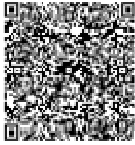


2024:PHHC:104126-DB



CEA-46-2018 (O&M)
Reserved on : 16.07.2024.
Date of Decision: 13.08.2024

Executive Engineer, Transmission System, Haryana Vidyut Prasaran Nigam Limited

...Appellant

Vs.

Central Excise Service Tax Appellate Tribunal, Chandigarh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present Mr. Ajay Jagga, Advocate for the appellant.

Mr. Sunish Bindlish, Sr. Standing Counsel with
Mr. Viney Kumar, Advocate for respondent No.2.

SANJEEV PRAKASH SHARMA, J.

1. The appellant seeks quashing of order dated 17.04.2018, whereby its appeal seeking refund of the amount deposited twice as service tax, was dismissed by the Customs, Excise & Service Tax Appellate Tribunal, Chandigarh (hereinafter referred to as 'CESTAT')
2. Appellant-the Haryana Vidyut Prasaran Nigam Limited, a Government of Haryana undertaking, is engaged in the work of power transmission and distribution of electricity. It engaged M/s T.D.S.

Management Consultant Pvt. Ltd. (for short 'the TDS Management') to supply services of manpower during the financial years 2014-15 and 2015-16. It is stated that TDS Management was liable to pay service tax on the service rendered by them. It is stated that the appellant-company also deposited service tax on 29.06.2015, 06.07.2015 and 15.09.2015 of a total amount of Rs.4,46,187/-.

On the other hand, the TDS Management who were otherwise liable, also deposited the same amount of service tax on 07.04.2015, 03.07.2015 and 05.08.2015, in relation to the services provided. On coming to know, the appellant-company, therefore, moved appropriate application on 30.08.2016, seeking refund of the amount of tax paid to the Central Excise and Service Tax Division, Ambala City. They were asked by the authorities to file application in the format provided. Accordingly, supporting documents along with application in the required format were also deposited on 28.12.2016, as demanded by the respondents. Copies of the challan reflecting that the amount had been deposited twice by the appellant and service provider were also supplied as demanded by the respondents vide letter dated 02.01.2017. However, the applicant-company was conveyed on 12.04.2017 of an order dated 06.04.2017, rejecting their claim mentioning the refund application to be belated and beyond limitation.

3. Respondents' reasoned that the party had filed the refund claim on 28.12.2016 and service tax payments were made by the company on 29.06.2015, 06.07.2015 and 15.09.2015, therefore, refund claim is time barred as the claim was submitted after time limit of 'one year'.

4. An appeal was preferred against the said order by the appellant which was rejected, relying on Section 11B of the Central Excise Act, 1944

(for short 'the Act, 1944') which has been made applicable to service tax matters by virtue of Section 83 of the Finance Act, 1944, which stipulates that any person seeking refund of any duty may make an application before the Assistant/Deputy Commissioner of Central Excise, within one year from the relevant date. The Commissioner (Appeals)'s order dated 12.09.2017 is, therefore, also under challenge before this Court.

5. Further, appeal was preferred before the Customs, Excise and Service Tax Appellate Tribunal (for short 'CESTAT'), which relied upon the Larger Bench of the Tribunal and rejected the refund claim being time barred.

6. Learned counsel for the appellant has submitted that the limitation of one year is applicable to the duty paid and not on the amount which is deposited wrongly or under mistake and submitted that the limitation under Section 11B of the Act, 1944 would not be applicable to the amount paid twice by mistake as service tax and since the amount is not a duty but an erroneous payment of service tax, the period of limitation would not have application.

It was further stated that the refund application had been filed within 30 days from the date of knowledge of error and having paid twice, therefore, the appellant ought to be granted the refund.

7. Learned counsel submits that the application was actually filed as per Annexure A/1 on 30.08.2016 and a second application was filed on 29.09.2016, whereafter, on 03.10.2016, the Deputy Commissioner, returned back the file to the department instructing the appellant's company to file it in a particular format of Form-R. The subsequent application under Form-R was therefore submitted on 28.12.2016. Thus, it cannot be said that the

refund was highly belated and liable to be rejected. Learned counsel relies upon the judgment of the Madras High Court in the case of M/s 3E Infotech, 11 B/1 2nd Floor, New Street vs. Customs, Excise and Service Tax Appellate Tribunal 2018 (18) GSTL 410. He also relies on the judgment of the Bombay High Court in the case of Parijat Construction vs. Commissioner of Central Excise, Nashik 2018 (9) GSTL 8. He also relies on the judgments of the Karnataka High Court in M/s Bellatrix Consultancy Services vs. The Commissioner of Income Tax 2022 (67) GSTL 59, K.V.R. Constructions vs. Commissioner of Central Excise, Bangalore 2010 (17) STR 6 and Commissioner of Central Excise (Appeals), Bangalore vs. K.V.R. Construction 2012 (26) STR 195. He also relies on the judgment of the Tripura High Court in the case of Tripura Cricket Association vs. Union of India and others 223 (70) GSTL 259.

