

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

PRINCIPAL BENCH –COURT NO. 4

Service Tax Appeal No. 50779 of 2018

(Arising out of Order-in-Appeal No. 45/Central Tax/Appl-II/Delhi/2017 dated 30.11.2017 passed by the Commissioner, Central Tax, New Delhi)

**Commissioner, Central Tax, Delhi
South, New Delhi**

Appellant

3rd Floor, EIL Annexe Building,
Bhikaji Cama Place,
New Delhi-110066.

Versus

M/s NSC Projects (Private) Limited

Respondent

Plot No. L-87, Street No. 7C,
Mahipalpur Extension, Mahipalpur,
New Delhi-110037.

And

Service Tax Appeal No. 52632 of 2019

(Arising out of Order-in-Appeal No. 54/Central Tax/Appl-II/Delhi/2019 dated 19.08.2019 passed by the Principal Commissioner, GST South, New Delhi)

**Principal Commissioner, GST
South, New Delhi**

Appellant

3rd Floor, EIL Annexe Building,
Bhikaji Cama Place,
New Delhi-110066.

Versus

M/s NSC Projects Private Limited

Respondent

L-87, Street No. 7C,
Mahipalpur Extn.,
New Delhi-110037.

Appearance:

Present for the Appellant: Shri S.K. Meena, Authorized Representative

Present for the Respondent: Shri Hemant Bajaj, Advocate

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Hon'ble Mr. P.V. Subba Rao, Member (Technical)

**Date of Hearing : 12/03/2025
Date of Decision : 25/06/2025**

Final Order Nos. 50930-50931/2025**Dr. Rachna Gupta:**

This appeal is the outcome of the proceedings arising out of refund claim amounting to Rs. 5,92,77,253/- filed by M/s NSC Projects Pvt. Ltd., L-87, L Street No. 7C, Mahipalpur Extn. Delhi, Mahipalpur, New Delhi-110037 under Section 102 of Finance Act, 2016, on 10.02.2017.

2. The facts relevant for the purpose are as follows :

2.1 M/s NSC Projects Pvt. Ltd, L-87, Street No.7C Mahipalpur Extn. Delhi Mahipalpur, New Delhi-110037 (hereinafter referred to as 'the party') are registered with Service Tax Delhi-II, vide STC No. AADCN4958NSDO01 under the categories of Construction services other than residential complex including commercial/industrial buildings or civil structures, 'Construction of Residential Complex Service, 'Works Contract Services'. The 'Works Contract Service in respect of Construction of Government Buildings for which contracts were entered prior to 15th March, 2015 were exempted from payment of service tax in terms of Notification No, 06/2015-ST. Subsequently special provision of exemption in certain cases for construction of Government Building was promulgated vide Section 102 on 14.05.2016 with retrospective effect dated of 01st April 2015. But the appellant was paying service tax hence an application was filed on 10.02.2017 for refund of service tax amounting to Rs. 5,92,77,253/-.

2.2 The refund claim was initially rejected vide Refund Order No. 40/2016-17-R dated 02.05.2017 on the ground of limitation.

Being aggrieved the respondent has preferred an appeal before Commissioner (Appeals). The Commissioner (Appeals) vide Order-in-Appeal No.45/Central Tax/Apl-II/Delhi/2017 dated 30.11.2017, has held that refund is not rejectable on the ground of limitation and remit the issue back to the adjudicating authority to decide the admissibility of refund claim on remaining issues other than issue of limitation.

2.3 Pursuant to those directions the Order-in-Original No. 62/2018-K dated 28.01.2019 was passed sanctioning the refund claim holding as follows:

- (i) In terms of the statutory provision under Section 102(2) of the Finance Act, 1993, the appellant is eligible for refund of service tax deposited for the period from 01.04.2025 till 29.02.2016;
- (ii) The appellant is legally eligible for refund of service tax amounting to Rs. 5,54,12,001/- + Rs. 38,65,251/- = Rs. 5,92,77,253/- deposited for the period from 01.04.2015 till 29.02.2016 as well as from 01.03.2016 till 30.09.2016.
- (iii) Thus, the unjust enrichment provisions are not applicable to the present refund claims as the amount is directed to refund to the accounts of service receiver from which the payment of service tax was collected for the rendered services.
- (iv) The respondent had also filed affidavit to return the refund amount to the original person i.e. MES (GOI), service recipient directly or indirectly as deemed fit.

Department filed appeal against the said order-in-original dated 28.1.2019 which has been dismissed vide Order-in-Appeal No. 54/2019 dated 19.08.2019. Being aggrieved, the department is before this Tribunal

3. We have heard Shri S.K. Meena, learned Authorized Representative for appellant and Shri Hemant Bajaj, learned Advocate for the respondent.

