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IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. III

SERVICE TAX APPEAL No. 40554 of 2019

[Arising out of Order-in-Appeal No.CMB-CEX-000-APP-005-19 dated 02.01.2019 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore]

M/s.Suraj Forwarders & Shipping Agencies **Appellant**
24/509, Essar Building, GV Iyer Road,
Wellington Island,
Cochin 682 003.

Vs.

The Principal Commissioner of GST & CE **Respondent**
6/7, A.T.D. Street Race Course Road,
Coimbatore 641 018.

APPEARANCE:

Shri G. Derrick Sam, Advocate for the Appellant

Shri R. Rajaraman, Assistant Commissioner (Authorized Representative) for the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing: 07.12.2021
Date of Pronouncement: 10.12.2021

FINAL ORDER No. 42457 / 2021

The appellant is aggrieved by the rejection of refund of service tax paid to the tune of Rs.3,07,838/-.

2. Brief facts of the case are that the appellant who had their office at Tirupur was holding the Service Tax Registration No. ABOFS1766LSD001 under Tirupur Commissionerate. On 17.11.2014, they filed the request for cancellation / surrender of Centralized Service Tax Registration in Tirupur Range as they have shifted their business activities to Ahmedabad and had already obtained Centralized Registration Certificate in Ahmedabad. A reply was issued to the appellant by e-mail dated 2nd January 2015 wherein it was informed to the appellant that their request for surrender has been approved by the department.

3. Thereafter, the appellant discharged the service tax liability and filed ST-3 returns under the new registration number under the jurisdiction of Ahmedabad Service Tax Commissionerate. But, while paying service tax for the period October to December 2014, they inadvertently mentioned the registration number pertaining to Tirupur Commissionerate in their challan dated 05.01.2015 for payment of service tax of Rs.3,07,838/-.

4. The Range Superintendent of Service Tax Division, Ahmedabad while scrutiny of returns for the period October 2014 to March 2015 noticed the error and vide letter dated 23.08.2016 informed the appellant that challan mentioned in the return is not matching with the registration number available in the ACES. Appellant replied vide their letter dated 12.09.2016 stating that during the filing of half yearly return for the Centralized STC, there was an error in mentioning the

registration number in the challan and requested that amount paid as per the challan to be adjusted to the payment that has to be made in regard to registration number of Ahmedabad Commissionerate.

5. On 23.09.2016, the department replied to the appellant stating that request cannot be accepted. The appellants were directed to make payment of service tax along with applicable interest and penalty again and furnish the proof of payment to the Ahmedabad Commissionerate.

6. The appellant then filed an application on 06.03.2017 for refund of service tax paid by mistake in their earlier registration number of Tirupur Division.

7. Show cause notice dated 16.05.2017 was issued to the appellant proposing to reject the refund claim as time-barred under Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. After due process of law, the original authority rejected the refund claim. On appeal, the Commissioner (Appeals) upheld the same. The appellant is thus before the Tribunal.

8. On behalf of the appellant, Ld. Counsel Shri G. Derrick Sam appeared and argued the matter. He adverted to the letter issued by the appellant dated 17.11.2014 requesting for surrender of the Centralized Registration Service Tax of Tirupur Range and the approval for surrender given by the department by e-mail dated 02.01.2015. He submitted that there was an error in noting the registration number in the challan and the appellant had requested for adjusting the amount paid by them

towards the Centralized Registration of Ahmedabad Commissionerate. This was declined by the department vide letter dated 23.09.2016 and the appellant was asked to pay the amount once again. In order to prevent litigation and penalties, they immediately paid the amount once again vide challan dated 26.09.2016. Thereafter, appellant filed refund claim on 06.03.2017 as the service tax has been paid twice on the very same taxable value as computed in the ST-3 returns. He submitted that the department does not dispute that the tax has been paid twice by the appellant on the consideration reflected in the returns. The refund claim is rejected stating that as the appellant has initially paid the service tax with the registration number of Tirupur Range on 05.01.2015, refund claim dated 06.03.2017 is time-barred. He submitted that the service tax having been paid by mistake, the department cannot retain the excess amount with them.

9. Ld. Counsel relied upon the decisions of Hon'ble Madras High Court in the case of *3E Infotech* - 2018 (18) G.S.T.L. 410 (Mad.) and in the case of *Vinarom Ltd*. in W.P. No.17012 of 2001 dated 03.08.2010. The decision of the Tribunal in the case of *Venkatraman Guhaprasad Vs CGST & CE Chennai* – 2020 (42) G.S.T.L. 124 (Tri.-Chennai) was also relied. He prayed that the appeal may be allowed.

10. Learned Authorized Representative Shri R. Rajaraman appeared and argued for the department. He supported the findings in the impugned order. It is submitted by him that in the decisions relied by the Ld. Counsel, the amount has been

paid by mistake and there was no service tax liability. In the present case, the appellant has discharged service tax and there is only mistake in noting the registration number while depositing the amount. Therefore, the time limit prescribed under Section 11B would be applicable and the rejection of refund claim is legal and proper.

