

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 231 of 2012

(Arising out of Order-in-Appeal No. 13/2012 (MST) dated 13.01.2012 passed by the Commissioner of Central Excise and Service Tax (Appeals), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Core Minerals

5th Floor, Tower 2, TVH-Beliciaa Towers,
94, MRC Nagar, Chennai – 600 028

: Appellant

VERSUS

The Commissioner of Service Tax

M.H.U. Complex, 692, Anna Salai, Nandanam,
Chennai – 600 035

: Respondent

AND

Service Tax Appeal No. 245 of 2012

(Arising out of Order-in-Appeal No. 13/2012 (MST) dated 13.01.2012 passed by the Commissioner of Central Excise and Service Tax (Appeals), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

The Commissioner of Service Tax

M.H.U. Complex, 692, Anna Salai, Nandanam
Chennai – 600 035

: Appellant

VERSUS

M/s. Core Minerals

5th Floor, Tower 2, TVH-Beliciaa Towers,
94, MRC Nagar, Chennai – 600 028

: Respondent

APPEARANCE:

Shri M. Karthikeyan, Learned Advocate for the Assessee

Smt. Sridevi Taritla, Learned Additional Commissioner for the Revenue

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOS. 40069-40070 / 2023

DATE OF HEARING: 15.02.2023

DATE OF DECISION: 22.02.2023

Order : [Per Hon'ble Mr. P. Dinesha]

The assessee has filed Service Tax Appeal No. 231 of 2012 against the Order-in-Appeal No. 13/2012 (MST) dated 13.01.2012 passed by the Commissioner of Central Excise and Service Tax (Appeals), Chennai. Service Tax Appeal No. 245 of 2012 has been filed by the Revenue against the same.

2. It is the case of the assessee that it was providing service of Transport of Goods by Road, Mining Services, Renting of Immovable Properties and Supply of Tangible Goods Service and had filed a refund claim on 30.06.2009 under Notification No. 41/2007 dated 06.10.2007 for the period from April 2008 to March 2009. The Deputy Commissioner of Service Tax issued a Show Cause Notice dated 08.02.2011 proposing to reject the refund claim made by the assessee for the reasons that: (i) the assessee's claim was not within sixty days as per Para 2(e) of Notification No. 41/2007 *ibid.*, (ii) the assessee had not produced the certificate from the service providers to the effect that they have paid the Service Tax to the Government account and (iii) the conditions prescribed under the above Notification were not fulfilled by the assessee. The assessee filed a detailed reply seriously rebutting the proposal made in the Show Cause Notice for rejecting its refund claim and also contended that its application for refund was well within the period of limitation as provided under Section 11B of the Central Excise Act, 1944 which is applicable with respect to the claim of rebate as well. It was also explained that the assessee had filed all the relevant documents prescribed under the Notification *ibid.* along with its refund claim.

3. The Adjudicating Authority, however, vide Order-in-Original No. 22/2011 dated 14.06.2011 did not agree with the explanation offered by the assessee, proceeded to confirm the proposal made in the Show Cause Notice

thereby rejecting the refund claim of the assessee. Seriously aggrieved by the rejection of its refund claim, the assessee preferred an appeal before the First Appellate Authority. After hearing, the First Appellate Authority gave a partial relief, thereby granting a substantial refund, but however, concluded that the assessee-appellant's claim of refund to the extent of Rs.36,10,218/- was time-barred. Aggrieved by that part of the First Appellate Authority's order, the present appeal has been preferred by the assessee. The Revenue has also preferred appeal against the other part of the order of the First Appellate Authority wherein the First Appellate Authority has held that the assessee's claim for refund was within the time-frame prescribed under Section 11B of the Central Excise Act, 1944.

4. Heard Shri M. Karthikeyan, Learned Advocate for the assessee and Smt. Sridevi Taritla, Learned Additional Commissioner for the Revenue.

5. After hearing both sides, we find that the only issue to be decided is: whether the appellant was entitled for refund as claimed by it?

