation to require the assessee to submit the requisite documents. Refund is the right of the assessee and should not be taken away by the State especially with the approach of the kind that was adopted in the present case. The appeal is dismissed on merits.”*

7. In view of above settled position of law, I do not find any merits in the impugned order in rejecting the refund applications filed by the appellant. Accordingly, after setting aside the same, I allow the appeals filed by the appellants.

(Order dictated in Court)

**(S.K. Mohanty)**  
**Member (Judicial)**