IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2022

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

C.E.A No.49 OF 2019

BETWEEN :

M/s BELLATRIX CONSULTANCY SERVICES
NO.398, 2ND FLOOR, 3RD MAIN ROAD
2ND CROSS, SHAMANNA GOWDA ROAD
KAVERINAGAR, R.T. NAGAR POST
BANGALORE – 560 032 ... APPELLANT

(BY SHRI. L.S. KARTHIKEYAN, ADVOCATE)

AND :

THE COMMISSIONER OF CENTRAL TAX
BANGALORE NORTH COMMISSIONERATE
NO.59, HMT BHAWAN
GROUND FLOOR, BELLARY ROAD
BANGALORE – 560 032 ... RESPONDENT

(BY SMT. K.R. VANITA, ADVOCATE)

[THROUGH VIDEO CONFERENCING]

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THIS CEA IS FILED UNDER SEC.35G OF THE CENTRAL EXCISE ACT, ARISING OUT OF ORDER DATED: 29.11.2018 PASSED IN FINAL ORDER NO.21813/201, PRAYING TO SET ASIDE FINAL ORDER NO.21813/2018 DATED: 29.11.201

PASSED BY THE CESTAT, BANGALORE AS NOT PROPER, CORRECT AND LEGAL AND ETC.

THIS CEA, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 08.06.2022, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, ***P.S.DINESH KUMAR J,*** PRONOUNCED THE FOLLOWING:-

JUDGMENT

This appeal by the assessee has been admitted to consider the following substantial questions of law:

(i) Whether the Tribunal is justified and correct in upholding rejection of the claims for refund of amounts paid as Service Tax on grounds of limitation under Section 11B of the Central Excise Act, 1944 even though the levy under Section 66B of the Finance Act, 1994 does not apply to the activities of the Appellant?

(ii) Whether the Tribunal is justified and correct in upholding rejection of the refund claims contrary to law declared by various High Courts and in particular the jurisdictional Hon'ble Court in the cases relied upon by the Appellant?

(iii) Whether the Tribunal is justified in denying substantive right of claim for refund based on decisions of the CESTAT wherein the factual position

was different and activities carried out by the Appellants were taxable services?"

2. Heard Shri. L.S. Karthikeyan, learned Advocate for appellant and Smt. K.R. Vanita, learned Advocate for respondent.

3. Appellant-Assessee's case is, it had entered into an agreement with a Professional Lien Search LLC, a Company based in the United States of America (USA) and providing support services to real estate property buyers in the USA. Appellant's activity is to verify the information on various types of issues related to the property proposed to be purchased by the prospective purchasers such as Property Tax information, Building Permits, unpaid bills for utilities, Property maintenance, etc.

4. Assessee obtained service tax registration and paying service tax on the consideration charged on the client periodically. It

has filed returns for the half yearly period from April to September, 2016, October 2016 to March 2017 and for the quarterly period from April to June, 2017. Subsequently, assessee learnt that it was not liable to pay service tax on export of services, in terms of Chapter-V of Finance Act, 1994. On December 29, 2017, it filed a claim before the Assistant Commissioner of Central Excise, Bengaluru for refund of Rs.27,70,791/-. The Assistant Commissioner called upon the assessee to explain as to why a portion of the refund to the extent of Rs.15,80,520/-, being the tax paid between April 2016 and December 2016, should not be rejected as it was beyond the period of limitation of one year. After hearing, the Assistant Commissioner allowed refund of Rs.11,90,271/- and rejected the claim for remaining amount. Assessee challenged the Order-in-Original before Commissioner (Appeals) and the same was

rejected. Assessee filed further appeal before CESTAT[1] and the same has also been dismissed by the impugned order.

5. Shri. L.S. Karthikeyan submitted that assessee's services are not taxable. The Assessing Officer has held that the services provided to the client based in the USA falls under Rule 5 of Place of Provision of Services, 2012 and the activities undertaken fall under export of services. Having recorded the said finding, he has allowed a part of the claim and rejected the remaining claim on the ground that the claim was not filed within one year from the date of export. He submitted that when appellant was not liable to pay tax at all, the rejection of part of the claim is untenable. Accordingly, he prayed for allowing this appeal.

[1] Central Excise Sales Tax Appellate Tribunal

6. Smt. K.R. Vanitha, for the Revenue, argued opposing the appeal.

7. We have carefully considered rival contentions and perused the records.

8. The Assistant Commissioner of Central Excise, the Assessing Authority has recorded in para 18 of his order that appellant's services fall under Rule 5 of the place of provision of services, 2012. He has allowed refund of Rs.11,90,271/- being a portion of the claim and rejected the claim for the remaining amount of Rs.15,80,520/- on the ground of limitation. The Commissioner (Appeals) and CESTAT have upheld the Order-in-Original.

9. It is not in dispute that assessee had paid service tax on an erroneous assumption that it was liable to pay the taxes. The Assessing Authority has allowed a part of the claim. Thus, according to

the Assessing Authority, appellant is not liable to pay service tax, but the application in respect of the taxes paid for the period between April 2016 to December 2016, are barred by time under Section 11B of Central Excise Act.

10. In M/s.*Shiv Shanker Dal Mills etc. etc. Vs. State of Haryana and others*[2] the Hon'ble Supreme Court of India speaking through Justice Krishna Iyer has held as follows:

> *"This big bunch of writ petitions shows how litigation has a habit of proliferation in our processual system since cases are considered in isolation, not in their comprehensive implications and docket management is an art awaiting its Indian dawn. The facts, being admitted, obviate debate. All these appellants and writ petitioners had paid market fees at the increased rate of 3 per cent (raised from the original 2 per cent) under Haryana Act 22 of 1977. Many dealers challenged the levies as unconstitutional, and this Court, in a series of appeals (CAs Nos. 1083 of 1977 etc.) [Kewal Kishan Puri v. State of Punjab, (1980) 1 SCC 416] ruled that the excess of 1 per cent over*

[2] AIR 1980 SC 1037

the original rate of 2 per cent was ultra vires. This cast a consequential liability on the Market Committees to refund the illegal portion. They were not so ordered probably because they could not straightway be quantified. The petitioners who had, under mistake, paid larger sums which, after the decision of this Court holding the levy illegal, have become refundable, demand a direction to that effect to the Market Committees concerned. There cannot be any dispute about the obligation or the amounts since the Market Committees have accounts of collections and are willing to disgorge the excess sums Indeed, if they file suits within the limitation period, decrees must surely follow. What the period of limitation is and whether Article 226 will apply are moot as is evident from the High Courts judgment, but we are not called upon to pronounce on either point in the view we take. Where public bodies, under colour of public laws, recover people's moneys, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of "alternative remedy", since the root principle of law married to justice, is ubi jus ibi remedium.

(Emphasis Supplied)

11. In view of the admitted fact that the services rendered by the assessee satisfy all conditions of Rule 6A of the Service Tax Rules, 1994 and the services provided by it are export services, it is entitled for refund of the tax. In view of authority in the case of *Shiv Shanker Dal Mills,* the refund cannot be denied on the ground of limitation.

12. In the result, the questions of law are answered in favour of the assessee and the appeal deserves to be allowed.

13. Hence, the following order:

(a) Appeal is ***allowed***.

(b) Order dated 12.02.2018 passed by the Assessing Authority and confirmed by the Commissioner (Appeals) and the CESTAT so far as refund amount of Rs.15,80,520/- is set-aside.

(c) Revenue shall refund the amount with interest as per Section 11B of the Central Excise Act, 1944 within an outer limit of three months as per law.

Sd/-
JUDGE

Sd/-
JUDGE

SPS