CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service Tax Misc Appeal No. 86104 of 2022

In

Service Tax Appeal No. 86905 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/582/18-19/939 dated 29.03.2019 passed by the Commissioner (Appeals), GST, CE & Customs, Nagpur)

Maloo Infraspace **.....Appellant**
Khatri Market, 1st Floor,
Opposite Dnyanmata High School Camp,
Amravati

VERSUS

Commissioner of Central Excise, Nagpur **.....Respondent**
GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur

WITH

Service Tax Misc Appeal No. 86105 of 2022

In

Service Tax Appeal No. 86907 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/581/18-19/944 dated 29.03.2019 passed by the Commissioner (Appeals), GST, CE & Customs, Nagpur)

Maloo Enterprises **.....Appellant**
Joshi Colony, Behind IMA Hall,
Camp, Amravati

VERSUS

Commissioner of Central Excise, Nagpur **.....Respondent**
GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur

APPEARANCE:

Shri Jay Chheda, Advocate for the appellant
Shri Sunil K Katiyar, (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/85080-85081 / 2023

DATE OF HEARING : 23.11.2022
DATE OF DECISION : 30.01.2023

Per: AJAY SHARMA

The applications for urging additional grounds have already been allowed vide order dated 23.11.2022 and the same have also been taken into consideration while deciding these appeals.

2. These appeals have been filed challenging the Orders dated 29.3.2019 passed by the Commissioner (Appeals), GST, C.Ex. & Customs, Nagpur by which the learned Commissioner vide separate orders rejected the appeal filed by the appellants and confirmed the orders passed by the Adjudicating Authority. Since the issue involved in both the appeals are identical therefore I am disposing them by this common order.

3. The issue involved herein is whether the refund of excess service tax paid by the appellants can be denied to them on the ground of limitation when the limitation period has expired after the introduction of CGST Act?

4. The facts leading to the filing of the instant appeals are stated in brief as under:-

(i) The ***Appellant- Maloo Enterprise (Appeal No. ST/86907/2019)*** paid excess service tax (inclusive of interest & cess) for the period April, 2017 to June, 2017 by inadvertently paying the service tax of the amount of Rs.9,34,600/- (including interest & cess) twice on the same day i.e. 2.8.2017 by two different challan numbers 50552 & 50842 respectively. Thereafter on 8.8.2017 they erroneously paid service tax amounting to Rs.7,58,491/- (including cess & interest) which their sister group entity Maloo Infraspace was liable to pay and which the said Maloo Infraspace had already paid on 4.8.2017 vide challan no. 50717. Therefore they filed refund claim, vide letter dated 4.10.2018 in *'Form R',* of excess/erroneously paid service tax totaling Rs.16,93,021/- (inclusive of interest & cess) for the period April, 2017 to June, 2017 u/s. 11B of Central Excise Act, 1944.

(ii) On the other hand Appellant-Maloo Infraspace ***(Appeal No. ST/86905/2019)*** paid service tax amounting to Rs.7,58,491/- (inclusive of interest & cess) on 4.8.2017 although they were liable to pay service tax only to the tune of Rs.1,45,098/- (inclusive of interest & cess) as per ST-3 return filed by them on 12.11.2017. They also filed refund claim, vide letter dated 4.10.2018 in *'Form R',* of excess payment of service tax of Rs. 5,47,891/- (inclusive of interest & cess) for the period April, 2017 to June, 2017 u/s. 11B of Central Excise Act, 1944.

5. Two separate show cause notices dated 4.1.2019 were issued to both the appellants proposing to reject the refund claim of Rs. 16,93,021/- and Rs.5,47,891/- respectively in terms of Section 11B(1) ibid r/w Section 83 of the Finance Act, 1994 on the ground of non-filing of relevant documents in support of their claim of excess payment and also on the ground of time bar. The Adjudicating Authority vide two separate Orders-in-Original dated 11.1.2019 rejected both refund claims on the ground of non-production of relevant documents and also on the ground of limitation. The said orders were upheld by the 1st Appellate Authority i.e. Commissioner (Appeals) vide two

separate Orders-in-Appeal dated 29.3.2019 by rejecting the appeals filed by the appellants.

6. Learned counsel for the appellant submits that the appellants are eligible for refund in terms of Section 142(3) & (5) of CGST Act, 2017 r/w Rule 6(4A) of Service Tax Rules, 1994. According to learned counsel the excess tax paid is not on account of interpretation of law, taxability, classification, valuation or applicability of exemption notification but it is a genuine error, therefore they are eligible to adjust the excess amount paid in terms of Rule 6(4A) ibid. According to learned Counsel, since GST was introduced w.e.f. July, 2017 therefore the appellant could not adjust excess amount in the subsequent quarter and that there is no time limit for adjustment of excess service tax as the time limit prescribed u/s. 11B ibid is not applicable for refund u/r. 6(4A) ibid r/w Section 142(5) of CGST Act, 2017 if the limitation expires during GST regime. He also submits that after the introduction of CGST Act, the appellant are entitle for cash refund as now it is not possible to adjust excess service tax. Per contra learned Authorised Representative appearing on behalf of Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of appeal.

7. I have heard learned counsel for the appellant and learned Authorised Representative on behalf of Revenue and perused the case records including the written submissions and case laws cited by the respective sides. A perusal of the orders of both the authorities below give the impression that very less attention have been paid to the documents submitted by the appellants in support of their claim of excess payment and the authorities mainly concentrated on the issue of time bar as laid down under Section 11B ibid. The excess payment has been made by the appellants in the month of August, 2017 for the period April, 2017 to June, 2017 and the refund claim has been filed in the

month of October, 2018. Admittedly Central Goods & Service Tax Act was introduced w.e.f. 1.7.2017 replacing the erstwhile existing Act and Rules. Section 142(5) of the new Act makes the assessee eligible to file refund claim and to get the refund of the amount of service tax paid by them in cash notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944. The said provision expressly prescribed that the limitation provided in sub-section (1) of Section 11B is not applicable. Had this provision not been there, still this Tribunal in catena of decisions viz. *Fluid Controls Pvt. Ltd. vs. CCE&ST, Pune-1; 2018(3)TMI 1857-Cestat Mumbai, R.S. Chemicals vs. CCE, Noida; 2017() TMI 884-Cestat Allahadad* and *M/s. Cochin International Airport Ltd. vs. Commr., Central Tax & C.E., Cochin; 2021(3) TMI- Cestat Bangalore;* has held that time bar of Section 11B(1) ibid is not applicable to advance/deposits, wrong remittance of tax not payable and other payments which are not in the nature of taxes or duties. Following the aforesaid decisions and also looking at the language of Section 142(5) ibid, I am also of the view that the refund claim filed by the appellants were within time and the authorities below erred in rejecting the claims on this ground.

8. Since earlier I have observed that authorities below did not pay much attention to the documents placed on record by the appellants and they had merely given the findings on it without discussing in details about the documents placed on record by the appellant before them, therefore I do not want to comment about the admissibility or otherwise of the documents placed on record by the appellants in support of their claim. In my view it has to be done by the authorities below. As I have already observed that the refund claim filed by the appellants are within limitation therefore for the purpose of verification/ eligibility of documents and also for calculating the eligible refund claim, I am remanding the matter back to the Adjudicating Authority as

this exercise needs to be done by the said authority and if the said authority find the appellants eligible for refund after verifying the documents then they are under obligation to grant cash refund of the amount to be refunded to the appellants in terms of Section 142(3) ibid. The adjudicating authority is also directed to grant proper opportunity of hearing to the appellant and to adhere to the principle of natural justice.

9. These appeals are accordingly disposed of on the above terms.

(Pronounced in open Court on 30.01.2023)

(Ajay Sharma)
Member (Judicial)

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