CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 85190 of 2017

(Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-215-2016-17 dated 10.11.2016 passed by the Commissioner of Customs & Central Excise (Appeals), Goa)

M/s. Timblo Drydocks Pvt Ltd **…..Appellant**
Subhash Timblo Bhavan,
Isidorio Baptista Road,
Post Box no. 242,
Margao, Goa

Vs.

Commissioner of Customs & Central Excise, Goa **…..Respondent**
GST Bhavan, EDC Complex,
Patto Plaza,
Panaji

APPEARANCE:

Shri C.S. Biradar, Advocate for the appellant
Shri Dilip Shinde, AC (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

FINAL ORDER No: A/86289 / 2019

DATE OF HEARING : 22.07.2019
DATE OF DECISION : 22.07.2019

PER: C J MATHEW

Appellant herein M/s Timblo Drydocks Pvt Ltd, assails order-in-appeal no. GOA-EXCUS-000-APP-215-2016-17 dated 10th November 2016 of Commissioner of Customs & Central Excise

(Appeals), Goa for having rejected claim for refund of ₹56,27,388/- on the ground that condition (b) in paragraph no. 3 of notification no. 41/2012-ST dated 29th June 2012 and of ₹10,57,754/- for having been sought after the period of limitation prescribed therein. Explaining the background, Learned Counsel for appellant submits that the claim pertained to rebate of taxes discharged on services procured for the construction of *MV Arina Samurai* in their yard and export thereafter. The original claim of ₹1,10,36,124/-, filed on 19th August 2015, had been re-filed on 1st September 2015 to include an enhancement of ₹10,57,754/-. The original authority had limited the sanction to ₹48,72,342/- while rejecting the balance and the appeal thereon, having modified the sanction, limits the grievance to the amounts identified *supra.*

2. Learned Counsel for the appellant drew our attention to the particular condition that was invoked for declaring the appellant, in their capacity as person liable to pay service tax under section 68 of Finance Act, 1994, as ineligible and submits that the restriction, intended to prevent the supplier of services from claiming the refund, did not extend to tax saddled on exporters under 'reverse charge mechanism.' Placing reliance on the decision of the Tribunal in *Bharat Heavy Electricals Ltd v. Commissioner of Central Excise, Bhopal [2017 (49) STR 81 (Tri-Del)],* which had been also relied upon by the first appellate authority to allow similar claim for the subsequent period, he seeks relief for the appellant. As far as the

rejection on the ground of bar of limitation of time is concerned, Learned Counsel places reliance on the decision of the Hon'ble High Court of Madras in *Shasun Pharmaceuticals Ltd v. Joint Secretary, MF(DR), New Delhi [2013 (291) ELT 189 (Mad.)]* and of the Tribunal in *KLA India Public Ltd v. Commissioner of Central Excise, Meerut –I [2016 (41) STR 511 (Tri-Del.)]* as well as in *Banco Products India Ltd v. Commissioner of Central Excise & Service tax, Vadodara [2016 (42) STR 535 (Tri-Ahmd)]*.

3. Learned Authorised Representative contends that the non-eligibility of the person liable to tax is a condition that must be strictly enforced and further contends that the decisions pertaining to limitation, cited on behalf of appellant, were either in the context of applications that were revised upon deficiencies being pointed out by the sanctioning authority or had the effect of diminishing the claim originally preferred.

4. We find that the Tribunal in, *re Bharat Heavy Electricals Ltd,* has laid down the principle that

> *'12. The Notification No. 41/2012-S.T. has been issued in terms of Section 93A of the Finance Act, 1994. The notification provides for grant of rebate by way of refund of the service tax paid on the specified services used for export of goods. It is nobody's case that the GTA services for which the appellant has claimed rebate of service tax under the notification has not been used for export of goods. Consequently, there is no doubt that the appellant falls within*

> *the gamut of the notification whose stated purpose is to grant refund of service tax on services used for export. In terms of the decisions of the Hon'ble Supreme Court cited above, once it is determined by strict means that the appellant will be eligible for the benefit of the notification, it is necessary to interpret the wording of the notification so as to achieve the purpose and object for which the notification has been issued. Apex Court in the case of CCE v. Malwa Industries (supra) has held as under :*
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> > *"20. We, as noticed hereinbefore, have no quarrel with the proposition that exemption notification should be construed strictly which means that benefit thereof should not be granted to one, who is not entitled therefor. But it is also true that those who are entitled to the benefit cannot be deprived therefrom by taking recourse to the doctrine of narrow interpretation simplicitor, although the purpose and object thereof would be defeated thereby."*
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> *If the view taken by the authorities below were to be upheld, the person such as the appellant, who has exported the goods and used certain services for the same, and for whose benefit the Notification No. 41/2012-S.T. has been issued in the first place, will not get the benefit. A literal interpretation of Clause 3(b) would deny such refunds, in all those cases where the exporter has paid service tax on reverse charge basis. Such an interpretation would also render the notification to be useless in all such reverse charge cases. Clearly this cannot be the intention of the Govt. in issuing the notification.'*

Furthermore, it is also inconceivable that a special provision for discharge of tax liability by the recipient, which may not have been anticipated when the general scheme of rebate was devised, should stand in the way of the more fundamental principle that taxes should not be allowed to insinuate into the value of exports.

5. As far as limitation is concerned, we are of the opinion that it does not brook any latitude. As pointed out by Learned Authorised Representative, the decision in which a contrary view was taken were those in which the amount claimed was not revised by a subsequent application which had the effect of enhancing the claim itself. We, therefore, do not find the decision cited by Learned Counsel to be a binding precedent for advancing the date of filing of claim for the enhanced amount, and thus, bring the claim within the prescribed period.

6. For the above reasons, we modify the impugned order by allowing refund to the extent of ₹56,27,388/- while upholding the rejection of ₹10,57,754/-.

(Operative part pronounced in Court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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