

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**

PRINCIPAL BENCH, COURT NO. II

Appeal No. ST/51457-51458 & 54976/2014-ST(SM)

[Arising out of Order-in-Appeal No.212 & 213/2013 dated 11.12.2013 & 44/SM/ST/D-II/14 dated 04.07.2014 by the Commissioner of Central Excise & Service Tax (Appeals), New Delhi].

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether Their Lordships wish to see the fair copy of the Order?
4. Whether Order is to be circulated to the Departmental authorities?

M/s. Transcend Mt Services Pvt. Ltd.

Appellants

Vs.

C.S.T.-Service Tax- Delhi

Respondent

Appearance:

Shri S. Sivakumar, Advocate for the Appellants

Shri. G.R. Singh, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing: 28.01.2015

FINAL ORDER NO. 50276-50278/2015-ST(SM)

Per Ashok Jindal:

The appellants is in appeals against the impugned order rejecting the refund claim as time barred as same has been filed beyond the limitation period prescribed as per section 11 B of the Central Excise Act, 1944.

2. The facts of the case are that appellant filed refund claims through electronic filing on ACES web portal as per the CBEC Circular No. 919/09/2010 CX dated 23.3.2010 and Trade Notice No. 14/ST/09 dated 17.9.09 and under Rule 5 of the Cenvat Credit Rules, 2004 for the Cenvat credit remaining unutilized in their credit account. The appellant has not filed hard copy of the refund claim filed (electronically). Therefore, their refund claim was held as time barred. Aggrieved from the said order, the appellant is before me against the impugned order holding the refund claim as time barred.

3. Learned Counsel for the appellant submits that they have filed refund claim electronically and got the acknowledgements. She further submits that the appellant has filed refund claim electronically as per Circular No. 919/09/2010-CX dated 23.3.2010. If at all there is any requirement for filing of hard copy of the refund claim filed electronically, then why the refund application has been acknowledged by the department. She further submits that a similar case came up before this Tribunal in the case of NCS Pearson India Pvt. Ltd. wherein this Tribunal vide Final Order No. 58499-58500/13 dated 2.12.2013 held that if the refund claim filed electronically, then the date of filing the refund claim electronically shall be considered as date of filing of claim. Therefore, she prays that impugned order be set aside.

4. On the other hand, learned AR opposed the contention of the learned Counsel and submits that as per requirement of section 11B of Central Excise Act, 1944, the appellant is required to file the application with supportive documents for claim of refund. Admittedly, same has not been filed by the appellant, therefore, they have committed a breach of statutory provisions of the Act. He further submits as per Notification No. 5/2006 CE (NT), refund claim should contain supporting documents for the claim of refund claim. Admittedly, same has not been filed by the appellant. Therefore, the refund claim is barred by limitation. He also relied on the Miles India Ltd. [1987 (30) ELT 641 (SC)].

5. Heard both sides. Considered the submissions.

6. In this case, it is not in dispute that the appellant has been filed refund claim electronically in time. As this refund claim was filed electronically within time limit prescribed as per Section 11B of the Act and as held by this Tribunal in the case of NCS Pearson India Pvt. Ltd. (supra), I hold that date of filing of refund claim electronically should be considered as date of filing of refund claim. I find that the in the impugned order refund claim has not been considered on merits. Therefore, impugned order is set aside and matter remanded to the adjudicating authority to consider the refund claim on merits being filed within time. Appeal is allowed in these terms.

(Dictated and pronounced in the open court)

(Ashok Jindal)  
Member (Judicial)