CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service tax Appeal No. 88758 of 2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/SSP/APPL/057/18-19 dated 08.06.2018 passed by the Commissioner of GST & Central Excise (Appeals),Nashik)

M/s. RM Phosphates & Chemicals P. Ltd. .....Appellant
Plot no. T-3/1,
Babhale Village, Nardana,
MIDC Area, Dhule

VERSUS

Commissioner of CENTRAL EXCISE & .....Respondent
SERVICE TAX, Nashik
Plot no. 155, Sector P-34, NH,
Jaishtha & Vaishak, CIDCO
Nashik

APPEARANCE:

Shri Sachin Chitnis, Advocate for the appellant
Shri Dharmendra Singh, Supdt. (AR) for the respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

FINAL ORDER No: A/86776 / 2019

DATE OF HEARING : 01.10.2019
DATE OF DECISION : 01.10.2019

After hearing both sides, I find that the appellants are engaged in the manufacture of chemical fertilizers and also receiving goods transport agent service for movement of the said fertilizers. In terms of the provisions of law, they were duty bound to pay service tax on the said GTA service so received by them on reverse charge basis. The appellant discharged such service tax.

2. However, they subsequently realised that in terms of provisions of notification 25/12-S.T. dated 28.06.2012, the service tax on transportation of fertilisers was absolutely exempted. Accordingly, they filed refund of service tax on 27.09.2015, to the extent of ₹23,84,155/-, paid during the period 05.05.2013 to 05.09.2015. The said refund claim was considered by the authorities below and by holding that the same was not payable, sanctioned the same to the extent of ₹15,31,838/-, falling within the limitation period. The balance refund of ₹8,52,317/- was rejected as barred by limitation. The said order of original adjudicating authority was upheld by the Commissioner (Appeals) and hence the present appeal.

3. The short issue required to be decided in the present appeal is as to whether provisions of Section 11B of Central Excise Act, 1944, would apply to the refund of service tax claimed beyond the normal period of limitation, prescribed under the said section. Admittedly, the refund in question stands claimed by the assessee beyond the normal period of one year. Learned advocate's contention is that inasmuch as the said service tax was paid under a mistake of law, the period of limitation would not apply and as such refund should have been sanctioned to them inasmuch as exchequer has no right to retain

the tax which are not due to them. For the above proposition, Learned advocate has also relied upon various decisions of the High Courts.

4. Admittedly, in terms of the Hon'ble High Court decision, the tax paid under a mistake of law has been held to be refundable irrespective of the period of limitation. However, it has to be kept in mind that the Hon'ble High Court exercises vast jurisdiction in terms of writ petition under Article 226 of the Constitution. The Tribunal, being a creature of the law is bound by the provisions of the Act and is expected to exercise its powers and jurisdiction, within the four corners of the Act. In terms of the provisions of Section 11B, any refund, arising to an assessee, has to be filed within the period of limitation provided under the said section. The said section, nowhere makes any distinction between the refund of tax/duties having been filed under a mistaken belief or otherwise. Every refund arises to the assessee only and only when the same is not payable. As such any duty or tax, which was not payable, but was paid by an assessee, is required to be refunded to the assessee. If such refund are allowed without considering limitation, the provisions of section 11B would become futile and otiose and nothing would remain in section 11B regarding limitation to be applied to such refund claims. It is well settled law that any interpretation which leads to rendering any provisions of law as futile has to be avoided.

5. The above contentions are supported by the Hon'ble Supreme Court in the case of Porcelain Electrical Mfg. Co. V/s Collector of C. Ex., New Delhi reported in 1998 (98) E.L.T. 583 (S.C.) wherein it was clearly held by the Hon'ble Supreme Court that the excise authorities working under the Act are bound by the provisions of the Act and cannot exercise jurisdiction which the Hon'ble High Court exercised in terms of their writ jurisdiction. As such, by applying the ratio of the above decision of the Hon'ble Supreme Court, I find that in the absence of any dispute to the fact that the refund claim stands made after a period of one year, I find no merits in the appeal and reject the same.

(Dictated and pronounced in open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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