6.1 The Learned Advocate for the appellant contended at the outset that though the assessee-appellant had conceded that the refund to the extent disallowed by the First Appellate Authority could be time-barred, the same is being questioned in this appeal, which is a question of law and therefore, there was no estoppel. It is his case that a period of one year, as prescribed under Section 11B *ibid.*, should be reckoned from the end of the relevant quarter and not from the date of export, in which event, no part of the assessee's claim is hit by the period of limitation.

6.2 He would further submit that the Service Tax was paid not on the date of export, but only on 06.10.2008 and the appellant's refund claim, being made on 30.06.2009, was very much within the period of one year prescribed under Section 11B *ibid.*

7. *Per contra*, the Learned Additional Commissioner for the Revenue supported the findings of the lower authorities.

8. Having heard the rival contentions, we are of the view that the issue to be decided is no more *res integra*. The Hon'ble Supreme Court in the case of *M/s. Sansera Engineering Ltd. v. Deputy Commissioner, Large Tax Payer Unit, Bengaluru* [2022 (382) E.L.T. 721 (S.C.)] has held, in very clear terms, as under:-

"9. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, "refund" includes "rebate of duty" of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The "relevant date" is defined under Explanation (B) to Section 11B of the Act, which means in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of goods. Thus, the "relevant date" is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the "relevant date" and in such form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004 issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.

10. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002 Rules and notification dated 6.9.2004 can be said to be a subordinate legislation. The subordinate legislation cannot override the parent statute. Subordinate legislation can always be in aid of

the parent statute. At the cost of repetition, it is observed that subordinate legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory.....

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11. It is required to be noted that Rule 18 of the 2002 Rules has been enacted in exercise of rule making powers under Section 37(xvi) of the Act. Section 37(xxiii) of the Act also provides that the Central Government may make the rules specifying the form and manner in which application for refund shall be made under section 11B of the Act. In exercise of the aforesaid powers, Rule 18 has been made and notification dated 6.9.2004 has been issued. At this stage, it is required to be noted that as per Section 11B of the Act, an application has to be made in such form and manner as may be prescribed. Therefore, the application for rebate of duty has to be made in such form and manner as prescribed in notification dated 6-9-2004. However, that does not mean that period of limitation prescribed under Section 11B of the Act shall not be applicable at all as contended on behalf of the appellant. Merely because there is no reference of Section 11B of the Act either in Rule 18 or in the notification dated 6-9-2004 on the applicability of Section 11B of the Act, it cannot be said that the parent statute - Section 11B of the Act shall not be applicable at all, which otherwise as observed hereinabove shall be applicable with respect to rebate of duty claim."

9. In view of the above guiding binding principle laid down by the Hon'ble Apex Court, it is clear that the period of limitation prescribed under Section 11B shall have to be applied since Section 11B *ibid.* is a substantive provision in the parent statute and the subordinate legislation in the form of Notification cannot override the parent statute.

10.1 The Revenue has preferred appeal against the granting of refund by the First Appellate Authority wherein the First Appellate Authority has held that the assessee's claim for refund was within the time-frame provided under Section 11B of the Central Excise Act, 1944. The Revenue has contended that the time-limit, as prescribed under the

Notification No. 41/2007 *ibid.*, was to be applied, which is procedural in nature.

10.2 After considering rival contentions, we hold that both the appeals filed by the parties stand covered by the decision of the Hon'ble Apex Court (*supra*), wherein the Hon'ble Apex Court has categorically held that the time limit prescribed under the substantive legislation, namely, Section 11B, is applicable. We also note that even the subsequent subordinate legislation in the form of Notification No. 17/2009 dated 07.07.2009 has prescribed time-limit of one year.

11. In view of the above discussions, we are of the considered view that the assessee's claim for refund was very much in order and the denial of refund is held to be bad and contrary to the law and therefore, the impugned order is set aside.

12. Accordingly, we allow the appeal filed by the assessee with consequential benefits, if any, as per law and dismiss the Revenue's appeal.

(Order pronounced in the open court on **22.02.2023**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)