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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: August 23, 2018

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SERTA 13/2018

NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY

..... Appellant

Through: Mr. Prabhat Kumar Sahu, Advocate

versus

COMMISSIONER OF SERVICE TAX,

..... Respondent

Through: Mr. Harpreet Singh, Senior Standing
Counsel

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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S. RAVINDRA BHAT, J. (Oral)

1. The following question of law arose for consideration of this court:

“Did the Tribunal fall into error in holding that only part of the amount claimed by the assessee was refundable and that the other part could not be repaid on account of expiry of limitation under Section 11(B) of the Central Excise Act or Section 27(c) of the Customs Act.”

2. With consent of counsel for the parties, the appeal is finally heard today.

3. The appellant is a registered society set up by Ministry of Finance, Planning Commission, several State Governments and

distinguished academicians as a centre for research in public economics and policies.

4. Concededly, at the relevant time service tax was not payable for any of the functions or work undertaken or performed by the appellant/assessee. In these circumstances, under a wrong impression that it was liable to service tax, the assessee was levied certain amounts. Subsequently, upon inquiry, it was informed by CBEC on 13.04.2009 that its activities were not taxable. Soon thereafter, it sought refund of the amounts deposited. The Deputy Commissioner refunded part of the amount but disallowed refund of ₹ 11,49,090/- on the ground *that* the application was filed after a lapse of period of one year. The Assessee unsuccessfully filed an appeal to CESTAT which appears to have relied upon the judgment of the Supreme Court in *Collector of Central Excise, Chandigarh v. Doaba Co-operative Sugar Mills*, 1988 (37) E.L.T. 478 (S.C.).

5. Counsel for the assessee contends that when the amount in question was never payable as there was no levy at all, the question of denying the refund of part payment did not arise and that the general principal of limitation will be applicable from the date of discovery of mistaken payment in the present case. So the refund claim is made within the stipulated period of the limitation.

6. Counsel for the Revenue, on the other hand, relied upon the judgment of the Supreme Court in *Collector of C.E., Kanpur vs. Krishna Carbon Paper Co.*, 1988 (37) ELT 480 (SC). Relying upon

the said judgment, it is submitted that the refund claim before a departmental authority is to be made within the four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed there-under.

7. This court is of the opinion that the CESTAT clearly fell into error. *Krishna Carbon Paper Co.* (supra) was a case where principal duty was payable; excess amount had been paid on a mistaken notion with respect to the liability for excess production under a notification which was later discovered to be not correct. In the present case, levy never applied – a fact conceded by no less than the authority of CBEC. In these circumstances, the general principle alluded to in *Krishna Carbon Paper Co.* (supra) would apply. Consequently, the appeal has to succeed and is therefore allowed. The appellant shall be entitled to refund of entire amount with proportionate interest.

8. The appeal is disposed of in the aforesaid terms.

S. RAVINDRA BHAT, J

ANU MALHOTRA, J

AUGUST 23, 2018

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