

Time limitation not applicable on refund of amount paid by mistake – CESTAT

7 February 2022



Summary

The Customs, Excise, Service Tax Appellate Tribunal (CESTAT), Delhi has set aside the order rejecting the refund claim of amount mistakenly paid as service tax. Further, the CESTAT stated that the price as per contract was firm and independent of any variation, therefore, unjust enrichment is not applicable. The CESTAT further held that time limitation will not be applicable as the amount deposited is revenue deposit and not tax as the appellant was not liable to pay tax. Therefore, the CESTAT directed the Revenue to grant the refund of amount in cash along with interest @12% p.a.

Facts of the case

- The appellant¹ is engaged in providing services such as shifting of overhead cables/wires, laying of cables under or alongside road, installation of streetlights, traffic lights, etc., for the Electricity Board/Nigam.
- The appellant had filed a refund claim of the amount incorrectly paid on the ground that the work undertaken is not liable to service tax as per circular².
- The appellant contended that the limitation period³ is not applicable in the present case as the amount was mistakenly paid. Further, the principle of unjust enrichment is not applicable as the work order was procured in competition in open bidding. Also, the price is as per open bid and is firm in all respect, independent of any variation. The price fixed is not affected due to levy of tax.
- The refund claim was rejected by the Assistant Commissioner observing that the appellant had issued invoices/bill inclusive of service tax. Out of such payment received, they had deposited the service tax portion in the government exchequer. Therefore, the amount deposited was tax amount and not just any amount deposited.

Further, it was alleged that the claim has been filed after more than one year from the date of deposit of the tax.

- Aggrieved by the rejection, the appellant preferred appeal before the Commissioner Appeals who dismissed the same agreeing with the findings of the Assistant Commissioner.
- Therefore, the appellant filed present appeal⁴ before the CESTAT.

CESTAT Delhi observations and ruling⁵:

- **Amount to be treated as deposit:** Service tax was not leviable on the services provided by the appellant and tax was paid by mistake. Thus, the amount paid by the appellant will be treated as deposit and shall be entitled for refund. Further, limitation will not be applicable as the amount deposited is not tax but revenue.
- **Unjust enrichment inapplicable:** The work order was issued to the appellant in an open competitive bid. It is clear from the contract that the price was firm in all respect and independent. The appellant did not charge any service tax in the invoices. Accordingly, the principle of unjust enrichment is not applicable.

¹ Ishwar Metal Industries

² Circular No. 123/5/2010 -TRU dt.24.05.2010

³ limitation u/s 11B of the Central Excise Act, 1944

⁴ Service Tax Appeal No. 51834 of 2018-SM

⁵ Final Order No.50064/2022 dated 28 January 2022

- **Direction to grant of refund along with interest:** The CESTAT directed to grant refund of the amount in cash within 45 days from receipt of order along with interest @12% p.a. from the end of three months from the date of refund application by the appellant, till the date of grant of refund.

Our comments

Earlier, the Apex Court⁶ had held that the refund claim would not be disallowed solely because it seemed barred by limitation.

Similarly, the Madras High Court⁷ had held that a refund claim cannot be barred by limitation when service tax is paid by mistake, merely because the period of limitation⁸ had expired.

In another case, the Karnataka High Court⁹ had also held that the limitation period is not applicable for refund of service tax wrongly paid on late payment charges.

Thus, it is a well-settled practice that where the amount paid as tax is due to mistake of law, then the period of limitation is not applicable for a refund. Thus, it seems that the issue is no more res-integra under the erstwhile indirect tax regime.

However, unlike erstwhile indirect tax regime, time limit of two years from the relevant date is applicable in case of refund of any tax, interest or any other amount paid under GST. Thus, it appears that in case of wrong tax paid or tax paid by mistake, the assessee is required to file a refund application within the time limit prescribed under GST.

⁶ ITC Ltd. [1993 (7) TMI 75]

⁷ 3E Infotech [2018 (7) TMI 276]

⁸ under Section 11B of the Central Excise Act, 1944

⁹ Way2wealth Brokers Pvt. Ltd.[2021 (10) TMI 488]

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