(2015) 10 DEL CK 0329

In the Delhi High Court

Case No : CEAC 11/2015

Alar Infrastructures Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise, Delhi-I RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Finance Act, 1994 — Section 83

Citation : (2015) 10 DEL CK 0329

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : N.L. Ganpathi, Advocate, for the Appellant; Satish KumarAdvocateStanding Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

1. The only ground on which the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, Principal bench (''CESTAT'') has by the final order dated 22nd October, 2014 dismissed the Appellant''s Appeal No. 56798/2013 is that the claim of the Appellant for refund of service tax was barred by limitation with reference to Section 11B of the Central Excise Act, 1944 (''CE Act''). It was held that by virtue of Section 83 of the Finance Act 1994, Section 11B of the CE Act will be applicable to service tax matters. Therefore the CESTAT held that as regards claims for refund of service tax, the one year limitation period stipulated in Section 11B of the CE Act would apply.

2. According to the Appellant, the services rendered by it, viz., ''Business Auxiliary Services'' were provided to recipients outside India and therefore, they were exempt from service tax liability by the Export of Services Rules, 2005 read with Central Board of Excise & Customs (CBEC) Circular No. lll/05/2009-ST dated 24th February 2009 and Government of India Notification 06/2010-ST dated 27th February 2010. It is the further contention of the Appellant that on facts its case is no different from the facts in the three other appeals which were heard

together by the CESTAT with the appeal of the Appellant and which were allowed by the same impugned order.

3. Having heard the submissions of counsel for the parties, this Court finds that the question of applicability of Section 11B of the CE Act read with Section 83 of the Finance Act, 1994 to the refund application of the Appellant would arise only if the CESTAT came to the conclusion that the services rendered by the Appellant were in fact liable to service tax. If, on the other hand, the CESTAT finds that the services rendered by the Appellant were not amenable to service tax at all, the question of processing the refund application of the Appellant with reference to Section 11B of the Act would not arise. This legal position has been made explicit in the context of a claim for refund under the Customs Act, 1962 in the decision of this Court in Hind Agro Industries Limited Vs. Commissioner of Customs and Others, . In that decision the Court has discussed the legal position emerging from the decision of the Supreme Court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, .

4. Consequently, the Court is of the view that the CESTAT ought to have first satisfied itself that the services rendered by the Appellant was, on facts, amenable to service tax and different from the other three appeals which were heard together with the Appellant''s appeal and allowed by the same impugned order. If and only if the CESTAT finds that the services rendered by the Appellant were in fact amenable to service tax would it then take up the question whether in terms of Section 11B of the Central Excise Act, 1944 and the claim of the refund was barred by limitation.

5. Consequently, the impugned order of the CESTAT insofar as it dismisses the appeal of the Appellant is set aside and the Appeal of the Appellant is restored to the file of the CESTAT for a decision afresh in the above terms in accordance with law.

6. The appeal is disposed of in the above terms. Order Dasti.