IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75140 of 2021

(Arising out of Order-in-AppealNo.23/S.Tax-I/Kol/2020 dated22.10.2020 passed by Commissioner of CGST & CX, Appeals-I, Kolkata.)

M/s.Larsen & Toubro Limited
(Godrej Waterside Building, Tower-II, 11th& 12th Floor, Plot-DP-5, Sector-V, Salt Lake City, Kolkata-700091.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

.....Respondent
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Rahul Tangri& Ms. Udita Saraff, both Advocates for the Appellant (s)

Shri J.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75430/2022

DATE OF HEARING : 15 February 2022
DATE OF DECISION : 02 February 2022

P.K.CHOUDHARY :

M/s. Larsen & Toubro Ltd., the Appellant herein, is *inter alia* engaged in the business of engineering, construction, manufacturing and financial services. In respect of continuous supply of Works Contract Services, the Appellant initially raises provisional invoices on its contractor inasmuch as approval of such invoices are obtained at a later point of time.

2. Briefly stated the facts of the case are that the Appellant had raised invoices on its contractor (M/s.Jindal Steel & Power Ltd., Angul) on provisional basis for the months of January 2013, February 2013

and March 2013 and approval for the same was received in the month of July 2013. It is submitted by the Appellant that the receipt of certified copy of invoices was delayed owing to the remoteness of contractor's location i.e. Angul district in the state of Odisha. Section 68 of the Finance Act, 1994 read with Rule 6(1) of the Service Tax Rules, 1994 mandates payment of Service Tax by 6th of the following calendar month, therefore in order to avoid any delay in payment of tax and cause violation of law, the Appellant duly discharged its tax liability on the amount which was more than the finally approved amount by the contractor of the Appellant. The Appellant made payment of Service Tax amounting to Rs.42,16,666/- on provisional basis only. However, on receipt of the certified invoice, the actual Service Tax liability was ascertained as Rs.35,85,977/-, hence there was an excess payment of Service Tax amounting to Rs.6,30,689/- for the month of July 2013. Subsequently a refund application was filed on 06.08.2014 in terms of Section 11B of the Central Excise Act read with Section 83 of the Finance Act. A Show Cause Notice dated 27.03.2015 was issued alleging that the Appellant had contravened the provisions of Finance Act, 1994 and Service Tax Rules, 1994. The Adjudicating authority vide the Order-in-Original dated 08.12.2015 rejected the refund claim as barred by limitation of time on the ground of delay in filing such application by one day beyond the period of one year from the relevant date. On Appeal, the Ld.Commissioner(Appeals) upheld the Order-in-Original and rejected the Appeal before him. Hence the present Appeal before the Tribunal.

3. The Ld.Advocate appearing on behalf of the Appellant submitted that the refund application ought to have been filed within a period of one year from the date of payment of duty. It is his submission that for the purpose of Section 11B of the Central Excise Act, one year from the relevant date is excluding the date of payment of duty. Hence, there is no delay in filing of the refund application. He also draws our attention to Section 9 of the General Clauses Act, 1897 and submits that for the purpose of calculating the period of limitation, the date of cause of

action or first day of a series for computing of period has to be excluded from such period. In support of his submissions he relies on the judgement of the Hon'ble Supreme Court in the case of Tarun Prasad Chatterjee Vs. Dinanath Sharma reported in MANU/SC/0635/2000 and the decision of the Tribunal in the case of Collector of Central Excise Vs. SAIL, Rourkela Steel Plant reported as 1992 (61) E.L.T. 732 (Tribunal).

4. The Authorized Representative for the Department justified the impugned orders and submitted that the refund claim of the Appeal is barred by limitation and the Appeal being devoid of any merits, may be dismissed.

5. Heard both sides and perused the Appeal records.

6. I find that the Appellant is engaged in continuous supply of works contract and it initially raised provisional invoices on its contractor i.e. M/s.Jindal Steel & Power Ltd., Angul. The approval for such invoice is received at later point of time primarily because such invoice requires approval at multiple level which delays the finalization of invoice. In the present case approval for provisional invoice raised for the months of January 2013, February 2013 and March 2013 was received in the month of July 2013. It is the submission of the Appellant that in terms of Point of Taxation Rules, 2011, the Service Tax liability in respect of such invoices was payable in the month of July 2013. The Appellant further submits that though the intimation about the finalization of the invoices was received by the Appellant, however, receipt of such certified copy of invoices was delayed owing to the remoteness of the contractor's location i.e. Angul district in the state of Odisha. Section 68 of the Finance Act, 1994 read with Rule 6(1) of Service Tax Rules, 1994 mandates payment of Service Tax by 6th of the following calendar month, therefore, in order to avoid any delay in payment of duty, the Appellant discharged its tax liability. Thus the payment made for the month of July 2013 exceeded the Service Tax liability by Rs.6,30,689/-. The said excess payment was due to non-receipt of final certified copy of invoice at the time of discharging Service Tax liability. Since Service

Tax liability could not be deferred, the Appellant made payment of Service Tax amounting to Rs.42,16,666/- on provisional basis. On receipt of certified invoices, the actual Service Tax liability as ascertained was Rs.35,85,977/- It is the case of the Appellant that there was an inadvertent excess payment of Service Tax amounting to Rs.6,30,689/-. The Appellant have filed copy of the invoices and also the Chartered Accountant's certificate certifying the excess payment made by the Appellant as part of the Appeal Paper book. In view of such excess payment of Service Tax, the Appellant in terms of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 filed refund application on 06.08.2014 in Form-R along with copy of ST-3 Return, TR-6 Challan, Invoice-wise statement. Copy of all these documents are part of the Appeal Paper book. The Department's contention is that the claim of refund has been filed belatedly and the delay is of 1(one) day. The Appellant's claim is that for the purpose of Section 11B of the Central Excise Act, 1944, one year from the relevant date is excluding the date of payment of duty and hence it is their submission that there is no delay in filing of the refund application. I find that the Hon'ble Supreme Court in the case of Tarun Prasad Chatterjee Vs. Dinanath Sharma (supra) have laid the law by holding that –

> *"11. Section 9 of the General Clauses Act, 1897 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time preserved, the rule observed is to exclude the first and include the last day."*

7. Further the Tribunal in the case of Collector of Central Excise Vs. SAIL, Rourkela Steel Plant (supra) have decided that the provisions of Limitation Act and the General Clauses Act are to be applied for interpreting certain general situations like the period of limitation prescribed under any Act. The relevant paragraphs are reproduced:-

"3. *We have considered the arguments of both the sides. We find that the order of the Collector (Appeals) holding that the original refund claim was not hit by time bar is correct in law. In computing the time-limit the date of the event with reference to which time-limit is to be calculated is to be excluded. The Collector (Appeals) has relied upon the Tribunal decision which has been referred to above. In the said decision Section 12 of the Limitation Act has been relied upon. The said section lays down that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. Incidentally on this point he pointed out that this provision would apply only to suit or appeal or application and would not directly regulate the time-limit applicable for a refund claim filed under Section 11B of the Central Excises and Salt Act. Actually, the provisions of Section 9 of the General Clauses Act would squarely apply to the present type of case. Under the said provision, it has been laid down that any act or regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of dates or any other period of time, to use the word 'from'. Sub-section (2) of the said Section 9 lays down that this section applies also to all Central Acts made after the third day of January, 1868. In the book "Principles of Statutory Interpretation by Justice G.P. Singh (4th Edition,1988, page 579)" some cases have been cited which will illustrate the correct procedure to be applied in computing the time-limit. The same are as follows :-*

> *"The decisions in the early period were not quite uniform but ever since 1808 when Lester v. Garland was decided, the rule is well established that where an act is to be done within a specified time from a certain date, the day of that date is to be excluded.*

The powers of a company for compulsory purchase of lands which were to cease after expiration of 'three years from the passing of the Act', which was assented to on August 9,1899, were held not to cease until the midnight of August 9,1902.