8. Counsel for respondent No.2, Mr. Sunish Bindlish, relied on the judgment of the Hon'ble Supreme Court in Mafatlal Industries Ltd. versus Union of India 1997 (89) E.L.T. 247 (S.C.) to submit that if the amount has been deposited erroneously, the same is not liable to be refunded under Section 11B of the Act, 1944 and the State can retain it where the burden of duty is passed on to the third party. He also relies upon Veer Overseas Ltd. vs. Commissioner of Central Excise, Panchkula 2018 (15) GSTL 59, Assistant Controller of Cus. Vs. Anam Electrical Manufacturing CO. 1997 (90) E.L.T. 260 (SC), Agra Beverages Corporation Pvt. Ltd. and another vs. Union of India and others 1988 (34) E.L.T. 465 (All.), Southern Surface Finishers vs. Asstt. Commr. Of C. Ex., Muvattupuzha 2019 (28) G.S.T.L. 202 (Ker.), M.G.M. International Exports Ltd. vs. Asstt. Commr. Of S.T., Chennai 2022 (61) G.S.T.L. 565 (Mad.), Quest Global Engineering Services

P. Ltd. vs. Dy. Commr. Of GST & C. Ex. Chennai South 2022 (61) G.S.T.L. 355 (Mad.) and Sarita Handa Exports (P) Ltd. vs. Union of India 2015 (321) E.L.T. 434 (P&H).

9. We have considered the submissions.
10. Section 11B of the Act, 1944, deals with cases relating to refund of duty of excise and interest which provides for such application to be filed before the expiry of one year from the relevant date. It would be apposite to quote relevant extracts of Section 11B of the Act, 1944:-

Section 11B. Claim for refund of duty and interest, if any, paid on such duty :-

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such [duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

11. The issue arises as to whether the statutory limit prescribed in terms of Section 11B of the Act, 1944, would apply squarely in terms of Section 83 of the Finance Act, 1994, with respect to claim of payment for refund of wrongly deposited amount as service tax. Section 11B of the Act, 1944 was made applicable to service tax by Section 83 of the Finance Act, 1994.

12. From the perusal of the provision as noticed above, it is evident that persons seeking refund, may make an application within one year from the relevant date. In the present case, tax has been deposited twice, one by the service provider and one by the appellant and therefore, the demand for refund was made by the appellant on coming to know about dual deposit of the service tax. It is also an admitted position that there is no liability of the appellant to pay the service tax.

13. The sole ground to deny the appellant-company from refund of the tax is that the application for refund in the correct format had been moved after one year has elapsed.

14. The question which arises for consideration of this Court is whether one year period would be determined mechanically or from the date of knowledge of mistake of wrong deposit. The government company like the appellant is running by several different individuals. The application for refund would be processed at various levels before it is actually submitted to the department. One cannot lose sight of the fact that the amount was wrongly deposited by some individual officer of the appellant company who

did not check with the service provider relating to the tax having been already paid by the service provider. In the circumstances, the date of knowledge of wrong deposit has to be considered as a time from which the date of limitation would start and not from the date when the amount was deposited.

15. Article 265 of the Constitution of India prevents the authorities from collecting tax illegally. In other words, any amount which has been deposited with the State under a head can only be allowed to be retained if the same is deposited legally and not erroneously, illegally or without knowledge.

16. The claim of the appellant for refund therefore, cannot be allowed to be defeated solely on the basis that one year has elapsed from the date of deposit. It is to be noticed that the appellant-company had come to know about the wrong deposit of amount as service tax on 30.08.2016 when they received an email seeking release of amount of Rs.4,46,187/- from the service provider namely TDS Management and immediately thereafter on 29.09.2016, an application was moved i.e. within 30 days. This aspect has not been noticed both by the authorities concerned as well as the appellant authority and this Court finds the orders passed by them therefore, as erroneous.

17. The cases cited at bar and noted above are found to be on their own facts and circumstances and will have to be examined on facts of each case. This Court is of the firm view that in the case of Mafatlal (supra), the Court was examining the question whether refund of any duty which may have been deposited wrongfully by mistake should be made or not. The Nine Judges Constitution Bench of the Supreme Court, evolved the passing on

theory and found that as the duty under the Excise Act had passed on to the customers/consumers, the claim for refund was not acceptable. It also took into consideration the question about delay and held that once excess duty has been included in the sale price and has been passed on to the consumers, the original manufacture cannot claim refund thereto as the excess tax paid to the government goes to the public exchequers alone.

18. In the present case, service tax has been paid twice and the service provider has claimed the said amount from the appellant company which cannot be passed on since the appellant company itself has deposited the amount with the state exchequers. It is a case of dual payment. The other party namely TDS Management has not moved any application for refund. In the circumstances, the refund of the appellant-company cannot be denied solely on account of delay which has actually not occurred as it is from the date of knowledge.

18. Keeping in view the above, we allow the appeal and direct the respondents to refund the amount of Rs.,4,46,187/- deposited by the appellant-company along with interest. The refund shall be released within six months from today.

20. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

13.08.2024
rajesh

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|-------------------------------|---|--------|
| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |