(2021) 02 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 10516 Of 2020

Pujan Builders Engineers & Contractors @Hash C.C.E. And S.T.-Vadodara-II

Date of Decision : 11-02-2021

Acts Referred:
Central Excise Act, 1944 — Section 11B

Citation : (2021) 02 CESTAT CK 0016

Hon'ble Judges : Ramesh Nair, J

Bench : Single Bench

Advocate : Mrugesh Pandey, Sanjiv Kinker

Final Decision : Allowed

Judgement

1. This appeal is directed against Order-In-Appeal No.VAD-EXCUS-002-APP-532-2019-20 dated 13.02.2020 whereby the Learned Commissioner

(Appeals) upheld the rejection of refund claim of excess paid service Tax of Rs.1,61,203/- on the ground of time barred. Therefore, the appellant filed

present appeal.

2. The brief facts of the case are that the appellant during the period of April to Juneâ?? 17 filed ST-3 Return on 14.08.2017. Due to cancellation of

some of the invoices, the appellant has revised the ST-3 Returns on 21.09.2017. The said ST-3 Return was accepted by the department as no

objection was raised. Due to cancellation of some of the invoices the amount of service tax, relevant to those cancelled invoices were paid in excess.

In the revised ST-3 Returns an amount of Rs. 1,61,203/- was considered as excess service tax amount which was credited in TRANS-1(under GST

Law). The GST department has taken objection and the amount which was transferred in TRANS-1 was reversed along with payment of interest by

the appellant on 27.02.2019, thereafter they filed a refund application on

05.04.2019 for excess payment made by the appellant. By the Order-

InOriginal dated 13.02.2020 the refund was rejected on the ground of time barred by treating the relevant date is the date of payment of service tax i.e

05.07.2017 under Section 11B of Central Excise Act, 1944. Being aggrieved by the Order-In-Original appellant filed an appeal before the

Commissioner (Appeals) which came to be rejected maintaining the OrderIn-Original, therefore, the present appeal filed by the appellant.

3. Shri. Mrugesh Pandya, Learned Counsel appearing on behalf of the appellant submits that since the invoices were cancelled the amount shown in

invoices actually not a service tax payable in accordance with law and hence the same is treated as deposit, therefore the limitation provided under

Section 11B is not applicable.

3.1 Alternatively, he submits that since excess paid service tax was transferred to TRANS-1 (under GST) and subsequently, it was reversed along

with payment of interest on 05.04.2019, thus the refund accrued only after 27.02.2019, therefore, filing of refund claim on 05.04.2019 which is within 2

months i.e within the time limit prescribe under section 11B, therefore, for this reason also a refund is not time barred. . In support of his above

argument, he placed reliance on the following judgments:- Â

Â· Reiter India Ltd-2018 (363) ELT 1064 (Tri. Mumbai) Â

Â· Pratibha Constn., Engnr. & Contr. (I) P. Ltd.-2011 (22) STR 182 (Tri. Mumbai) Â

Â· Lancor Holdings Ltd-2020 (43) GSTL 399 (Tri-Chennai) Â

Â· Fluid Controls Pvt. Ltd-2018 (364) ELT 1041 (Tri.-MUM.) Â

Â· Josts Engineering Co. Ltd.-2018 (364)ELT 1039 (Tri. Mum.) Â

Â· National Ceramic Works-2009 (237) ELT 576 (Tri. Ahmd.) Â

Â· Staunch Natural Resources Pvt. Ltd-2018 (361) ELT 356 (Guj.) Â

Â· Staunch Natural Resources Pvt. Ltd-2018 (362) ELT A113 (S.C) Â

Â· R.S.Chemicals-2017 (353)ELT 247 (Tri. All.)

Â· Satya Prakash Builders Pvt. Ltd-2018 (8) GSTL 90 (Tri.-Del.)

Â· REITER INDIA LTD-2018 (363) ELT 1064 (Tri.-Mumbai)

Â· C.C. PATEL & ASSOCIATES PVT. LTD.-2013 (32) STR 392 (Guj.)

4. On the other hand, Shri. Sanjiv Kinker, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the

finding of the impugned order. He further submits that the appellant have admittedly paid the service tax during the period April to June 2017,

therefore, the refund filed on 05.04.2019 is much beyond the prescribed time limit on 1 year, therefore, both the lower authorities have rightly rejected

the claim on the ground of time bar in terms of Section 11B of Central Excise Act, 1944. He also submits that the refund claim has not passed the test

of unjust enrichment for the reason that the refund was primarily rejected on the ground of time barred, therefore the aspect of unjust enrichment also

need to be examined. He placed reliance on the following judgments:- Â

Â· MAFATLAL INDUSTRIES LTD-1997 (89) ELT 247 (S.C)

Â· MILES INDIA LIMITED-1987 (30) ELT 641 (S.C)

Â· ASSISTANT COLLR. OF CUS.-1997 (90) ELT 260 (S.C)

Â· COMEXX-2020-TIOL-698-CESTAT-AHM

Â· STEEL STRIPS-2011 (269) ELT 257 (Tri. â?"LB)

Â· NATIONAL FERTILIZERS LTD-2019 (31) GSTL 38 (M.).)

5. I have considered the submissions made by both the sides and perused the records. The facts in the present case is not under dispute that the

appellant have paid the excess service tax during the quarter April to June, 2017, however, the appellant under bona fide belief transferred the said

excess paid service tax into their TRANS-1 as balance in personal ledger account. Subsequently, on objection raised by the GST department the

appellant have reversed the said amount and also paid an interest of Rs. 52,256/- on 27.02.2019. In these peculiar circumstances, I find that since the

appellant has transferred the amount of excess paid service tax in the TRANS-1 and same was reversed on 27.02.2019, therefore till the date up to

27.02.2019 there is no cause for claiming refund of this amount. The refund is arising only after the appellant reversed the amount on 27.02.2019. The

refund was admittedly filed on 05.04.2019 i.e well within the prescribed time limit of 1 year in terms of section 11B. Therefore, in my considered view,

the refund was filed well within the time. Hence, the same is not time barred. As submitted by the Learned Authorized Representative the issue of

unjust enrichment need to be verified at the time when the refund is to be granted to the assessee. Therefore in the present case also though the

refund is not hit by limitation but the fact that whether the incidence of the refund amount has been passed on or otherwise needs to be examined by

the sanctioning authority.

6. Accordingly I set aside the impugned order and remand the matter to the adjudicating authority to only verify the unjust enrichment and accordingly,

to dispose of the refund claim of the appellant. Appeal is allowed by way of remand to the adjudicating authority.

(Dictated and pronounced in the open court)

