IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:08.11.2017
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.27264 & 27270 of 2017

M/s.Collabnet Software Pvt. Ltd., rep.by its Director ...Petitioner

Vs

The Assistant Commissioner,
Service Tax-I Division, Service Tax
III Commissionerate, Newry Towers,
Ground Floor, plot No.2054, II Avenue,
12th Main Road, Anna Nagar, Chennai-40. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus (i) to call for the records on the file of the respondent culminating in the impugned order No.12/2017-(R) dated 31.1.2017 bearing reference No.C.No.IV/161/2016-(R) SV0101 passed by the respondent rejecting the refund of Rs.4,72,220/-, quash the same and direct the respondent to make payment of refund of Rs.4,72,220/- along with interest under Section 11BB of Central Excise Act to the petitioner (WP.No.27264 of 2017); and (ii) to call for the records of the respondent herein culminating in the impugned order No.13/2017-(R) dated 31.1.2017 bearing reference No.C.No.IV/159/2016-(R) SV0101 passed by the respondent rejecting the refund of Rs.2,33,050/-, quash the same and direct the respondent to make payment of refund of Rs.2,33,050/- and Rs.1,16,276/- (Rs.1,16,276/- sanctioned vide Order in Original 296/2010(R) dated 28.12.2010 not yet received by the petitioner) totaling to Rs.3,49,326 along with interest under Section 11BB of Central Excise Act to the petitioner (WP.No.27270 of 2017).

For Petitioner : Ms.Gayathri
For Respondent : Mrs.Hema Muralikrishnan, SPC

COMMON ORDER

Mrs.Hema Muralikrishnan, learned Senior Panel Counsel accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner has filed these writ petitions challenging the Orders-in-Original dated 31.1.2017, by which, the petitioner's claim for refund was rejected as time barred.

3. It may not be necessary for this Court to make an elaborate exercise to consider as to whether the impugned orders are just and proper in the light of the following reasons :

The Original Authority passed the orders on 28.12.2010 vide Order-in-Original Nos.296/2010 and 298/2010, by which, a portion of the refund sought for was granted and the remaining portion was rejected. Aggrieved by the orders passed by the Original Authority, the petitioner filed appeals before the Commissioner of Appeals, who, by a common order dated 14.3.2014, allowed the appeals with consequential relief. As against the common order passed by the Commissioner (Appeals), the Revenue preferred an appeal to the Customs, Excise and Service Tax Appellate Tribunal. The Tribunal, by final order dated 01.10.2015, dismissed the appeal filed by the Revenue and held that the Commissioner of Appeals was right in ordering refund to the assessee. The Revenue has not preferred further appeal to this Court against that order. Further, the order of the Tribunal has attained finality. With these facts, the petitioner submitted two applications dated 04.8.2016 for refund of the accumulated CENVAT claim. Those applications were rejected by the impugned orders as being time barred.

4. The impugned orders have been passed without proper application of mind and without taking note of the fact that the petitioner has succeeded upto the Tribunal. In other words, the Revenue failed before the Commissioner of Appeals as well as the Tribunal. That apart, the Original Authority, who passed the Orders-in-Original dated 28.10.2010, had specifically stated that the applications filed in the year 2010 seeking refund were well within time. Therefore, the impugned orders passed by the respondent are wholly unsustainable.

5. For the above reasons, the writ petitions are allowed, the impugned orders are set aside and the respondent is directed to effect refund as per the applications made by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner, Service Tax-I Division, Service Tax III Commissionerate, Newry Towers, Ground Floor, plot No.2054, II Avenue,
12th Main Road, Anna Nagar, Chennai-40.

+2cc to M/s.Hema Muralikrishnan, Advocate Sr.Nos.79167,79168
+2cc to M/s.Gayathiri, S. Advocate SR.Nos.79178, 79179

WP.Nos.27264 & 27270 of 2017

RSI(CO)
sm:4.12.2017