**(2024) 07 CESTAT CK 1526**

**In the Customs, Excise And Service Tax Appellate, New Delhi**

**Case No :** Service Tax Appeal No.54193 of 2015

**M/s. Gea Westfalia Separator India Pvt. Ltd. @APPELLANT @Hash Commissioner of Central Excise and Service Tax @RESPONDENT**

**Date of Decision :** 12-07-2024

**Acts Referred:**
Finance Act, 1994 — Section 11B, 73A
Export of Service Rules, 2005 — Rule 4, 5

**Citation :** (2024) 07 CESTAT CK 1526

**Hon'ble Judges :** Binu Tamta, Member (J);Hemambika R. Priya, Member (T)

**Bench :** Division Bench

**Advocate :** Anil Bezawada, Rajeev Kapoor

**Final Decision :** Allowed

## Judgement

Binu Tamta, J

1. Challenge is to the rejection of the rebate/refund claims on the ground of limitation in terms of Section 11B of the Finance Act, 1994, The Act and insufficient documents by both the lower authorities.

2. The appellant is providing "Business Auxiliary Service" and "Consulting Engineer's Service" to its group companies situated outside India and received consideration in convertible foreign exchange. The appellant filed refund claims under Rule 5 of Export of Service Rules, 2005, (Rules) read with Notification No. 11/ 2006-ST dated19.04.2005 as they paid service tax on the services exported by them. The details of the claims are as under:-

S.No.

Date of Filing

Period of Refund Claim

Amount (in Rs.)

1.

13.03.2007

October, 2005 to  march, 2006

10,71,365/-

2.

07.12.2007

March, 2006

8,56,413/-

3.

07.12.2007

April, 2006 to  September, 2006

8,39,813/-

4.

07.12.2007

October, 2006 to  March, 2007

37,29,510/-

5.

30.06.2008

April, 2007 to  September, 2007

16,89,215/-

Total

81,86,316/-

3. The Adjudicating Authority vide order-in-original dated 27.12.2012 rejected all the refund claims and the appeal filed by the appellant was dismissed by the impugned order dated 19.08.2013. Hence, the present appeal has been filed by the appellant before this Tribunal.

4. The learned counsel for the appellant argued that the services in question have been held to be export services by the decision of this Tribunal in Gea Westfalia Separator Vs. Commissioner of Central Excise, Delhi-II, Final Order No.55797/2024 dated 03.05.2024 in S.T.Appeal No58353 of 2013, which makes it clear that the appellant was not liable to pay the service tax in respect of the services rendered by him. On the issue of limitation, the learned Counsel submits that the provisions of Section 11B are not applicable as the amount paid on the export of services is not tax but a deposit as Rule 4 of the Rules provide that

service tax is not payable on the export of services. Hence, the limitation prescribed therein does not govern the claim in the instant case. The learned Counsel submitted that the appellant has provided the necessary documents and, therefore, the impugned order is bad. Alternatively, the learned counsel pleaded that Union of India is not empowered to collect taxes as the services are consumed outside India and it is a settled principle that exports cannot be subjected to tax.

5. The learned Authorised Representative reiterated the findings of the authorities below and placed reliance on the decision of the Apex Court in I.T.C. Ltd. Vs. CCE, 2019 (368) ELT 216 (SC) and B.T. (India) Pvt. Ltd Vs. Union of India, (2023) 13 Centax 89 (Delhi).

6. Having heard both the sides and perused the records of the case and the statutory provisions. We may first consider whether the provisions of Section 11B of the Act are applicable and if so, the claim for rebate made by the appellant is time barred. As per the provisions of Section 83 of the Finance Act, various provisions of the Central Excise Act are made applicable to the service tax provisions and Section 11B is also included in the list of sections. Thus, there is no doubt that the provisions of Section 11B are applicable in so far as the provisions of the Act are concerned. However, the contention of the appellant is that their claim is not for refund, but a case of rebate in respect of the exports made and the provisions of Section 11B does not deal with it. In this regard, the Commissioner in the impugned order had relied on the provisions of Explanation A to Section 11B, which the appellant has completely ignored while making the submissions. The provisions of Explanation A to Section 11B are quoted below:-

"Explanation A --"Refund" includes rebate of duty or excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods, which are exported out of India."

6.1 Perusal of the above provisions refutes the argument of the learned Counsel for the appellant. The Explanation specifies that refund includes rebate of duty of excise on manufacture of goods, which are exported out of India. The learned Commissioner was right in observing that when the refund includes rebate of duty of excise in terms of Section 11B of the Act and when the provisions of Section 11B are applicable to the service tax matter, limitation period prescribed therein has to be complied with.

7. The submission of the appellant that the amount collected is not towards tax but is a deposit is incorrect as per their own statement in the synopsis, where it has been stated as under:-

"Consequently, from 01 April 2006 to 31 August 2007, the appellant exported services with payment of service tax and filed applications for claiming a rebate of the service tax so paid as per Rule 4 of the Export of Service Rules, 2005 (the rules)"

 

8. Thus, the appellant exported services with payment of service tax and filed applications for claiming a rebate of service tax paid as per Rule 5 of the Rules, 2005. Hence the contention that what is being claimed is not tax but was only a deposit is unsustainable.

9. We may now consider whether the claim of the appellant was within time as per Section 11B. The chart reproduced above shows the date of filing the rebate claims for the respective period and on the face of it, it appears that the Serial No.1- 4 are beyond the period of one year as they ought to have been filed on or before 04.02.2006, 30.03.2006, 03.07.2007 and 04.12.2007 respectively. Hence, the rebate claims being time barred have been rightly rejected by the Authorities below.

10. The alternate argument of the learned Counsel for the appellant that the Department has no authority to collect the tax as no service tax is leviable on export of services is misconceived in the facts of the present case. That under the Export of Service Rules, the exporter has two options, where under Rule 4 either the services could be exported without payment of service tax or in terms of Rule 5, the service tax could be paid at the time of export of service, which could be claimed as rebate later on following the conditions and the procedure prescribed under the Notification No. 11/2005 – ST. Rule 4 and 5 are quoted below:—-

"4. Export without payment of service tax.- Any service, which is taxable under clause (105) of section 65 of the Act, may be exported without payment of service tax.

5. Rebate of service tax.- Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification."

The appellant though had an option to export without payment of service tax, however, under the self-assessment, had chosen to assess and deposit the service tax at the time of export of service. Therefore, the contention raised by the appellant is unsustainable and as observed by the Commissioner that the appellant had not paid the service tax at the instance of the department. Moreover, the provisions of Section 73A of the Act provides for such contingency that, "where any person has collected any amount, which is not required to be collected from any other person, in any manner, as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government". Thus, no error can be attributed to the Department.

11. In so far as the claim for the period April, 2007 to September, 2007, being within the time limit of one year as the rebate claim was filed on 30.06.2008, the Authorities below rejected the same as the appellant failed to produce the

 

relevant documents, i.e. export invoices, FIRGs, service agreement between them and their foreign clients and also the declaration under para 3(ii)(b) of the Notification. We feel that it would be appropriate to grant an opportunity to the appellant to place on record the requisite documents in terms of the notification and the claim may then be considered by the Authorities in accordance with law.

12. The impugned order is modified to the extent that the rebate claim for the period April, 2007 to September, 2007 may be re-considered on the basis of the documents to be submitted by the appellant. The rejection of the rebate claim as being time barred is upheld. The appeal is, accordingly partly allowed.

[Order pronounced on 12th July, 2024]

 