

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 86272 of 2019

(Arising out of Order-in-Appeal No. PUN/EXCUS/001/APP/654/2018-19 dated 14.02.2019 passed by the Commissioner of Central Tax (Appeals-I), Pune)

**M/s Credit Suisse Services
India Pvt. Ltd.**

.....Appellant

**Ground To 5th Floor, Wing-1 and
4th To 7th Floor Wing-2,
Cluster-A EON Free Zone,
MIDC Kharadi, Knowledge Park,
Pune, Maharashtra – 411 014.**

VERSUS

**Commissioner of Central Excise
and Service Tax – Pune-I**

.....Respondent

**41-A, Ice House, Sassoon Road,
Opp. Waida College, Pune,
Maharashtra – 411 001.**

APPEARANCE:

Shri Mohit Raval, Advocate for the Appellant
Shri Prabhakar Sharma, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85332 / 2022

Date of Hearing: 21.01.2022

Date of Decision: 19.04.2022

Rejection of refund claim filed under Notification No. 12/2013-ST dated 01.07.2013 by the Appellant SEZ Unit seeking refund of service tax as exemption benefit by the Adjudicating Authority that had been confirmed by the Commissioner of Central Tax (Appeals-I),

Pune on 14.02.2019 vide his above referred order on the sole ground of limitation is assailed in this appeal.

2. Factual back drop of this case, is brief, in that under the above Notification No. 12/2013-ST dated 01.07.2013 Appellant, who was providing Information Technology Service and Business Support Service from its SEZ Unit, had filed refund claim to the tune of Rs.1,35,05,787/- but refund of Rs.94,35,098/- was sanctioned through adjudication order of the Assistant Commissioner of Central Tax Division-V (Viman Nagar) vide his refund Order-in-Original No. 218/Refund/Viman Nagar/Central GST/2018-19 but an amount of Rs.40,70,698/- claim for the period between April, 2017 to June, 2017 had been rejected as the refund application was not filed before 13th April, 2018 i.e. within a period of 1 year in terms of Clause 3(III)(e) of the said Notification. The said order was appealed against but it yielded no fruitful result to the Appellant who challenged the legality of such order before this forum.

3. Learned Counsel for the Appellant Mr. Mohit Raval, with reference to judicial decisions that has been made part of the written submission, argued mainly on three points. They are:

(i) Clause 3(iii)(e) of the said notification has not provided absolute prohibition for filing such an refund application beyond 1 year but made it discretionary for the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise to extent the period as he feels proper in permitting filing of such refund application.

(ii) Clause 2 Section 10 of the General Clause Act, 1897, applicable to all Central Acts except those are governed by the Indian Limitation Act 1877, makes it abundantly clear that any Act of Proceeding directed or allowed to be done in any Court or Office on a certain day or within a prescribed period and if the same is closed on the last day of prescribed period, the act and proceeding shall be considered as done or taken in due time if done on the next day afterwards on which the Court or Office is open and

(iii) Clause 3 of Section 51 of Special Economic Zones Act, 2006 has provided an overriding effect to the Act over any other statute and therefore the limitation contained in Notification No. 12/2013-ST cannot curtail the period of filing of refund for availment of exemption benefit.

4. Arguing on those 3 points noted above with reference to the Judicial decisions reported in AIR 1957 SC 271, 2003 (156) E.L.T. 945 (Bom.), 2004 (177) E.L.T. 395 (Tri. Mumbai), 2012 (27) S.T.R 20 (Tri-Del), 2020 (38) G.S.T.L. 92 (Tri – Hyd.), 2019 (31) G.S.T.L. 596 (A.P.), 2021 (54) G.S.T.L. 37 (Tri- Chennai), he urged for setting aside the order passed by Commissioner (Appeals) refusing refund only on the ground of limitation.

5. In response to such submissions, learned Authorised Representative for the Respondent-Department Mr. Prabhakar Sharma, while supporting the reasoning and rationality of the order passed by the Commissioner (Appeals), argued that discretionary power can only be exercised in favour of the affected person if

sufficient cause is assigned to any non-compliance and that in view of the order passed by the Commissioner (Appeals) that such application for refund should have been filed before 30.04.2018 (wrongly typed as 30.06.2018 in the Order-in-Appeal) means the limitation ends at least a day before i.e. on 29.04.2018, for which 30.04.2018 being a holiday would have no effect so as to apply the provisions contained in Section 10 of the General Clauses Act. He further argued that overriding effect of SEZ unit cannot delimit the stipulations contained in Notification No. 12/2013-ST that enable SEZ unit to seek exemption of service tax by way of refund.

6. I have heard the submissions at length and perused the case record, decided case laws and written notes submitted by the parties. Without pondering much into the legality of those 3 points urged by the learned Counsel for the Appellant, it would be just and proper to reproduce Section 10 of the General Clause Act, 1897 that reads:-

“10. Computation of time - (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887”

Admittedly as has been held in the Order-in-Original and Order-in-Appeal in terms of Notification No. 12/2013-ST the last date for filing of such refund application is before 30.04.2018 or to say in specific terms on or before 29.04.2018, though the same is not absolute but qualified being discretionary at the level of refund sectioning authority. However, on examination of the English calendar of the year 2018 in the open Court *vis-a-vis* Annexure-I, it could be noticed that 28th & 29th April, 2018 were weekends and 30.04.2018 was a Government holiday on account of Buddha Purnima. This being the facts on record, learned Commissioner (Appeals) order rejecting the refund solely on the ground that it is hit by the period of limitation is unsustainable and the same is required to be set aside. Hence the order.

ORDER

7. The appeal is allowed with consequential relief of sanctioned of refund of Rs.40,70,698/- with applicable interest to be paid to the Appellant within 3 months of receipt of this order and the order passed by the Commissioner of Central Tax (Appeals-I), Pune in Order-in-Appeal No. PUN/EXCUS/001/APP/654/2018-19 dated 14.02.2019, to the extent of rejecting the said refund, is hereby set aside.

(Order pronounced in the open court on 19.04.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)