CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH – COURT NO.III

Service Tax Appeal No.51705 of 2021 (DB)

(Arising out of Order-in-Appeal No.04/ST/DLH/2021 dated 19.01.2021 passed by the Commissioner (Appeals-I), Central Tax, GST, New Delhi.)

M/s. Punj Lloyd Limited **Appellant**
Punj Lloyd House, 17-18, Nehru Place,
New Delhi-110 019.

Versus

Commissioner of Central Tax/GST, **Respondent**
Room No.134,C.R. Building, I.P. Estate,
New Delhi.

AND

Service Tax Appeal No.51218 of 2022 (DB)

(Arising out of Order-in-Appeal No.12/ST/DLH/2021 dated 17.02.2021 passed by the Commissioner (Appeals-I), Central Tax, GST, New Delhi.)

M/s. Punj Lloyd Limited **Appellant**
Punj Lloyd House, 17-18, Nehru Place,
New Delhi-110 019.

Versus

Commissioner of Central Tax/GST, **Respondent**
Room No.134,C.R. Building, I.P. Estate,
New Delhi.

APPEARANCE:
Shri Ankur Jain, Advocate for the appellant.
Shri S.K. Meena, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R.PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NOS.50100-50101/2024

DATE OF HEARING:22.11.2023
DATE OF DECISION:18.01.2024

BINU TAMTA:

Service Tax Appeal No.51705/2021 (DB)

The present appeal has been filed assailing the order of the Commissioner (Appeals) bearing Order-in-Appeal

No.04/ST/DLH/2021 dated 19.01.2021, whereby the rejection of the refund application was affirmed.

2. The appellant is engaged in the business of Engineering, Procurement and Construction of various projects including offshore projects and was registered with the Service Tax Authorities and later on migrated into GST registration. The appellant in Consortium with PT Sempec Indonesia had entered into a Works Contract Agreement with ONGC on 21.12.2011. During the execution of the work allotted under the agreement, Notification No.30/2012-ST dated 20.06.2012 was issued providing that 50% of the service tax liability shall be paid by the Body Corporate receiving the services under the Works Contract from inter alia Association of Persons(AOP). In terms of the said notification for the financial year 2012-2013 to 2013-2014, ONGC paid 50% of the service tax liability under Reverse Charge considering the appellant to be an AOP. The appellant also paid 100% of the service tax liability amounting to Rs.10,80,68,227/-'under protest' considering it otherwise. This led to the deposit of 150% of the service tax with the Department. The appellant made a representation on 16.06.2015 and also a reminder dated 31.07.2015 to the Commissioner for clarification of service tax liability in case of Consortium. But as no response was received, a Writ Petition No.3782/2017 was filed in the High Court of Delhi seeking direction that the department may decide the tax liability and refund the excess amount on the basis that the tax has been collected by the Department without authority of law. The Department filed its reply to the Writ Petition, taking a preliminary objection that instead of filing the Writ Petition, the appellant should have filed an application for refund of the excess service tax paid.

Also that it is the mis-interpretation at the hands of the appellant, which made him pay the 100% service tax voluntarily and in case, he feels that he has made an excess deposit, the remedy is to file a refund application. In view of the statement made by the Department, the High Court disposed of the Writ Petition on 12.12.2017, *inter alia,* observing that the appellant would file an application for refund of the excess service tax deposited by them making all averments and assertions, as were made in the representation dated 16.06.2015 and if such an application is filed, the same would be decided in accordance with law by the Department.

3. In terms of the order of the High Court dated 12.12.2017, the appellant made an application for refund of the excess amount of Rs.10.27 crores on 12.03.2018. The Department issued show cause notice dated 28.04.2020 after a lapse of more than 2 years as to why the refund claim should not be rejected on the ground of limitation under Section 11B of the Central Excise Act, 1944. On adjudication, vide Order-in-Original dated 17.07.2020, the refund application was rejected on the ground of limitation referring to the provisions of Section 11B – Explanation (B)(f) with respect to the 'relevant date'. Challenging the said order, the appellant preferred an appeal, however, the same has been dismissed by the impugned order. Being aggrieved, the appellant has preferred the instant appeal before this Tribunal.

4. The appellant has made two-fold arguments, firstly the limitation period of one year has to be computed from the date of the order of the High Court, which is 12.12.2017 and the application for refund having been made on 12.03.2018, the same is within the prescribed time limit under Section 11B. The second

argument is that Section 11B is not applicable in the instant case as the tax is collected in excess and without authority of law. On both the arguments, the learned counsel for the appellant has referred to a series of decisions, which we will discuss later.

5. The Authorized Representative for the Revenue reiterated the findings of the Authorities below and submitted that the Hon'ble High Court has left the issue to be decided in accordance with law and accordingly the same has been considered in terms of the provisions of Section 11B of the Act. It is further their case that the said payment of tax is in consequence of appellant's own commercial delay, disputes and mis-understanding with ONGC rather than any mistake of law or error on the part of the Departmental Authorities or as a result of any unauthorized levy or collection of tax without the authority of law.

6. Having heard both the sides and perused the records of the case, we find that the issues raised in the present appeal are as follows:-

> "(i) What would be the 'relevant date' in the present case for computing the period of limitation in terms of Section 11B of the Central Excise Act?
> (ii) Whether the instant refund application is barred by limitation under the provisions of the Central Excise Act?
> (iii) Whether the excess tax deposited by the appellant is without any authority of law?"

7. Before considering the issue on merits, it is necessary to reproduce the provisions of Section 11B of the Act :

> **"Section 11B. Claim for refund of duty and interest, if any, paid on such duty** . -
>
> **(1)** Any person claiming refund of any [1][duty of excise and interest, if any, paid on such duty] may make an application for refund of such [2][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 [1][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 [2][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 [2][duty and interest, if any, paid on such duty] has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the [1][duty of excise and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund.

Provided that the amount of duty of excise as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Commissioner of Central Excise];

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;

(e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

(f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify : Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person."

Explanation B(ec) and (f)--

"[(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;]

(f) in any other case, the date of payment of duty."

8. The issue no.(i) and (ii) being linked with each other we will consider them together. The term "relevant date" has been given extended meaning covering various eventualities. From the arguments raised by the appellant it is clause (ec) of Explanation B to section 11B which is applicable in the present case whereas according to the revenue Clause(f) would be applicable to ascertain the relevant date. We find that there is no dispute that the appellant had deposited 100% service tax though they were liable to deposit only 50% in terms of the notification whereby the tax liability was apportioned in the ratio of 50:50. The appellant having deposited excess amount which was neither due nor the Department had any authority to claim or recover, had requested the Department in writing to verify their actual liability but there was no response from the department. As a result the appellant approached the High Court, *inter-alia* for an appropriate order, direction and clarification regarding liability to pay service tax in

case of a Consortium and direct the department to refund the tax amounting to Rs.10.27 Crores which has been collected without authority of law. Relying on the specific stand taken by the revenue in the counter affidavit that the proper remedy was to make an application for refund, the High Court did not consider the writ petition on merits. In view of the liberty granted by the High Court to the appellant to make an application for refund raising all averments and assertions, the appellant filed the refund application. We are therefore of the opinion that it is Clause(ec) which would apply in the facts of the present case, as the provisions whereof are couched in very wide words. Clause(ec) not only refers to any judgement or decree, but also to any order or direction as a consequence of which the duty becomes refundable. We may refer to the decision of the Apex Court in **Salona Tea Company Ltd. Vs. Supdt. of Taxes Nowgong & Ors.- 1988 (33) ELT 249**, where the issue of bar of limitation for refund of tax or duty paid or collected without the authority of law, observed was considered as under:-

> "Normally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution the court has power to direct the refund unless there has been avoidable laches on the part of the petitioner. It is true that in some cases the period of three years is normally taken as a period beyond which the Court should not grant relief, but that is not an inflexible rule."

9. In the present case if the department had not contested the writ petition taking a preliminary objection about the proper remedy of filing an application for refund, the High Court would have considered the prayer in the writ petition on merits and in the event the same being decided in favour of the appellant, he would have been entitle to claim refund of the duty. We find it relevant to

refer to the decision of the Karnataka High Court in **Commissioner of Central Excise Vs. KVR Construction - 2012 (26) STR 195**, where the Department had objected to the maintainability of the writ petition against the rejection of the refund applications as there was alternate remedy of filing an appeal under the statute, the High Court held that writ petition could not be rejected on the ground of alternative remedy. So the "relevant date" in this case would be the date of the order of the High Court, i.e.12.12.2017 and not from the date of payment of tax as claimed by the revenue under Clause(f). The application for refund was filed by the appellant on 12.03.2018, i.e., within three months from the date of the order of the High Court and the same being before the expiry of one year as per Section 11B(1) of the Act has to be treated being filed within the prescribed time limit. Thus we hold that the refund application is not barred by limitation as in the peculiar facts of the present case the "relevant date" would be the date of the High Court order i.e.,12.12.2017.

10. We now come to the other issue of the excess tax deposited by the appellant is without any authority of law. Under the notification dated 20.06.2012, the service tax liability was apportioned as 50:50 between the body corporate receiving the services as 50% and the balance 50% on the service provider. From the undisputed facts on record, we find that the service recipient ONGC had made 50% of service tax and consequently the appellant was required to pay the balance 50% only but under mistake that as per the prevailing law their liability is 100% they made the full deposit of 100%, thereby making the total deposit of 150% instead of 100%. Thus the department had received excess

amount of 50%, i.e., Rs 10,27,30,532/- for which they had no authority to retain.

11. On the settled principle in terms of Article 265 of the Constitution of India that no tax shall be levied or collected except by authority of law, the Department could not have collected and retained the excess 50% amount which stood paid by the appellant. In this regard we would like to rely on the decision in **Salona Tea Company Ltd. vs. Supdt. of Taxes Nowgong & Ors**. (supra) where the Apex Court very aptly observed:-

> "Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally as a corollary of the said statement of law it follows that taxes collected without the authority of law, as in this case, from a citizen should be refunded because no State has the right to receive or retain taxes or monies realised from citizens without the authority of law."

12. The issue that any amount paid over and above the actual duty liability should be considered as deposit which has to be refunded and in such cases limitation prescribed under Section 11B of the Act would not be applicable has been considered in series of decisions by the various High Courts and also by the Tribunal. In the case of **M/s.Credible Engineering Construction Projects, Limited versus Commissioner, Central tax, Hyderabad – GST-2022 (9) TMI 844 – CESTAT-HYDERABAD,** where there was a difference of opinion between the two members regarding the application of limitation under Section 11B for the purpose of refund, the matter was referred to the Third Member who opined that if an amount is paid under a mistaken notion as it was not required to be paid towards any duty or tax, the limitation prescribed under Section 11B of the Act would not be applicable. In this case, the Member (Judicial) had relied on the decision of the

Karnataka High Court **in KVR Construction** - **2012(26) STR 195,** which was affirmed by the Supreme Court vide order dated 11.07.2011 by dismissing the Department's Appeal – **2018 (14) GSTL J17.**

13. We may now consider the decision of the Principal Bench in **Oriental Insurance Company Ltd versus Commissioner of Central Excise and Service Tax, New Delhi - 2022 (75) GSTR 44 (CESTAT - DELHI)**, where the Tribunal after discussing the entire case law and referring to the decisions of the various High Courts - **M/s National Institute of Public Finance & Policy Vs. CST – 2019 (20) GSTL 330 (Del.), Commissioner of Central, Excise, (Appeals), Bangalore versus KVR Construction - 2012 (26) STR 195 (Kr), M/s. 3E Infotech vs. Customs, Excise & Service Tax Appellate Tribunal & Anr. - 2018-TIOL-1268-HC-MAD-ST, M/s Parijat Construction vs. Commissioner of Central, Excise, Nasik - 2017-TIOL– 2170 –HD – MUM - ST, Geojit BNP Paribas Financial Services Limited versus Customs, Central Excise & ST, Kochi – 2020 - 1539 STR 706 (Ker.), GB Engineers versus Union of India, 2016 (43) STR 345 (Jhar.),** considered the issue whether the limitation provided for under Section 11B of the Act for claiming refund before the expiry of one year from the relevant date, would be applicable or not in case the amount has been deposited under mistake.

