

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No. 70529 of 2019

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APPL-1587-2018-19 dated 29/11/2018 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s Avissoft Technologies, ...Appellant

(499, Line Par, Braj Raj Vihar, Chandrapuri, Prem Nagar Bareilly)

VERSUS

Commissioner of Central Excise, NoidaRespondent

(Noida)

APPEARANCE:

Shri A.P. Mathur, Advocate for the Appellant

Shri Madhukar Aanand, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.70129/2022

DATE OF HEARING: 05 August, 2022

DATE OF PRONOUNCEMENT: 10th August, 2022

P. ANJANI KUMAR:

Heard both sides and perused the case records. The instant appeal is directed against Order-in-Appeal dated 29/11/2018 passed by Commissioner (Appeals) CGST, Noida by which upheld the order of

the Original Authority denying the refund claim filed by the appellant for Rs.1,73,753/-.

2. Briefly stated facts of the case are that the appellant filed a refund application on 19.06.2017 consequent upon extension of retrospective exemption on specified services provided to the Government, a local authority or a governmental authority during the period from 01.04.2015 to 29.02.2016 in terms of Section (102) of Finance Act, 1994 by way of amendment to Finance Act in 2016.

3. Learned Counsel for the appellant submits that they have filed a refund claim for Rs.1,33,257/- on 08.11.2016 which was sanctioned vide refund order dated 07.02.2017, however, due to a clerical mistake refund amount of Rs.1,73,753/- remain to be filed; the refund claim cannot be denied for a clerical mistake. Learned Counsel for the appellant further submits that by the virtue of the amendment and the retrospective exemption the tax paid was held to be not payable; therefore, the said tax collected is without any authority of law and therefore, needs to be refunded to the appellants *suo moto* without even filing a refund claim and that in such cases limitation shall not be considered.

5. Vide written submissions, Learned counsel, extracts the relevant Section 102 and submits that the original application for refund of Rs 1,33,257 filed on 8.11.2016 was sanctioned and therefore, the impugned refund, which left out to be filed along with the above, due to a clerical mistake, by no stretch of imagination can be held to be barred by limitation. The facts of

the case relied upon by the department are different and hence, not applicable to the impugned case; in the above case initial application itself was filed after limitation period.

6. Learned Authorised Representative appearing for the Department submits that the provisions of Section 102 (3) of Finance Act, 1944 are very clear; the Section provided that the refund claim should be filed within a period of six months on the date of enactment of the Finance Bill, 2016; the limitation of time prescribed under the bill ended on 14.05.2016 whereas the appellant have filed the impugned refund claim on 19.06.2017. He relies on the judgment of Hon'ble Madhya Pradesh High Court in the case of M/s MDP Infra (India) Pvt. Ltd. 2019 (29) G.S.T.L. 296 (M.P.) and the judgment of Hon'ble Apex Court in the case of M/s Corporation Bank 2010 (18) S.T.R. 513 (S.C.).

7. Heard both sides and perused the records of the case. On going through the rival submissions, I find that Section 102 of the Finance Act provides as under:-

"102. Special provision for exemption in certain cases relating to construction of Government buildings. -

(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of -

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;
 - (b) a structure meant predominantly for use as -
 - (i) an educational establishment;
 - (ii) a clinical establishment; or
 - (iii) an art or cultural establishment;
 - (c) a residential complex predominantly meant for selfuse or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.
- (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.
- (3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President."

8. I find that it is very clear from the above provision that the refund claim needs to be filed within a period of 6 months from the date on which the Finance Bill, 2016 receives the assent of the president. The appellants have filed the impugned refund claim on 19.06.2017 much after the presidential assent to the amendment has been accorded. It is not a case of the appellant that they were not aware of the legal provisions in this regard. It is on record that a similar claim has been made by the appellant for Rs.1, 33,257/- on 08.11.2016. It is not possible to accept the contention that if a refund filed first is within time, the subsequent refunds should also be treated to have been filed in time. Each claim of refund is a

separate application and needs to be treated separate; has to be sanctioned separately. The proposition of the applicant leads to absurd conclusions as the sanctity of limitation is lost. Therefore, the appellant's claim that the subsequent refund filed on 19.06.2017 be treated as part of the refund claim filed on 08.11.2016 cannot be accepted.

9. Having gone through the cases sighted by the learned Authorised Representative for the department, I find that the judicial pronouncements in this regard are not in favour of the appellants. I find that if a statute prescribed the limitation such limitation has to be observed by the concerned while seeking refund. The authorities and for that matter this Tribunal, being creatures of the statute cannot extend the period of limitation or pass an order to the effect that delayed submission of refund would not disentitled to the refund, even if it pertains to refund of duty paid, which is subsequently, held to be non-payable.

10. In view of the above, I do not find any merit in the submissions of the appellant and the appeal therefore, is rejected.

(Order pronounced on 10-08-2022)

**(P. ANJANI KUMAR) Member
(Technical)**

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