

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 420 of 2012

(Arising out of O-I-A 260/2012/COMMR (A)/RBT/RAJ dated 18.05.2012 passed by Commissioner of Central Excise, (Appeals),-Rajkot)

LAVIOSA TRIMEX INDUSTRIES PVT LTD.

.....Appellant

CHITRAKUT-5, PACHSHEEL SOCIETY
SANSKAR NAGAR, BHUJ-KUCHH GUJARAT

VERSUS

C.C.E. & S.T.-RAJKOT

.....Respondent

CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:

Shri Mahesh Basutkar (Assistant Account Manager) appeared for the Appellant
Shri R.K. Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10112 /2023

DATE OF HEARING: 19.01.2023
DATE OF DECISION: 25.01.2023

RAMESH NAIR

In the present case, the only issue is that in the matter of refund claim in respect of services used for exported goods in terms of Notification No. 17/09-ST for the purpose of limitation whether the date of first filing of refund shall be taken or the date of second filing of refund along with Chartered Accountant Certificate should be taken.

2. Shri Mahesh Basutkar appearing on behalf of the appellant reiterates the grounds of appeal and relied upon the following judgments:

- United Phosphorus Ltd. 2005 (184) ELT 240 (Guj.)
- CST vs Reliance Communications Ltd. 2008 (11) STR 258 (Tri. Mum)
- ITW Signode India Ltd. 2003 (158) ELT 403 (SC)

3. Shri R.K. Agarwal, learned (Superintendent) Authorized Representative appearing for the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the limited issue to be decided is that whether the refund claim filed by the appellant is hit by limitation or otherwise. We find that there is no dispute that the appellant had filed the refund claim on 03.12.2010 i.e. within the prescribed time limit. However, due to non-submission of Cahrtered Accountant Certificate, the refund was returned to the appellant which was subsequently, filed on 30.12.2010. In this fact, it is settled law that once the refund claim was filed within the stipulated time period and even though the same was returned by the department to the assessee and if the same is filed on the second time, the first date of filing of refund claim should be taken as date of filing of refund claim. This issue has been considered in the judgements relied upon by the appellant. Therefore, we are of the view that the refund is not hit by limitation. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 25.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha