

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

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40086 of 2020

(Arising out of Order-in-Appeal No. MAD-CEX-000-APP-307-19 dated 14.10.2019 passed by the Commissioner of G.S.T. and Central Excise (Appeals), Coimbatore, Circuit Office, Madurai, 4, Lal Bahadur Shashtri Marg, C.R. Buildings, Madurai – 625 002)

M/s. Sivamurugan Chit Fund (P) Limited

: Appellant

No. 56-A, North Bus Stand Road, Udangudi,
Christianagaram, Tuticorin – 628 203

VERSUS

The Commissioner of G.S.T. and Central Excise

: Respondent

Madurai Commissionerate
4, Lal Bahadur Shashtri Marg, C.R. Buildings, Madurai – 625 002

APPEARANCE:

Shri A. Niraikulam, Consultant for the Appellant

Ms. K. Komathi, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 41738 / 2021

DATE OF HEARING: 03.08.2021

DATE OF DECISION: **06.08.2021**

Order :

The above case was taken up for hearing and Shri A. Niraikulam, Learned Consultant, appeared for the appellant and Shri S. Balakumar, Learned Departmental Representative, appeared for the Revenue.

2.1 It is the case of the appellant that they were engaged in chit fund business and after the introduction of negative taxation regime, they were compelled to pay Service Tax on the foreman charges collected for their

chit fund activities for the period from 01.07.2012 to 31.05.2013.

2.2 It is also the case of the appellant that the Hon'ble High Court of Delhi in the case of *M/s. Delhi Chit Fund Association v. Union of India* reported in 2013 (30) S.T.R. 347 (Del.) ruled that Service Tax was not chargeable on the services rendered by the foreman in the chit fund business, which ruling was upheld by the Hon'ble Supreme Court by dismissing the Revenue's Special Leave Petition as reported in 2015 (38) S.T.R. 1202 (S.C.). Consequent to the above, the appellant filed its refund claim vide application dated 19.01.2018, claiming a refund of Rs.18,17,979/-.

3. The Adjudicating Authority, after issuing Show Cause Notice, vide Order-in-Original No. 02/2019 ST (REF) dated 31.01.2019 rejected the refund claim as being hit by the limitation of time as prescribed under Section 11B of the Central Excise Act, 1944. On first appeal, the First Appellate Authority also having rejected the appellant's appeal, the present appeal has been filed before this forum.

4. Heard both sides and perused the documents as well as the decisions filed in support.

5. It is the settled position of law that any judgement of the Hon'ble Supreme Court is the law of the land. Therefore, when the Hon'ble Supreme Court holds that there was no question of liability to Service Tax, then, any amount collected under the guise of Service Tax becomes a collection of the said amount without the authority of law and the Revenue can never, therefore, claim any right over such amount; the same will have to be refunded forthwith to the concerned person. Hence, the collection of amount, which according to the appellant was out of compulsion, being a collection without any authority of law, will have to be refunded and in view of the above, I do not see any merit in the orders of the

lower authorities. Accordingly, the impugned order deserve to be set aside, and the same is set aside.

6. There is no doubt that Section 11B *ibid.* prescribes the period of limitation for filing the refund claim, but admittedly here, the application for refund was filed on 19.01.2018; the date of the judgement of the Hon'ble Supreme Court is 07.01.2014. There is a clear four-year delay in filing the refund claim. My view therefore is that the appellant is not entitled for any interest for the delay caused by it. In other words, the appellant cannot take advantage of its own mistake of filing a delayed refund claim and thus cannot claim the interest for that delayed period during which time it slept over its rights.

7. For working out refund along with consequential benefits, the matter is restored to the file of the Original Authority, who shall work out the refund in the light of my observations made hereinabove.

8. The appeal is allowed with directions.

(Order pronounced in the open court on **06.08.2021**)

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

Sdd