(2021) 10 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20237 Of 2020, 20245, 20246, 20247 of 2021

Base Educational Services Pvt Ltd — APPELLANT

Vs

Commissioner Of Central Tax, Bengaluru South Commissionerate — RESPONDENT

Date of Decision : 07-10-2021

Acts Referred:
Central Excise Act, 1944 — Section 11B
Constitution of India, 1950 — Article 265

Citation : (2021) 10 CESTAT CK 0011

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellant made 4 refund claims, all dated 18/05/2018, for different periods seeking refund of the service tax amount. In the first claim, the appellant had claimed the refund on the reason that the course fees paid by the students was returned along with service tax for those who discontinued the course and requested for the refund of the fees paid by them. The reason for claiming the second refund was that the coaching services run on a academic year / financial year basis, the payment related to 4th quarter of 2016-17 was received in the first quarter of 2017-18 and that on account of this, there was a differential service tax which was again paid. This had resulted in double payment of service tax and hence the same was claimed as refund. The third refund claim was made on account of the reversal of the receipts due to non-realisation of cheques and the last claim for refund was made on account of credit notes issued with respect to institutional consultancy.

2. The Assistant Commissioner of Central Taxes issued separate show-cause notices, all dt. 08/08/2018, proposing, inter alia, to reject the refund claims on the ground that the appellant's claims were hit by limitation of time as specified under Section 11B of the Central Excise Act, 1944. The appellant filed its detailed

reply, all dt. 05/09/2018 and also placed reliance on various decisions; but the adjudicating authority vide the Orders-in-Original No.34/2018-(R), No.35/2018-19(R), No.36/2018-19(R) and No.57/2018-19(R) sanctioned only a partial refund. Thereafter the appellant preferred appeals before the first appellate authority who vide the impugned common Order-in-Appeal Nos.259-262/2020 confirmed the denial against which the present appeals came to be filed before this forum. All the appeals are considered for common disposal for convenience.

3. Heard Shri T.L. James, learned consultant for the appellant and Shri K.B. Nanaiah, learned AR for the Revenue. I have considered the rival contentions and gone through the decisions relied upon during the course of hearing.

4. Facts are not in dispute, neither the payment of service tax nor the refund claims by the students are also in dispute. The Orders-in-Original have been passed by rejecting a part of refund mainly on the ground that the appellant's claims are barred by limitation. The first claim for refund was prior to May 2017 for which the claim was filed on 18/05/2018 which the adjudicating has held as barred by limitation. In respect of the second claim which is relating to the period April 2017 to July 2017 for which the claim was filed on 18.05.2018 was also held to be barred by limitation. The 3rd claim is relating to April 2017, the refund for which was claimed on 18.05.2018, has also been rejected as hit by limitation. In respect of the last claim which is relating to the period July 2016 to April 2017, the claim which is filed on 18.05.2018 has also been held to be barred by limitation, and, these findings have been upheld by the Commissioner (Appeals) in the impugned order. The appellant in its reply to the show-cause notices has, inter alia, contented that in respect of some of its claims, the period of limitation should be reckoned from the date of cause of action i.e. the date on which the students claimed refund; that the payment of service tax would fall within the next quarter for which the service tax was paid by mistake. The authorities below, however, have not given any finding on the above contentions. Be it as it may, Hon'ble High Court of Judicature at Madras in the case of 3E Infotech Vs. Customs, Excise & Service Tax Appellate Tribunal and another [2018(18) GSTL 410 (Mad.)] has considered an almost identical issue of refund under Section 11B ibid vis-à-vis the time prescribed thereunder in respect of refund claims and after considering various decision of both the Hon'ble Apex Court as well as other High Courts, has observed as under:-

12. Further, the claim of the respondent in refusing to return the amount would go against the mandate of Article 265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law.

13. On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex

Court, and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs. 4,39,683/- cannot be barred by limitation, and ought to be refunded.

14. There is no doubt in our minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper, and against the tenets of Article 265 of the Constitution of India. On the facts and circumstances of this case, we deem it appropriate to pass the following directions :-

(a) The Application under Section 11B cannot be rejected on the ground that is barred by limitation, provided for under Section.

(b) The claim for return of money must be considered by the authorities.

5. From the above, it is clear that refund claims rejected as time barred in these cases cannot be sustained and hence, the impugned order is set aside. Appeals are allowed with consequential benefits, if any, as per law.

(Order was pronounced in Open Court on 07/10/2021)