11. Heard both sides.

12. The facts narrated as above establishes that service tax has been paid twice by the appellant for the very same taxable value. Though the department agrees that the earlier payment made by challan dated 05.01.2015 on the service tax registration number of the Tirupur Commissionerate is incorrect, they have neither adjusted the amount nor refunded the amount. Instead, vide letter dated 23.09.2016, the appellant has been directed to make the payment once again. The said letter reads as under :

> "With reference to your letter dt.12/09/2016, in this connection it is to inform you that your request for consideration of challan no.69103330501201559708 paid against STC no.ABOFS1766LSD002 cannot be accepted by this office because you have paid the said amount in STC No.ABOFS1766LSD001 which pertains to unit SURAJ FORWARDERS & SHIPPING AGENCIES, situated at no.2, 1st floor, Indira na, 1st street, oddakadu tirupur, tamil nadu 641603 and failing in the jurisdiction of Coimbatore.
>
> Therefore, you are further requested to make the payment of service tax of Rs.307838/- along the applicable interest and penalty and intimate the office of undersigned with the submission of the proof of payment at the earliest."

The department has directed to pay the tax again as their inhouse formalities does not allow adjustment of tax wrongly paid towards one Commissionerate to another. The appellant has again paid service tax mentioning the service tax registration of

Ahmedabad Commissionerate on 26.09.2016. It is clear that the department has collected service tax twice from the appellant. This is not permissible under law.

13. The Hon'ble High Court of Madras in the case of *3E Infotech* (supra) had occasion to analyse the similar issue and held that when service tax is paid by mistake, the claim for refund cannot be barred by limitation. The relevant paras of the said decision are noticed as under :

> **"12.** Further, the claim of the respondent in refusing to return the amount would go against the mandate of Article 265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law.
>
> **13.** On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court, and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs. 4,39,683/- cannot be barred by limitation, and ought to be refunded.
>
> **14.** There is no doubt in our minds, that if the Revenue is allowed to keep the excess service tax paid, it would not be proper, and against the tenets of Article 265 of the Constitution of India. On the facts and circumstances of this case, we deem it appropriate to pass the following directions :-
>
> (a) The Application under Section 11B cannot be rejected on the ground that is barred by limitation, provided for under Section.
>
> (b) The claim for return of money must be considered by the authorities."

14. In the case of *Vinarom Limited* (supra), the Hon'ble high Court observed as under :

> "8. When a specific query was made to the learned Standing Counsel for the respondents as to how the amount was again collected from the petitioner, it is submitted that it was on the persuasion made by the petitioner. For a moment, I am not able to appreciate the said stand taken by the respondents. Since the petition had already paid a sum of Rs.28,42,745/- by way of book adjustments, the Customs Department ought not to have and, as a

matter of fact, should not have again received the said sum by way of cash. Rightly, an Application was made by the petitioner on 28.08.1999 for refund of the sum, but wrongly, the plea was rejected by the Authorities, holding that the Application is barred by limitation. The respondents/authorities seem to have taken the original date of adjustment in the DEPB as the crucial date for the purpose of limitation. The respondents/authorities seem to have taken the original date of adjustment in the DEPB as the crucial date for the purpose of limitation. In my considered opinion, it is not correct, for, the actual date on which the amount became due was the date on which second payment was made i.e., on 16.07.1999. Until 16.07.1999, the petitioner would not to have asked for refund of the amount. The amount became due to the petitioner only on or after 16.07.1999; therefore, the period of limitation would start running from 16.07.1999. The petitioner made the Application well within the period of limitation i.e., on 26.08.1999. Thus, the said claim made on 26.08.1999 cannot be held to be barred by limitation at all. To that extent, I am of the view that the order of the original Authority as well as the Appellate Authority are liable to be set aside."

15. The Tribunal in the case of *Venkatraman Guhaprasad* (supra) following the decision in the case of *3E Infotech* (supra) had held as under :

"5.3 The second ground for rejection of refund claim is on the ground of limitation. Section 11B prescribes a period of one year for filing the refund claim. However, the Hon'ble jurisdictional High Court in the case of *3E Infotech* (supra) had occasion to analyse the issue of levy when service tax is paid under mistake of law. The Ld. Counsel has also placed on record the decision of the Hon'ble Apex Court in the case of *Commissioner of Central Excise, Bangalore* v. *KVR Constructions* - 2018 (14) G.S.T.L. J70 (S.C.). The said decision arises out of an appeal filed by the department against the judgment of the Hon'ble High Court of Karnataka [2012 (26) S.T.R. 195 (Kar.)], wherein it was held that the provisions of limitation under Section 11B of Central Excise Act, 1944 would not apply for refund of service tax paid by mistake.

5.4 In *Shravan Banarasilal Jejani* - 2014 (35) S.T.R. 587 (Tri. - Mum.), the Tribunal had occasion to analyse a similar issue and held that erroneous payment of service tax has to be refunded to the applicant. The Hon'ble High Court of Bombay in *Parijat Construction* v. *Commissioner of Central Excise* - 2018 (359) E.L.T. 113 (Bom.) had also taken a similar view."

16. After appreciating the facts and evidence placed before me and following decisions cited above, I am of the view that the rejection of refund on the ground of limitation cannot be

justified. The impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open Court on 10.12.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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