When a notice was required to be served within fourteen days from the commission of the offence, a notice served at 8 a.m. on January 25, was held to be valid even though the offence was committed at 7.15 a.m. on January 11."

4. *It has also been observed by the learned author that the General Rule of exclusion of the first day and the inclusion of the last day is subject to a contrary intention indicated in the statute. Applying the above principle we find that in Section 11B of the Central Excises and Salt Act relating to refund claims the relevant expression is that a person claiming refund may make an application for refund ..... before expiry of six months from the relevant date. In view of the clear position regarding the effect of the word 'from', the proper procedure would be to exclude the relevant date and start the period of limitation of six months from the following day. The point raised in the appeal before us that the date of computation can never be by excluding 29-2-1988, has got no legal basis. Similarly, nothing much turns on the argument that since the Act specifically provides the relevant date which in the present case is the date of payment of duty, i.e. date of debit in the P.L.A., the Limitation Act cannot be made applicable. The fact that the relevant date has been defined in the Central Excises and Salt Act does not affect a general principle as to how to compute the period of limitation. The provisions of the Limitation Act and the General Clauses Act are to be applied for interpreting certain general situations like the period of limitation prescribed under any act. In view of the above circumstances, the decision of the Collector of Central Excise (Appeals) cannot be faulted. We, therefore, uphold the same and dismiss the appeal."*

8. I also find that the Tribunal in the case of Fact Set System India Pvt.Ltd. v. CCE & ST, Hyderabad-IV reported as 2018 (11) TMI 1385-CESTAT Hyderabad has observed thus:-

> *"8. I have gone through the records of the case and considered the submissions on both sides. The two short points to be decided is whether the refund application filed by the appellant in October, 2014 for the period ending October, 2013 should be treated as time barred in terms of the notification. The notification as it has been drafted requires the application to be filed within one year from the period for which the refund has been claimed. In this case, the refund application was filed for the period ending October, 2013 and in view of the General Clauses Act, this month cannot be reckoned while calculating the period of one year. It has to begin from November, 2013 and ends in October, 2014. Therefore, the refund application ha sbeen filed within time limit and rejection of refund to the extent of Rs.6,55,298/- on this account is incorrect and needs to be set aside. Even otherwise, the notification itself provides for extension of this time by the Asst. Commissinoer/Dy. Commissioner. The second question is whether the appellant is entitled to refund of Rs.8,80,140/- on account of services for which they had not permission of the Unit Approval Committee of the Development Commissioner. This approval being an essential requirement of the Exemption Notification No.12/2013-ST needs to be fully complied with if the appellant seeks to claim refund under the notification. There is nothing on record to show that the approval which is said to have not been obtained by the lower authority which fact has been reconfirmed by the first appellate authority has actually been obtained. Therefore, the refund on this account needs to be disallowed."*

Further the judgment of the Hon'ble Calcutta high Court in the case of UOI Vs. Bengal Ruby Mica Supply Co. MANU/WB/0670/2006 as relied upon by the Respondents was a case of incorrect assessment by the Customs Authorities and the jurisdiction of the department to make assessment was

challenged wherein the High Court held that the department was in rights to do the assessment and mere mistake in arriving at the value of the goods, cannot make the entire assessment invalid and thus the consequential refund was also disallowed.

9. In view of the above discussions and by respectfully following the judgement of Hon'ble Supreme Court and the decision of the Tribunal (cited supra), it is my considered view that the period of limitation should be calculated as per the General Clauses Act and therefore I hold that the refund application has been filed within time and rejection of refund is incorrect and needs to be set aside.

The impugned orders are set aside and the Appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in the open court on 02 August 2022.)

Sd/

(P.K.CHOUDHARY)

MEMBER (JUDICIAL)

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