

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

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No. 12327 of 2019**

(Arising out of OIA-CCESA-SRT-APPEAL-PS-186-2019-20 dated 28/06/2019 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**Pramukh Realty**

Shop No. 5, Gokul Vihar A-1, Tokaekhada  
Silvassa, Dadra And Nagar Haveli

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Daman**

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi  
Opp.Vapi Town Police Station,  
Vapi, Gujarat - 396191

**.....Respondent**

**APPEARANCE:**

Shri Kaushik Nahar, CS for the Appellant

Shri Ghanshyam Soni, Joint Commissioner (Authorized Representative) for the Respondent

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

**Final Order No. A/ 10213 /2022**

DATE OF HEARING: 22.02.2022  
DATE OF DECISION: 22.02.2022

**RAMESH NAIR**

The brief facts of the case are that the appellant have paid service tax on Construction of residential Complex for which they have entered into the agreement for sale of flats, accordingly they have paid service tax on sale of flats. Subsequently the sale of flats has been cancelled and the appellant have returned the amount collected from the clients along with service tax. Thereafter the appellant have filed a refund claim for the service tax paid on such value of services which was refunded to the customers. The adjudicating authority has sanctioned the refund on merit as well as on limitation. The Revenue being aggrieved by the order in original filed an appeal before Learned Commissioner (Appeal). The Learned Commissioner (Appeals) has rejected the appeal only on the ground of time bar which shows that the issue of refund on merit attained finality. Now the only issue to be decided by me is whether the refund is time bar or otherwise.

2. Shri Kaushik Nahar, Learned Company Secretary appearing on behalf of the appellant submit that since the service tax payment stands finalized only when the customer has decided to terminate the sale of the flat and accordingly, the total value of flat along with service tax collected from the customers has been refunded that should be taken as relevant date in terms of Clause (eb) of Section 11B. Therefore, from the date of refund of amount to the customer the appellant have filed refund claim well within the period of one year. He also placed reliance on the tribunal judgment in the case of M/s Ramesh Kumar Agarwal vide final Order No. 51646/2021 dated 25.06.2021.

3. Shri Ghanshyam Soni, Learned Joint Commissioner (AR) appearing on the behalf of revenue reiterates the finding of the impugned order. He further submits that there is no exception provided under Section 11B as regard time limit of one year it should be reckoned from the date of payment of service tax. Accordingly, since the refund was filed after one year from the date of payment of service tax the same become time bar. Hence the commissioner (appeals) has rightly denied the refund on limitation. He also placed reliance on the following judgments:

- Bosch Electricals Drive India P. Ltd – Interim Order No. 40019/2021-LB
- Bosch Electricals Drive India P. Ltd – Interim Order No. 40012/2021-SM
- Ajni Interiors – High Court of Gujarat in SCA No. 10435/2018
- Ajni Interiors-Supreme Court of India in SLP (Civil) Diary No.3952/2020

4. I have carefully considered the submission made by both sides and perused the records. I find that in the facts of the present case the appellant have paid service tax even though the service was not completed and subsequently when the sale agreement was cancelled the appellant have

returned the value of flat along with service tax to their customers. In my considered view the date of finalization i.e. Cancellation of sale of flat and refund of amount should be taken as a relevant date for computing the limitation under Section 11B . In this regard I would like to refer to the provision of section 11B which is reproduced below:

*" 11 B(B) "relevant date" means, -*

*(a).....*

*(b).....*

*(c).....*

*(d).....*

*(e).....*

*[(ea).....]*

*[(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;]*

*[(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;]*

From the above provision of clause (eb) of section 11B(B) it is clear that in the case where the service tax payment need to be adjusted at a later stage. The date of adjustment has to be reckoned for the purpose of computing limitation.

4.1 In the present case the fund has arisen from cancellation of the sale of flats and refund of amount to the customers. In my view this stage should be considered as adjustment of service tax hence, the one year period should be computed from the date of refund of amount made to their customers against cancellation of sale of flats. The very same issue has been considered by this tribunal in the case of M/s Ramesh Kumar Agarwal (Supra) wherein the tribunal has passed the following order:

*"8. Coming to the plea of issue being barred by time, I hold that no doubt the service tax was deposited by the appellant on 4<sup>th</sup> October,*

2016 and 24 October, 2016 and the refund claim has been filed on 7<sup>th</sup> May, 2018 which is absolutely beyond one year from the date of deposit. But admittedly post the said deposit the circumstances arose due to which the transaction value against which the aforesaid service tax was paid, was got returned to the customers due to sale of the flat being not finalized. The said amount of sale consideration was returned to the customer Shri K.K Agarwal on 15 October, 2017. It is post this date that the necessity arose to return the amount of Rs. 38,250/- also, as was collected from the said customer to discharge the service tax liability of the appellant.

" 11 B(B) "relevant date" means, -

(a).....

(b).....

(c).....

(d).....

(e).....

[(ea).....]

[(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;]

[(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;]

The aforesaid provision applies to present case

9. The date of adjustment in the present case is the date when the money received by appellant need to be refunded alongwith the amount of service tax.

10. Accordingly, I am of the opinion that the period of one year, in the given facts and circumstances, shall reckon from 15 10 2017 when appellant returned the amount of sale consideration to Shri KK Agarwal instead of 04.10.2016. The refund claim filed on 7th May, 2018 therefore, stands very much within the period of one year Learned Commissioner (Appeals) is opined to have ignored the peculiarity of facts and circumstances of the present case and is observed to have formed very rigid opinion. under challenge is, therefore, liable to be set aside. The order I draw my support from the decision of CCE, Pune vs. Ispat Profiles India Ltd. reported in 2007 (220) ELT 2018 (Tri-Mumbai), where it has been held that the date of reversal should be considered as the date of payment giving rise to the cause of action.

11. Further, this Tribunal in the case of Hexacom (1) Ltd. vs. CCE, Jaipur reported as 2006 (3) STR 131 (Tri. - Delhi) has clarified that there can never be a bar to return the amount which invites the service tax liability

*and date of said return shall be the relevant date for the purpose of the refund claim as was clarified by Tribunal, Mumbai in the case of Prachar Communications Ltd. v. CCE, Mumbai-IV reported as 2006 (2) STR 492 (Tri. - Mumbai) wherein it was held that "when assessee paid back excess service by them to their customers, entitled to adjustment of same in term of Rule 6 of Service Tax Rules, 1994 and this having been done by them, they would be entitled of refund of excess taz paid by them."*

*12. In view of entire above discussion, it is hereby held that both the grounds taken by the Commissioner (Appeals) for rejecting the refund claim are held to be against the appreciation of the relevant facts of the present case. The order, accordingly, is hereby set aside. However, the appellant is directed to return the amount to Shri K.K. Agarwal within 15 days of receiving the said amount from the Department against the intimation thereof to the Department. The Department is held at liberty to take appropriate action, in case of non-compliance. Appeal, accordingly, stands allowed."*

4.2 As per my above discussion and the judgment cited above the appellant's refund claim is not time bar.

5. Accordingly the appellant is entitled for the refund. Accordingly, the impugned order is set aside and Order in original is upheld. The appeal is allowed with consequential relief in accordance with law.

(Dictated & Pronounced in the open court)

**RAMESH NAIR  
MEMBER (JUDICIAL)**