14. The Principal Bench particularly relying on the decision of the Jurisdictional High Court of Delhi in **M/s National Institute of Public Finance & Policy** (supra) and also of the Kerala High Court in **Geojit BNP Paribas Financial Services Ltd**. (supra) pointing out the distinguishing feature for attracting the provisions under Section 11B is that the levy should have the colour of validity when

it was paid and only consequent upon interpretation of law or adjudication, the levy is liable to be ordered as refund. Further noting that when payment was effected, if it has no colour of legality Section 11B is not attracted and hence concluded that when service tax is not leviable but it is deposited mistakenly by the appellant, the provisions of section 11B of the Excise Act relating to limitation would not be applicable and therefore the order of the Commissioner (Appeals) rejecting the refund claim on the ground of being made beyond the period of one year from the date of payment of duty was set aside.

15. We are not repeating the discussion on the decision taken by the various High Court's except the order of the Delhi High Court in **M/s. National Institute of Public Finance and Policy (supra),** where the Tribunal rejected the claim of refund, relying on the decision of the Supreme Court in **Doaba Cooperative Sugar Mills,** the High Court held the appellant to be entitled to the refund amount with proportionate interest, observing that --

> **"4.** Concededly, at the relevant time Service Tax was not payable for any of the functions or work undertaken or performed by the appellant/assessee. In these circumstances, under a wrong impression that it was liable to Service Tax, the assessee was levied certain amounts. Subsequently, upon inquiry, it was informed by CBEC on 13-4-2009 that its activities were not taxable. Soon thereafter, it sought refund of the amounts deposited. The Deputy Commissioner refunded part of the amount but disallowed refund of Rs. 11,49,090/- on the ground that the application was filed after a lapse of period of one year. The Assessee unsuccessfully filed an appeal to CESTAT which appears to have relied upon the judgment of the Supreme Court in Collector of Central Excise, Chandigarh v. Doaba Co-operative Sugar Mills, 1988 (37) E.L.T. 478 (S.C.)."
>
> **5.** Counsel for the assessee contends that when the amount in question was never payable as there was no levy at all, the question of denying the refund of part payment did not arise and that the general

> principal of limitation will be applicable from the date of discovery of mistaken payment in the present case. So the refund claim is made within the stipulated period of the limitation.
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> **6.** .....Relying upon the said judgment, it is submitted (by the Revenue) that the refund claim before a departmental authority is to be made within the four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder.
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> **7.** This court is of the opinion that the CESTAT clearly fell into error. .....In the present case, levy never applied - a fact conceded by no less than the authority of CBEC.....Consequently, the appeal has to succeed and is therefore allowed. The appellant shall be entitled to refund of entire amount with proportionate interest."

16. The learned Counsel for the appellant has also referred to a decision of the Apex Court in **Union of India vs. ITC Ltd. – 1993 (67) ELT 3 (SC)** where it was observed that where excess duty was not payable by the party under the provisions of a statute but had in fact been paid under a mistake of law, the party has a right to recover it and there is a corresponding legal obligation on the part of the government to refund the excess duty so collected because the collection in such cases would be without the authority of law. The payment and recovery of excess excise duty was thus on account of a mutual mistake. In that view, the court held as under :

> "We are, therefore, of the opinion that the High Court, while disposing of the writ petition under Article 226 of the Constitution of India, was perfectly justified in holding that the bar of limitation which has been put against the respondent by the Collector Central Excise (Appeals) to deny them the refund for the period 1–9–1970 to 28-5-1971 and 1-6-1971 to 19-2-1972 was not proper as admittedly, the respondent had approached Assistant Collector of Central Excise soon after coming to know of the judgement in Voltas case (supra) and the assessee was not guilty of any latches to claim refund. "

Applying the aforesaid decision to the facts of the present case, we find that the appellant had approached the department on 16.06.2015 and immediately thereafter on 31.07.2015 and as the Department failed to respond the appellant filed the writ petition under Article 226 of the Constitution of India. The Department scuttled the said proceedings by pleading that the proper course was to file a refund application and when the same was filed by the appellant within three months of the order of the High Court, they then disallowed the same on the ground of limitation. We do not find the approach of the Department to be justified to reject the refund claim on the ground of limitation. It has been repeatedly observed that just as an assessee cannot be permitted to evade payment of rightful tax, the Authority which recovers tax without any authority of law cannot be permitted to retain the amount merely because the tax payer was not aware at that time that the recovery being made was without any authority of law.

