**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

STA No.3/2019
Date of decision:14.10.2019.

Commissioner of Central Excise and Service Tax and Customs, Rohtak

..............Appellant.

v.

M/s Registrar,Guru Jambheshwar University of Science and Technology,Hisar.

..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Ms.Jaishree Thakur

Present:- Mr.Puneet Pali,Advocate for
Mr.Amit Goyal,Advocate for the appellant.

<u>**Jaswant Singh,J.**</u>

Since there is delay of 158 days in refiling the present appeal, CM 2101-CII/2019 has been filed seeking condonation of said delay.

For the reasons stated in the application supported by the affidavit of Commissioner, Goods and Services Tax, Rohtak, the application is allowed and delay in filing the appeal is condoned.

<u>Main case.</u>

Respondent University is registered with the Service Tax Department. It is receiving services of Manpower Recruitment Supply Agency to undertake various works. It paid service tax under the reverse charge mechanism for the services received by it under the category of Manpower Recruitment/Supply Agency service. It being not liable to pay service tax in view of Notification dated 20.6.2012, filed refund claim before the adjudicating authority. The Adjudicating Authority partially allowed the refund which was within one year of payment of service tax but denied the refund which was beyond one year. Aggrieved against the same, respondent filed appeal before the Commissioner(A) which was allowed vide order-in-Appeal dated 28.12.2016/2.1.2017(A-3). Aggrieved against the same, Revenue filed appeal before CESTAT,Chandigarh. However, the same was dismissed vide Final Order dated 4.8.2017 (A-4). Hence the present appeal by Revenue under Section 83 of the Finance Act,1994 for setting aside the Order-In-Appeal dated 28.12.2016/2.1.2017 (A-3) and the CESTAT Final Order dated 4.8.2017 (A-4), raising the following substantial questions of law:-

i) Whether in view of Section 11 B(f) of the Central Excise Act,1944 as made applicable by the Section 83 of the Finance Act,1994 the respondent-party is eligible for refund of Service Tax and interest (if any) paid, within last one year from the date of filing of refund?

ii) Whether the Respondent is eligible for refund of Service Tax amount paid on or after 12.9.2014 only?

iii) Whether the Service Tax amount paid before 12.9.2014 is time barred and not refundable in view of Section 11 B(f) of the C.E.Act?

iv) Whether the CESTAT is right in passing order by not discussing all the facts present before it.

v) Whether to avail a benefit under the law, the party has to abide by the procedure/time limit laid down by that law i.e. Section 11 B in the present case?

At the time of hearing,learned counsel for the appellant admits that in view of instructions dated 22.8.2019 issued by Ministry of Finance,Department of Revenue, Central Board of Indirect Taxes and Customs (Judicial Cell) the instant appeal would not be maintainable before this Court, as refund amount i.e. 42,39,625/- is below the monetary limit of Rs. 1 Crore.

In view of the said instructions dated 22.8.2019 learned counsel for the appellant prays for withdrawal of the instant appeal, however the questions of law raised would remain open.

Dismissed as withdrawn with liberty aforesaid.

(Jaswant Singh)
Judge

14.10.2019. **(Jaishree Thakur)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**