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ORDER IN APPEAL :

M/s Rangoli Park Home & Resort Pvt. Ltd. Rangoli, Survey No. 397/2/3 Opp. Railway Crossing, Bhavnagar- Rajkot Highway, Vadu, Bhavnagar (hereinafter referred to as appellant) filed this appeal against Order-In-Original No. RDUW2018-19 dated 25/02/2019 (hereinafter referred to as impugned order) passed by the Assistant Commissioner, Central GST Division, Bhavnagar-1 (hereinafter referred to as lower adjudicating authority);

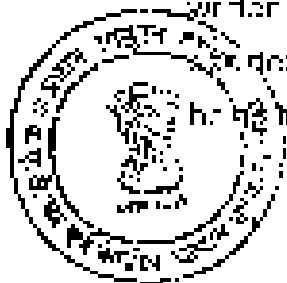
1. The brief facts of the case are that appellant was registered under the category of 'Restaurant Service' and was having Service Tax Registration No. AADCR71026SD001. The appellant had filed Service Tax refund claim vide letter dated 16.11.2018, on 19.11.2018 amounting to Rs. 01,7604. The refund claim pertains to excess payment of Service Tax (including Cesses) made vide Challan No. 62/27, dated 05.07 2017 as per the statements of the facts to the appeal memorandum. On verification by the lower adjudicating authority it was observed that refund claim was filed beyond the relevant date i.e. after one year from the date of making payment. Accordingly Show Cause Notice dated 04.12.2018 was issued to the appellant, as to why their refund claim, being time barred, should not be rejected under the provisions of Section 113 of the Central Excise Act, 1944 as made applicable to Section 83 of the Finance Act 1994 and then rejected the refund claim vide impugned order.

2. Being aggrieved with the impugned order the Appellant has preferred present appeal inter alia, on the following grounds:

- (i) The lower adjudicating authority has erred in rejecting the claim of refund of excess payment made of Rs. 01,7604 as time barred in terms of provisions of Section 113 of the Central Excise Act 1944 read with Section 83 of the Finance Act 1994.
- (ii) The lower adjudicating authority has not considered the judgments cited by the appellant.

4. Personal Hearing was attended by CA Shri Vishal Pareek on behalf of the appellant and reiterated the submission of appeal memorandum and requested to decide the case on the basis of their submission.

5. I have carefully gone through the facts of the case, the impugned order as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether the refund claim filed by the appellant is time barred as held by the lower adjudicating authority is correct or not.



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supplying machinery to the importer

(2) For the removal of doubts, the proviso contained in the proviso to clause (b) of the said proviso to subsection (2), including any such modification approved or modified under sub-section (6) may be taken into account by the Central Government at a future date notified in the Official Gazette.

(3) Explanation. - For the purposes of this section, -

(a) "date of import" means the date of issue of bill of lading or other document of title in respect of the taxable materials used in the manufacture of goods which are exported out of India;

(b) "date of export" means -

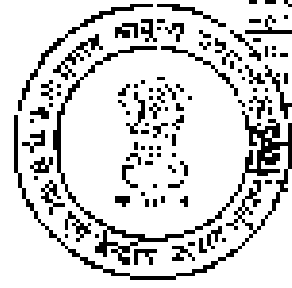
- (i) in the case of goods exported out of India when a bill of lading or other document of title is available in respect of the goods, the date on which the cargo may be, the taxable materials used in the manufacture of such goods;
- (ii) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, loads/unloads;
- (iii) if the goods are exported by land, the date when the goods pass the frontier;
- (iv) if the goods are exported by post, the date of despatch of articles by the post office concerned to a place outside India;
- (v) in the case of goods returned to India by mail, parcel or post-bag, or if shipped by any other similar process, the date when the goods are received by the factory for the purposes of re-sale;
- (vi) in the case of goods in which excise duty is required to be effected if removed for home consumption but which are required when exported outside India, if such removal is for any other purpose than re-sale, the date when the goods are received by the factory;
- (vii) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the tax levied by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty payable on his production of excise duty goods, if such manufacturer has made the payment on the date prescribed by any notified authority in respect of that period and no duty is required, the date of such production;
- (viii) in the case of a purchase of the goods for re-merchandise, the date of purchase of the goods by such person;
- (ix) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) or section 5A, the date of issue of such order;
- (x) in a case where a duty of excise is paid provisionally under this section the date on which, thereunder, the duty of excise is paid in full;
- (xi) in a case where the duty of excise is refundable on account of a special order or direction of an authority, the date of such order or direction;
- (xii) in any other case, the date of payment of duty.

(Explanation)

8. In discharge of above provisions, I have examined the findings of the lower adjudicating authority as well as arguments submissions put forth by the Appellant. I find that appellant had filed the refund claim after the expiry of the prescribed time limit fixed as per the above provision of the Central Excise Act 1944 (i.e. One year from the date of payment vide Chairman dated 05.07.2011). Hence there is no reason to deviate my view from that of lower adjudicating authority that refund application is time barred. My views are also bolstered by the judgment pronounced by the CBESTAT, Principal Bench, New Delhi in the case of Comptroller of C.Ex. Ksipur Vs. Maranesh Builders (P) Ltd. 2010(18)5.LR 133(17-18); wherein Tribunal has relied upon the judgments of the Honorable Supreme Court as well as High Court. I find that in the said judgment, it has been, inter alia, observed as under:

(1) I have carefully perused the submissions on both sides and perused the records

21. There is no dispute about the fact that the respondents had, as their sole, obtained contract for transportation of granite from their available by treating the same as granite quarries under Section 65 of Income tax with effect from 1990 and 1995, and during the period from March 2000 to September 2002, the tax was paid by them without any protest. The only issue raised in the Board's Circular on 20.05.07 that they claimed was that their activity is not taxable and they had raised claim in 1994-95. The said Board's Circular is not binding on the respondents. The respondents, while claiming exemption, have not raised any protest. In the case of Minerals Industries Ltd. v. UOI (1997) 187 ITR 209, the Hon'ble Supreme Court has held that when a taxpayer is liable to pay tax, the same may be called as 'legal duty'. However, if a person is not liable to pay tax, though it may be called as 'duty', it is not a 'legal duty' and it is not enforceable with the taxpayer. In the case of Minerals Industries Ltd. v. UOI (1997) 187 ITR 209, the Hon'ble Supreme Court has held that when a taxpayer is liable to pay tax, the same may be called as 'legal duty'. However, if a person is not liable to pay tax, though it may be called as 'duty', it is not a 'legal duty' and it is not enforceable with the taxpayer. In the case of Minerals Industries Ltd. v. UOI (1997) 187 ITR 209, the Hon'ble Supreme Court has held that when a taxpayer is liable to pay tax, the same may be called as 'legal duty'. However, if a person is not liable to pay tax, though it may be called as 'duty', it is not a 'legal duty' and it is not enforceable with the taxpayer.



1. A copy of the order of the Government of India, Ministry of Revenue, dated 28.12.1972, on the subject mentioned above, under Section 2(1)(b) of the Land Revenue (Amendment) Act, 1972, is enclosed herewith for reference. The Government of India, Ministry of Revenue, vide order dated 28.12.1972, has directed that the land revenue of the land in question shall be levied on the basis of the area of the land as shown in the record of rights of the land in question. The Government of India, Ministry of Revenue, vide order dated 28.12.1972, has also directed that the land revenue of the land in question shall be levied on the basis of the area of the land as shown in the record of rights of the land in question.

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2. In view of above, the impugned order is upheld and the appeal filed by the Appellant is rejected in view of the Section 11B of the Central Excise Act 1944 and with Section 82 of the Finance Act, 1954.

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श्री एस. नरेश्वर । S. Narasimhan
अधिकारी (सुपरिन्डेंट) । Dy. Suptg. Officer.

Handwritten signature and date: 27/10/84
Commissioner (Appeals)

By SUDAN

To
Mrs Rangoli Park Hotel & Resort Private Limited,
Rangoli Park - Survey No. 237/908,
Opp. Railway Crossing,
Bhavnagar-Rajkot Highway,
Bhavnagar Dist. Bavnagar.

Copy to:-

- 1) The Prindps. Chief Commissioner, CST & Central Excise, Ahmedabad Zone, Ahmedabad, for kind information please
- 2) The Commissioner, Central CST & Central Excise, Bhavnagar for information and necessary action
- 3) The Assistant Commissioner, Central CST Division, Bhavnagar for necessary action
- 4) Guard File.