

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO. II**

**Service Tax Appeal No.50046 of 2020 (SM)**

(Arising out of Order-in-Appeal No.68/Central Tax/Appl-II/Delhi/2019 dated 4.9.2019 passed by the Commissioner of Central Tax (Appeals), Delhi]

**M/s. Aadhar Stumbh Township Pvt.Ltd.**

2<sup>nd</sup> Floor, Plot No.2, Anand Plaza, LSC, Saink Vihar,  
Pitampura,  
Delhi-110 034.

**Appellant**

VERSUS

**Commissioner of Central Excise &  
Central Goods & Service Tax Commissionerate,**  
Delhi-West.

**Respondent**

**APPEARANCE:**

Shri Rajesh Chhibber, Advocate for the appellant.  
Shri Ravi Kapoor , Authorised Representative for the respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.50501/2022**

**DATE OF HEARING:11.01.2022  
DATE OF DECISION:08.06.2022**

**ANIL CHOUDHARY:**

The appellant-Aadhar Stumbh Township Pvt. Ltd. is registered with the Service Tax Department and providing services under the category of "Construction service" including commercial/industrial building or civil structure, works contract service, etc. The appellant is also executing work for the State Government being CPWD and PWD, for which they were entitled to exemption under Mega Exemption Notification No.25/2012-ST. AS the exemption lapsed w.e.f. 1.4.2015, the appellant started depositing the tax. Subsequently, the Government extended the exemption benefit by

making retrospective amendment in Notification No.25/2012-ST vide amending notification no.9/2016-ST dated 1.3.2016. Further, Section 102 of the Finance Act, 1994 sub-section (1) provided – “notwithstanding anything contained in Section 66 B, no service tax can be levied or collected for the period commencing from the 1<sup>st</sup> day of April, 2015 and ending with 29<sup>th</sup> day of Feb., 2016 (both days inclusive) in respect of the taxable services provided to the Government, a local authority or a Government Authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of

- (a) civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession; under a contract entered into; before the 1<sup>st</sup> day of March, 2015 and on which, an appropriate stamp duty applicable has been paid.

Sub-section (2) provides, “refund shall be made of all such service tax which has been collected but which would not have been so collected, had sub-section (1) been in force at all material times.

Sub-section (3) provides, “notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the ascent of the President.

2. The appellant finding that it is also entitled to refund for the services provided to Government Authorities during the relevant period, for which tax had already been deposited, but exemption was extended with retrospective effect, applied for refund of Rs.22,29,461/- and Rs.18,15,725/- by

dispatching the refund application by speed post no.ED160532755IN dated 8.11.2016 and speed post No.ED 160532741 IN. The refund application was dispatched to Service Tax Division - 11. The works for which refund was claimed were (a) construction of Police Station and Residential staff quarters at Dilshad Garden, Delhi, (b) construction of office building and staff quarters at Mandawali Fazalpur, Delhi and (c) construction of Police Station Building and Residential Staff Quarters at Khajuri Khas, Delhi.

3. The postal envelope sent by speed post containing the refund applications were returned by postal authorities on 25.11.2016 with the remarks "refused to accept" by the Department. Thereafter, the appellant filed the refund application in person and the same were filed on 5.12.2016.

4. Revenue after scrutinizing of the applications issued Deficiency Memo No.1034 dated 17.02.2017 requiring the appellant to file documents/information like Form-R, copy of the complete work contract agreement/orders entered with the various parties, copy of the invoices with respect to the work done or to be done, copy of the audited balance sheet and income tax return for financial year 2015-2016, party-wise reconciliation of services rendered and payment received, party-wise ledger account of receipts and service tax refund and also brief notes on business activities and clarification why the provisions of unjust enrichment are not applicable.. There was no difficulty pointed out as regards the refund application being not filed in time as permitted by Section 102(3) of the Finance Act, which is required to be filed on or before 14.11.2016. In response, the appellant by their letter dated 17.03.2017 submitted the desired documents.

5. Subsequent to the introduction of the GST and formation of new offices/division, Range of Central Taxes, the file of the appellant with regard

to the refund claims were transferred to the Division – Pitampura, GST Delhi, West Commissionerate.

6. Revenue issued another communication vide letter no.733 date 22.11.2017 pointing out that refund applications appear to be barred by limitation.

7. In response, the appellant by letter dated 13.11.2017 submitted that they had submitted the refund claim timely within six months as per Section 102(3) of the Finance Act by speed post, but the speed post was returned with the observation "refused".

8. During the course of personal hearing, counsel for the appellant also produced the original envelopes. However, the Adjudicating Authority doubted filing of the refund application by speed post on 8.11.2016 and considered the date of filing as 5.12.2016, and held that refund claim is barred by limitation. The Adjudicating Authority observed that from perusal of the envelope, it is difficult to ascertain as to which office, applications were sent through speed post since the Service Tax Division is not clearly visible whether it is 11 or II. Accordingly, the refund applications were rejected on the ground of limitation vide order-in-original dated 25.01.2018.

9. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to dismiss the appeal upholding the order-in-original.

10. Being aggrieved, the appellant is before this Tribunal.

11. It is evident that during the pendency of the appeal before the Commissioner (Appeals), Revenue had entertained correspondence with the Superintendent of Post Office, New Delhi requesting for detailed tracking

report for these two packages. However, in reply, Postal Department informed by its letter dated 29.05.2019 that the record is no longer available as they preserve the records only for six months.

12. Ld. Counsel for the appellant, *inter alia*, urges that the whole controversy raised by the Department is around the address mentioned on the envelopes used for dispatch of refund applications - whether the appellant has mentioned Division II or 11. It is further urged that there is no dispute regarding the dispatch by the appellant of the refund applications by speed post on 08.11.2016 and subsequently, received back from the Post Office with the remark "refused to accept". Thus, in view of the postal remarks, there is presumed service on the Department. The fact of dispatch by speed post on 8.11.2016 is also fortified by the subsequent filing by hand on 5.12.2016. Thus, in the facts and circumstances, Revenue is trying to take advantage of its own wrong by denying the refund on the ground of time bar.

13. Further, evidently, in view of retrospective exemption given with respect to the specified services vide an amending notification no.9/2016-ST and further read with the Section 102(1) and (2), Service Tax was not payable on these specified services and the appellant is entitled to refund of the service tax paid during this period. Thus, the amount of tax deposited has taken the character of 'Revenue deposit' by operation of law. Further, there is no limitation for refund of revenue deposit.

14. Ld. Counsel also relies on Article 265 of the Constitution of India, which provides "no tax shall be levied or collected except by the Authority or law".

15. It is evident on the basis of the record that Revenue had refused to accept the speed post, which was dispatched on 8.11.2016, due to shifting of the Range Office of the service tax from CGO Complex, New Delhi-III to Ambedkar Bhawan, Rohini-Delhi. Reliance is also placed on the following rulings:-

- (1) **Kujjal Builders Pvt. Ltd. – 2018 (10) GSTL 374 (T-Delhi)**
- (2) **Siemens Engineering & Mfg. Co. of India Ltd.**  
**- 1976 AIR 1785, 1976 SCR 489**
- (3) **M/s. Agni Steels Pvt. Ltd. -2021 TIOL 251 CESTAT-Mad.**

16. Reliance is also placed on the Ruling of the Hon'ble Madras High Court in the case of **M/s. 3E Infotech Vs. Commissioner of Customs, Excise and Service Tax – 2018 (7) TMI 276**, wherein under the facts that service tax was paid under misconception held that the claim for refund cannot be held barred by limitation, merely because period of limitation under Section 11 B expired. Accordingly, Id. Counsel prays for allowing his appeal with consequential benefits in accordance with law.

17. Opposing the appeal, Id. Authorised Representative for Revenue relies on the impugned order.

18. It is further urged that the court below has observed that from perusal of the envelope, it is difficult to ascertain as to which office the applications were sent since the Service Tax Division is not clearly visible.

19. Having considered the rival contentions, I find that there is sufficient evidence on record that appellant had dispatched the refund applications by speed post on 8.11.2016, which were returned by the Department by refusing to accept. Further, refusing of refund by the Department is evident

from the facts on record, as the Service Tax Division has been shifted from CGO Complex, New Delhi to Ambedkar Bhawan, Rohini, New Delhi. Thus, I hold that the appellant had dispatched the refund application well within the period of limitation, which was expiring on 14.11.2016. Such dispatch on 8.11.2016 is also proved by the fact that the appellant has soon thereafter receipt back of the mail with the remark "refused to accept", has again filed the application by hand on 5.12.2011. In this view of the matter, I hold that the refund application has been filed within the limitation as prescribed under Section 102(3) of the Finance Act. I further hold that in view of Section 102(1) and (2) of the Finance Act, the service tax deposited by the appellant has taken the changed character of revenue deposit, by operation of law as the Government of India extended exemption with retrospective effect vide notification no.9/2016-ST read with Section 102 introduced by Finance Act, 2016. Thus, the rejection of refund by Revenue is also hit by Article 265 of the Constitution of India. I further hold that no limitation is applicable for refund in the facts and circumstances of the present case, due to the amount lying with the Revenue having the nature of revenue deposit.

20. In view of my findings and discussion, I allow this appeal and set aside the impugned order-in-appeal. The Adjudicating Authority is directed to grant refund within a period of 45 days from the date of receipt of this order along with interest under Section 11 BB.

[Order pronounced on 08.06.2022.]

**(ANIL CHOUDHARY)**  
MEMBER (JUDICIAL)