(2015) 02 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 420 Of 2009

M/s KLA India Public Ltd — APPELLANT

Vs

C.C.E. Meerut-I — RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Citation : (2015) 02 CESTAT CK 0003

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : R.L. Thapaliyal, R.K. Mishra

Final Decision : Dismissed

Judgement

1. Appeal is filed against Order-In-Appeal No.136-ST/MRT- II/2009 dated 27.02.2009 which upheld the Order-In-Original dated 17.7.2008 in terms

of which the appellants' refund claim for Rs.6,84,152.69 was rejected.

2. The facts, briefly stated, are as under:

The appellants filed a refund claim on 16.6.2008 for claiming refund of the service tax paid on services used for export of goods in terms of

Notification No. 41/2007-ST dated 06.10.2007. Under the said exemption notification, claim for refund was to be filed on a quarterly basis within sixty

days from the end of the relevant quarter during which the said goods were exported. The Adjudicating Authority held that the claim pertained to the

period 01.10.2007 to 31.12.2007 and therefore the last date for filing refund claim was 29.2.2008 whereas the refund application was received on

16.6.2008. Therefore the claim was held to be time- barred and rejected. In there appeal, the appellants have contended that they had actually filed

their claim on 28.2.2008 which was well within the time limit prescribed under the said notification. They contended that the claim filed on 16.6.2008

was actually a re-submission made after rectification of deficiencies in response to the letter of the Assistant Commissioner dated 22.5.2008 and

therefore the date of filing the claim is to be reckoned to be 28.2.2008 which makes their claim as having been filed within the prescribed time limit.

They cited several judgments to the effect that when the original refund claim was filed within time and proper claim in prescribed format was filed

after direction from the department beyond the prescribed time limit, the date on which the claim was initially filed is to be considered for the purpose

of limitation, as had been held by Tribunal in the cases of Commissioner of Central Excise, Bolpur Vs. Bhandiguri Tea Estate 2001 (134) ELT 116

(Tri.-Kolkata), Goodyear India Ltd. Vs. Commissioner of Customs, New Delhi 2002 (150) ELT 331 (Tri.-Del.) and Super Spinning Mills Ltd. Vs.

Commissioner of Central Excise, Coimbatore 2007 (219) ELT 958 (Tri.-Chennai).

3. We have considered the contention of the appellants. There is no doubt that several judgement of CESTAT as citied above have held that the time

limit is to be computed with reference to the date on which refund /rebate claim was initially filed and not from the date on which refund/rebate claim

was re-submitted after removing defect. In the present case, we have perused the application with they had filed on 28.2.2008. In that application they

have not even mentioned the amount of refund which they sought to claim. That application also does not contain the classification of various input

(taxable) services in respect of which the refund was claimed. The claim was also not accompanied with any documents showing payment of service

tax and other documents required to be enclosed alongwith with the refund claim as per the condition laid down under the said notification. As per

Notification No. 41/2007-ST dated 06.10.2007, the refund claim was required to be accompanied with the documents ""evidencing export of goods,

payment of Service Tax on the specified services for which claim for refund of Service Tax paid is filed and copy of written agreement entered into

by the exporter with the buyer of said goods.

It is thus evident that what was filed on 28.2.2008 can by no stretch of imagination be called a refund claim (defective or otherwise). In these

circumstances it can not be held that the appellants had filed a ""refund claim"" (even a defective one) on 28.2.2008 and that what they did on 16.6.2008 was to re-file it after removal of defects. Thus it has to be held that the appellants filed the refund claim for the first time only on 16.6.2008 which is

clearly beyond the prescribed time limit.

4. In the light of the analysis above, we find no infirmity in the impugned order. The appeal is dismissed.

