CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 88370 of 2018

(Arising out of Order-in-Appeal No. NGP-I/APPL/103/2017-18 dated 02.04.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nagpur-I)

M/s Diamond Enterprises **.... Appellant**
At/Post – Pan Rajanangaon, Tq. Paitha,
Aurangabad, Maharashtra

Versus

Commissioner of Central Excise & Service Tax, Aurangabad **.... Respondent**
Town Centre, N-5, CIDO, Aurangabad

Appearance:

None for the Appellant

Shri O. Shivadikar, AC, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86315 / 2019

Date of Hearing: 24.07.2019
Date of Decision: 24.07.2019

Per: Dr. D.M. Misra

None present for the appellant. Heard the learned AR for the Revenue.

2. This is an appeal filed against Order-in-Appeal No. NGP-I/APPL/103/2017-18 dated 02.04.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nagpur-I.

3. The short issue involved in the present appeal that the appellant filed a refund claim of Rs.69,777/- for the Service Tax paid during the period September, 2006 to December, 2006 against TR-6 challan dated 3.10.2006 and 10.01.2007 in pursuance to the dismissal of appeal, filed by the Revenue against Order-in-Appeal dated 20.10.2010, by this Tribunal vide Order No. A/1116-1130/15/SMB dated 28.04.2015. The authorities below have rejected the refund claim on the ground of time bar. The appellant in their submission referred to provisions of Section 11B(5)(e) of Central Excise Act, 1944 defining 'relevant date' for claiming refund of duty consequent to the order of the Tribunal. The said provisions read as follows:-

> *"(e) in case the tax becomes refundable as a consequence of any judgment, decree, order or direction of appellate authority, Tribunal or Court, the date of such judgment order or direction."*

4. Learned AR for the Revenue has submitted that the refund claim due after the order of the Commissioner (Appeals) dated 20.10.2010 and not after the Tribunal's order dated 28.04.2015. A plain reading of the meaning of 'relevant date' in clause (e) of sub-section (5) of Section 11B, it is clear that if any refund arises as a consequence of any judgment/decree/order, then the refund claim should be filed within one year from the date of said judgment.

5. In the present case, the appellant had filed refund claim on 4.12.2015 i.e. within one year from the date of order of the Tribunal i.e. dated 28.04.2015. In the result, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in open court)

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

Sinha