17. In the present case, the appellant had sought for the amount paid in excess to the 100% duty paid under mistake that they were liable to pay the same as per the existing statute, but for the notification issued subsequently, whereby the duty was apportioned 50:50 between the service recipient and the service provider, has not been disputed by the Revenue. It would be relevant to consider the following paras from the decision of the Karnataka High Court in **KVR Construction** (supra):-

> **"18.** From the reading of the above Section, it refers to claim for refund of duty of excise only, it does not refer to any other amounts collected without authority of law. In the case on hand, admittedly, the amount sought for as refund was the amount paid under mistaken notion which even according to the department was not liable to be paid.

19. According to the appellant, the very fact that said amounts are paid as service tax under Finance Act, 1994 and also filing of an application in Form-R of the Central Excise Act would indicate that the applicant was intending to claim refund of the duty with reference to Section 11B, therefore, now it is not open to him to go back and say that it was not refund of duty. No doubt in the present case, Form-R was used by the applicant to claim refund. It is the very case of the petitioner that they were exempted from payment of such service tax by virtue of circular dated 17-9-2004 and this is not denied by the Department and it is not even denying the nature of construction/services rendered by the petitioner was exempted from to payment of Service Tax. What one has to see is whether the amount paid by petitioner under mistaken notion was payable by the petitioner. Though under Finance 12 2012 (26) STR 195 (Kr.) 10 ST/51761/16 Act, 1994 such service tax was payable by virtue of notification, they were not liable to pay, as there was exemption to pay such tax because of the nature of the institution for which they have made construction and rendered services. In other words, if the respondent had not paid those amounts, the authority could not have demanded the petitioner to make such payment. In other words, authority lacked authority to levy and collect such service tax. In case, the department were to demand such payments, petitioner could have challenged it as unconstitutional and without authority of law. If we look at the converse, we find mere payment of amount, would not authorize the department to regularise such payment. When once the department had no authority to demand service tax from the respondent because of its circular dated 17-9-2004, the payment made by the respondent company would not partake the character of "service tax" liable to be paid by them. Therefore, mere payment made by the respondent will neither validate the nature of payment nor the nature of transaction. In other words, mere payment of amount would not make it a "service tax" payable by them. When once there is lack of authority to demand "service tax" from the respondent company, the department lacks authority to levy and collect such amount. Therefore, it would go beyond their purview to collect such amount. When once there is lack of authority to collect such service tax by the appellant, it would not give them the authority to retain the amount paid by the petitioner, which was initially not payable by them. Therefore, mere nomenclature will not be an embargo on the right of the petitioner to demand refund of payment made by them under mistaken notion.

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> **23.** Now we are faced with a similar situation where the claim of the respondent/assessee is on the ground that they have paid the amount by mistake and therefore they are entitled for the refund of the said amount. If we consider this payment as service tax and duty payable, automatically, Section 11B would be applicable. When once there was no compulsion or duty cast to pay this service tax, the amount of Rs. 1,23,96,948/- paid by petitioner under mistaken notion, would not be a duty or "service tax" payable in law. Therefore, once it is not payable in law there was no authority for the department to retain such amount. By any stretch of imagination, it will not amount to duty of excise to attract Section 11B. Therefore, it is outside the purview of Section 11B of the Act."

18. Thus the consistent view of the various High Courts of Delhi, Karnataka, Kerala, Madras, Mumbai and Jharkhand (details whereof are given in paragraph 12) is that limitation prescribed under Section 11B does not apply to a refund claimed in respect of service tax paid under a mistake of law. The reliance place by the Revenue on the decision of the Apex Court in **Doaba Sugar Mills (supra)**was distinguished by the Bombay High Court in **M/s. Parijat Construction** by saying that it made an exception in case of refund claims where the payment of duty was under a mistake of law. Applying the ratio of the said decisions, the refund application by the appellant cannot be rejected on the ground of delay. There is one more aspect which we need to consider that amount of Rs.10,80,68,227/- was deposited by the appellant 'under protest'. Therefore in terms of the 2nd proviso to Section 11B, limitation of one year shall not apply and in that view, the refund application cannot be rejected on the ground of limitation, being beyond the period of one year.

19. In view of our discussion above, we are of the considered opinion that the impugned order rejecting the refund application as time barred is liable to be set aside and the Department is directed

to refund the amount as claimed by the appellant in the refund application alongwith proportionate interest. The **Appeal No.ST/51705 of 2021 (DB)** is accordingly allowed.

Service Tax Appeal No.51218 of 2022(DB)

20. The present appeal has been filed assailing the order of the Commissioner (Appeals) bearing Order-in-Appeal No.12/ST/DLH/2021 dated 17.02.2021, whereby the rejection of the refund application was confirmed.

21. Briefly stated, by virtue of an agreement with ONGC the appellant provided services in the nature of design, engineering, including service, procurement, cleaning and greeting of various specified goods for execution of works for the laying of the pipeline for the period September, 2005 to March, 2006. On investigation, the team of DGCEI informed the appellant that the services of laying the pipeline were taxable under Commercial and Industrial Construction Services. Accordingly, the appellant deposited the amount of service tax of Rs.10,80,68,227/- along with interest amounting to Rs.52,59,040/-. On adjudication, the Commissioner of Central Excise vide order dated 26.02.2009 confirmed the demand of service tax with interest and penalty. In challenge to the said order, the Tribunal vide Final Order dated 8.10.2015 set aside the Order-in- Original holding that the services classifiable under the category of "Works Contract" became taxable service only after 1.06.2007. In terms of the order of the Tribunal, the appellant on 13.10.2016 filed the refund application for a sum of Rs.52,59,040/- deposited towards interest (as the service tax amount was already recovered from the service receivers). That almost after three years, the Department issued show cause notice dated 27.04.2020 saying that the refund application is time barred under Section 11B

of the Act. The Adjudicating Authority rejected the refund application on the ground of limitation as the refund application was filed on 13.10.2016, which is after the period of one year of the order of the Tribunal dated 8.10.2015. The appeal filed by the appellant was also rejected by the Commissioner (Appeals). Being aggrieved, the appellant has filed the present appeal before this Tribunal.

22. Referring to the provisions of Section 37C of the Central Excise Act, as applicable to the Finance Act, 1994, the learned Counsel for the appellant submitted that the period of limitation needs to be reckoned from the date of service of the order and not from the date of the order itself and relied on the decisions as under:

(i) **CCE Vs. M.M. Rubber Co.-1991(55)ELT 289 (SC)**

(ii) **Commissioner of CGST,Cus. & C.Ex., Dehradun Vs.SBL Pvt. Ltd.-2019(370) ELT 465 (Tribunal-Delhi)**

(iii) **R.P. Casting Pvt. Ltd.Vs. CESTAT, New Delhi – 2016 (344)ELT 168 (Raj.)**

(iv) **Qualimax Electronics Pvt.Ltd. Vs. Union of India -2010 (257) ELT 42 (Delhi).**

