

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

Appeal No. ST/86317 & 86331/2017

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-011 & 012-17-18 dated 10.04.2017 passed by the Commissioner of Service Tax (Appeals), Pune).
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M/s Knorr Bremse Technology Centre (I) Pvt. Ltd.	Appellant
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Vs.

Commissioner of Service Tax-I, Pune	Respondent
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Appearance:

Shri Bharat Raichandani, Advocate	for Appellant
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Shri Dilip Shinde, Supdt. (AR)	for Respondent
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CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL) HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)
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Date of Hearing: 08.08.2018

Date of Decision: 08.08.2018

ORDER NO. **A/87369-87370/2018**

Per: Dr. D.M. Misra

These two appeals filed against Order-in-Appeal No. PUN-SVTAX-000-APP-011 & 012-17-18 dated 10.04.2017 passed by the Commissioner of Service Tax (Appeals), Pune.

2. Briefly stated facts of the case are that the appellants are engaged in providing Software Development Services to various customers located outside India. The appellants have filed refund

of accumulated CENVAT Credit in terms of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012-CE(NT) dated 18.6.2012 for the quarter 1.7.2014 to 30.9.2014 on 29.9.2015 for an amount of Rs.38,33,483/- and for the quarter January, 2015 to March, 2015 filed on 29.1.2016 for an amount of Rs.37,74,692/- . On adjudication, the refund claim was rejected on the ground that the same is barred by limitation. Aggrieved by the order, the appellant filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. Learned Advocate for the appellant submits that the refund claim was rejected solely on the ground that the same is barred by the time limit prescribed for filing the refund claim under Notification No. 27/2012-CE (NT) read with Section 11B of the Central Excise Act, 1944. It is his contention that the relevant date for computing the period of limitation was considered as end of the quarter, whereas the claim of the appellant was that limitation would commence from the date of receipt of the foreign remittance for the quarter. He submits that the issue is no more *res integra* and covered by the decision of the Larger Bench of this Tribunal in the case of Commissioner of Central Excise & Service Tax, Bangalore-I Vs. Span Inforech India Pvt Ltd. – 2018 – TIOL-516-CESTAT-BANG-LB.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. We find that the short issue involved in the present case for determination is computation of time limit for allowing the refund claim on export of services under Rule 5 of CENVAT Credit Rules, 2004 whether would be the last date of quarter or from the date of receipt of the foreign exchange. We find that the issue is no more *res integra* and considered by the Larger Bench of this Tribunal in the case of *Span Infotech Pvt. Ltd. (supra)*. Resolving the conflicting view on the issue, it has been observed as follows:

“9. Rule 5 of the CENVAT Credit Rules, 2004 provides for refund of unutilized CENVAT credit, even after adjustment of the same for payment of duty of excise or service tax. The conditions, safeguards and limitations for consideration of such refund claims have been spelt out by the Government through notifications. Notification No.5/2006 (up to 17/06/2012) and Notification No.27/2012 (w.e.f. 18/06/2012) (as amended) has specified the conditions in this regard. These notifications specify that such refund claims are to be filed within the period specified in Section 11B. The relevant date specified under the above section leaves no room for doubt as far as export of goods is concerned. However as far as export of services is concerned, the various sub-sections specifying relevant date under Section 11B do not cover the case of export of services. Further the exporters of services have been given the option to file claims for such refunds once in a quarter and in respect of 100% EOUs, once in a month. The issue referred to Larger Bench is whether the time limit prescribed under Section 11B in respect of filing of refund claims is to be applied from the date of receipt of payment for export of services or can be considered from the end of the quarter in which such payments have been received.

10. After considering the provisions of the Notifications issued under Rule 5 of the CCR, we note that there is a specific condition that the refund claims are required to be filed within the period specified under Section 11B. Consequently, we are of the view that completely ignoring the provisions of Section 11B may not be appropriate. This view is supported by the decision of Hon'ble Madras High Court in the case of GTN Engineering (supra) wherein Hon'ble High Court has disagreed with the view expressed by Hon'ble Karnataka High court in the case of mPortal (supra) that Section 11B will have no application with respect to refund under Rule 5 of CCR.

11. The definition of relevant date in Section 11B does not specifically cover the case of export of services. Hence, it is necessary to interpret the provisions constructively so as to give it meaning such that the objective of the provisions; i.e. to grant refund of unutilized CENVAT credit, is facilitated. By reference to the Service Tax Rules, 1994 as well as the successor provisions i.e. the Export of Service Rules, 2005, we note that export of services is completed only with receipt of the consideration in foreign exchange. Consequently, the date of Foreign Inward Remittance Certificate (FIRC) is definitely relevant. The Hon'ble Andhra Pradesh high Court has held that the date of receipt of consideration may be taken as relevant date in the case of Hyundai Motors [2015(39) STR 984 (AP)] = [2015-TIOL-739-HC-AP-ST](#).

12. The related question for consideration is whether the time limit is to be restricted to the date of FIRC or can be considered from the end of the quarter. The Tribunal in the case of Sitel India Ltd. (supra) has observed that the relevant date can be taken as the end of the quarter in which FIRC is received since the refund claim is filed for the quarter.

13. Revenue has expressed the view that relevant date in the case of export of services may be adopted on the same lines as the amendment carried out in the Notification No.27/2012, w.e.f. 01/03/2016. Essentially after this amendment the relevant date is to be considered as the date of receipt of foreign exchange. While this proposition appears attractive, we are also persuaded to keep in view the observations of the Hon'ble Supreme Court in the case of Vatika Township (supra), in which the Constitutional Bench has laid down the guideline that any beneficial amendment to the statute may be given benefit retrospectively but any provision imposing burden or liability on the public can be viewed only prospectively. Keeping in view the observations of the Apex Court, we conclude that in respect of export of services, the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis.”

7. Following the aforesaid precedent, we remand the appeal to the adjudicating authority to compute the time limit in accordance with the principles laid down as above. Appeals are allowed by way of remand.

(Operative portion of the order pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha