(2021) 03 CESTAT CK 0074

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 40124 Of 2020

M/s. Dynamic Techno Medicals Pvt. Ltd. — APPELLANT

Vs

Commissioner Of CGST And Central Excise — RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:
Finance Act, 1994 — Section 104

Citation : (2021) 03 CESTAT CK 0074

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : K. Sankaranarayanan, Vikas Jhajharia

Final Decision : Allowed

Judgement

1. Brief facts are that the appellants filed refund claim of service tax paid on development charges to SIPCOT Industrial Growth Centre, Perundurai. As per section 104 of the Finance Act, 1994, service tax on development charges is exempted for the period 1.6.2007 to 21.9.2016. The refund claim of Rs.3,58,934/- being the service tax paid on development charges to SIPCOT was filed by the appellant as per this exemption available under section 104 of Finance Act. The refund claim though dated 26.9.2017 was received in the office of the refund sanctioning authority on 9.10.2017. As per section 104, the refund claim has to be filed within six months from 31.3.2017. The refund sanctioning authority rejected the refund claim on three counts. Firstly, that SIPCOT has to make refund claim, secondly, it is time-barred and thirdly that relevant documents are not produced. Against this, appellant filed appeal before Commissioner (Appeals) who after taking note of the dates was of the view that there is no delay and therefore directed to process the refund claim. In such denovo proceedings of refund claim, the original authority was of the view that the refund claim is filed beyond the time limit prescribed under section 104 and therefore the appellant is not eligible for refund. The appellant once again filed an appeal before Commissioner (Appeals) who upheld the rejection of refund

claim. Hence this appeal.

2. On behalf of the appellant, ld. Counsel Shri K. Sankaranarayanan appeared and argued the matter. He submitted that service tax was paid by the appellant to SIPCOT has deposited it with the Government. The appellant could not file the refund claim without obtaining sufficient documents from SIPCOT. SIPCOT has informed the appellant only on 26.9.2017 and the refund claim was submitted to the department. Since the documents indicating the deposit of service tax is with SIPCOT, the appellant could not file the necessary details before time before the original authority. The delay has occurred only for these reasons and a lenient view may be taken. He relied upon the decision in the case of Roop Automotives Ltd. Vs. CGST & Central Excise, Chennai - 2019 (370) ELT 1676 (Tri. Chennai) and submitted that the Tribunal has condoned the delay in filing the refund claim when there was no fault on the part of the appellant to request for refund.

3. The ld. AR Shri Vikas Jhajharia appeared for the department. He supported the findings in the impugned order and stressed on the discussion made by Commissioner (Appeals) in para 9 of the impugned order. It is contended by him that refund claim has been rightly rejected.

4. Heard both sides.

5. A refund claim as per section 104 has to be filed within six months from the date when the Bill receives the assent of the President of India. Such assent was received on 31.3.2017. Thus, the refund claim ought to have been filed on or before 30.9.2017. In the present case, the refund claim is filed on 9.10.2017. Needless to say that when the service tax has been collected by SIPCOT, the appellant would require necessary documents from SIPCOT to file the refund claim. It is also to be noted that original authority in the first round of proceedings has rejected the refund claim stating that it is for SIPCOT to make a refund claim. From this, it is clear that there was a confusion as to who has to file the refund claim and therefore this has led to the delay in filing the refund claim. In the decision cited by the ld. Counsel for appellant, the Tribunal has considered the issue and held that the time limit of one year prescribed in section 11B of Central Excise Act would apply. In the case of Teknomec Vs. CGST & CE, Chennai - 2020 (35) GSTL 135 (Tri. Chennai), this Tribunal held that when claim has been filed within reasonable time from the date when appellant received intimation from SIPCOT, the refund has to be granted. Following the decision of the Tribunal, I am of the view that rejection of refund claim is unsustainable. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Dictated in open court)