Secondly, the provisions of Section 11B are not applicable as in view of the law laid down by the Supreme Court that service tax should not be levied on Works Contract Services during the relevant period, the Department had no authority in law to charge and collect service tax for the services provided by the appellant during the relevant period. In support of the submissions, he referred to the following decisions:-

a. Union of India Vs. ITC Ltd. -1993 (67) ELT 3 (SC)

b. **Salonah Tea Company Ltd. etc. Vs. Superintendent of Taxes, Nowgong & Others, etc. – 1988 (33) ELT 249 (SC)**

c. **Shri Vallabh Glass Works and Anr. Vs. Union of India & Ors. – 1984 (16) ELT 171 (SC)**

d. **Hind Agro Industries Ltd. Vs. CC – 2008 (221) ELT 336 (Delhi)**

e. **Maharana Pratap Haldighati Museum Vs. Commissioner of CGST, Udaipur – 2020 (41) GSTL 348 (Tri.-Del.)**

f. **National Institute of Public Finance & Policy Vs. CST – 2019 (20) GSTL 330 (Del.)**

g. **Satya Prakash Builders Pvt. Vs. Commissioner of Central Excise, Bhopal – 2018 (8) GSTL 90 (Tri.-Delhi)**

h. **Monnet International Limited Vs. CCE, New Delhi – 2017 (3) GSTL 380 (Tri.-Del.)**

23. The learned Authorised Representative for the Revenue has submitted that the limitation clause under Section 11B squarely applies to the present case as the refund application has been filed on 13.10.2016, which is beyond the period of one year from the date of the order of the Tribunal on 8.10.2015 and further the statutory time limit cannot be extended as laid down by the Supreme Court in the case of **Anam Electrical Manufacturing Company - 1997 (90) ELT 260 (SC)**.

24. Having heard both the sides and perused the records of the case, we need to consider the first argument raised by the appellant as to whether the period of limitation has to be computed from the date of the order or from the date of receipt of the order. We find from the memo of Appeals as well as from the synopsis filed by the appellant that the order of the Tribunal dated 8.10.2015 was signed only on 26.10.2015 and further received by the appellant on 2.11.2015 and therefore it is the date of receipt of

the order from which the limitation shall be computed and if so the refund application is within the prescribed period of one year. We are afraid that the date of communication/receipt of the order is not relevant in the present case as clause (ec) of Explanation to Section 11B uses the expression "from the date of such judgment, decree, order or direction", unlike the provisions of appeal under Section 35 and 35A which says that any person aggrieved by any decision or order may appeal within 60 days or three months as the case may be, from the date on which the order sought to be appealed against is communicated. In the later case of filing an appeal, the relevant date for computing the limitation period is the date on which the order is communicated to the party or he receives the order. There is vast difference in the wording of Section 11B Explanation Clause (ec) which makes the date of such order as the relevant date. We do not find any ambiguity in the provisions of the statute providing for computation of limitation period for filing an appeal in contra to the period for filing the refund application under Section 11B and as per the settled principle of law, the plain and simple words of the statute have to be interpreted as they are and do not require any addition or subtraction thereto. The submission that the order was signed on 26.10.2015 is not correct as the said signature is on behalf of the Registry as a procedural matter and would not affect the limitation.

25. The reliance placed by the appellant on the provisions of Section 37C of Central Excise Act that it is only the date the order is served/received that the limitation would start is misconceived as the Section only speaks of service of all decisions, order, summons or notice issued under the Act or the Rules made thereunder but it

nowhere says that limitation has to be computed from the date of service of the decision, order, summons or notice.

26. We accordingly hold that the 'date of such order' would mean the date of the order itself and therefore, in the present case as the order was passed on 8.10.2015, the period of one year shall be computed from the said date.

27. On the issue of applicability of the limitation period under Section 11B, we have discussed the issue at length in the connecting appeal of the appellant being Appeal No.ST/ 51705/2021. Since in terms of the decision of the Supreme Court in **Larsen & Toubro – 2015 (39) STR 913 (SC),** the Tribunal in its Order dated 08.10.2015 set aside the demand, as services under the category of 'Works Contract' became taxable only after 01.06.2007. Consequently, during the relevant period no service tax was chargeable under the 'Works Contract' services and the Department could not have collected any service tax on that account. Therefore, in view of our observations made in the connected appeal, the refund application by the appellant cannot be rejected on the ground of delay. Accordingly, the **Appeal No.ST/51218/2022 (DB)** is allowed on that ground. Consequently the refund application is allowed and the Department is directed to pay the appellant the amount claimed along with proportionate interest.

[Order pronounced on 18th January, 2024]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.