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

Appeal No. ST/86502/2018

(Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-121-2017-18 dated 21.12.2017 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Goa).

M/s Open Destinations Infotech Pvt. Ltd.	Appellant

Vs.

Commissioner of Central Excise & Service Tax, Goa	Respondent

Appearance:

Shri J.N. Somaiya, Advocate	for Appellant
Shri O.M. Shivdikar, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 05.11.2018

Date of Decision: 05.11.2018

ORDER NO. **A/87913 / 2018**

Per: Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed against Order-in-Appeal No. GOA-EXCUS-000-APP-121-2017-18 dated 21.12.2017 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Goa.

3. Briefly stated the facts of the case are that the appellant has filed cash refund of accumulated CENVAT Credit on export of service under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) dated 18.6.2012 for an amount of Rs.6,44,924/- for the quarter January, 2016 to March, 2016 on 31.3.2017. The adjudicating authority sanctioned the refund claim, whereas, on an appeal filed by the Revenue, the learned Commissioner (Appeals) allowed the Revenue's appeal observing that the refund claim is barred by limitation.

4. The learned Advocate refers the judgment of the Larger Bench of this Tribunal in the case of *C.C.E. CUS & S.T., Bengaluru Vs. Span Infotech (I) Pvt. Ltd. – 2018 (12) GSTL 200 (Tri-LB)* and the judgment of this Tribunal in the case of *Knorr Bremse Technology Centre (I) Pvt. Ltd. Vs. Commissioner of Service Tax, Pune – 2018 (10) TMI 1069 – CESTAT Mumbai.*

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

6. The short issue involved in the present appeal is whether the cash refund claim filed by the appellant for the quarter January, 2016 to March, 2016 on 31.3.2017 is barred by limitation. The Revenue sought to compute the relevant date from the date of receipt of FIRC, which is on 14.3.2016. I find that the issue is no more *res integra* and covered by the judgment of the Larger Bench of this Tribunal in the case of *Span Infotech (I) Pvt. Ltd. (supra).* Taking note of the relevant Notification, the Larger

Bench of this Tribunal analyzing the case has observed as follows: -

> ***"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. 1-3-2016. 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 ratio, I do not find merit in the impugned order. Consequently, the same is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the Court)

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

Sinha