4. Learned Authorized Representative for the department submitted that the present appeal filed by the department is based on the sole ground that the impugned refund claim is time barred as it was not filed the within six months from the enactment of Finance Act, 2016 as per Section 102(3) of the Finance Act, 1994. The section has been inserted in the Chapter VA of the Finance Act, 1994, by the Finance Act, 2016, with effect from 14.05.2016 retrospectively, which provides that no service tax shall be levied or collected on the specified construction service provided to the Government during the period 01.04.2015 to 29.02.2016 under the contract entered into before 01.03.2015.

5. Since the refund claim was filed on 10.2.2017, it was beyond six months from 14.05.2016. Hence it is liable to be set aside as being barred by time. The order is accordingly, prayed to be set aside and appeal be accordingly allowed.

6. While rebutting these submissions, learned counsel for respondent submitted the chronology of dates to clarify that the services were provided to the Government of India which were declared non-taxable retrospectively vide Section 102(3) as got

incorporated vide Finance Act, 2016. The amount in question no more remained, the amount of tax in nature. Hence Government is not allowed to retain the amount collection whereof is/becomes without authority of law. Principle of limitation will not apply to such amount. Refund of said amount has rightly been allowed. Learned counsel has also relied upon the decision in the case of **Corporation Bank Vs. Saraswati Abharansala**¹. With these submissions appeal filed by the department is prayed to be dismissed.

7. Having heard the rival contentions foremost we peruse the findings in order in original (as got merged with impugned order/order in appeal) with reference to aspect of limitation. Para 11 & 12 thereof read as follows:

"11 in consequence to the above, a new exemption provided is also provided in Service Tax Mega Exemption Notification (Entry no. 12A). From simple reading of Section 102 of Finance, 2016 and entry no. 12A of Notification No. 25/2012-ST dated 20.06.2012, it can be noted that exemption from service tax on construction, erection, commissioning, installation, completion fitting out, repair, maintenance, renovation of alteration of civil structure for government use for non-commercial purpose is restored subjection to the condition that such work is done under a contract entered into prior to the 1st March, 2015 and on which stamp duty, where applicable, had been paid prior to such date.

12. I find that the party has filed the refund claim of service tax on 10.02.2017 i.e. after the period of six months from the date on which the Finance Bill, 2016 received the assent of the President (i.e. 14-05-2016). Earlier, the refund claim was rejected by the then Assistant Commissioner vide Order-In-Original No. 40/2016-17-R dated 02.05.2017. Aggrieved by the said order, the party filed appeal in Commissioner Appeal. Commissioner Appeal vide Order In-Appeal No. 45/Central Tax/Appl-II/ Delhi/ 2017 dated 28.11.2017 allowed the refund on the issue of limitation holding that the refund claim filed by the appellant is within period of limitation as provided in the law. Hence, the claim of the party is admissible."

1 2010 (18) STR 513 (SC)

8. Perusal makes it abundantly clear that the refund claim was earlier rejected on grounds of limitation still the adjudicating authority has sanctioned the refund without quoting any reason which falsifies the applicability of six months period of limitation specifically prescribed in Section 102(3) of Finance Act, 2016.

9. We observe that the amount in question became refundable pursuant to Notification No. 6/2015 dated 14.5.2016 with reference to Section 102(3) of the Finance Act, 2016. The notification itself prescribes time limit of six months w.e.f. 14.05.2016. Admittedly, the refund claim is filed beyond said six months. Still has been sanctioned contrary to the mandate of said notification. The exemption notifications have to be read strictly as held by Hon'ble Supreme Court in the case of **Sunrays Engineers Pvt. Ltd. Vs. CCE²**.

10. We also find that **Zaigham Enterprises Vs. Commissioner of Cus., C. Ex. & ST, Noida³** has held that notification requiring filing of refund application within six months from date of Finance Bill, 2016 receiving assent of President. Court has no jurisdiction to enlarge limitation period provided under a notification which required to be strictly interpreted. Delay in filing refund application not condonable. Hon'ble Supreme Court in the case of **MDP Infra (India) Pvt. Ltd. Vs. Commissioner⁴** has held as follows:

"The Madhya Pradesh High Court in its impugned order had upheld the order of the Tribunal whereby the application filed on 22-3-2017 for refund of Service Tax paid on construction services provided to the Government Authority during period from 1-3-2015 to 30-9-2015 was held to be barred by

2 2015 (318) ELT 583 (SC)

3 2020 (35) GSTL 401 (Tri.-All.)

4 2021 (48) GSTL J49 (SC)

the limitation period of six months which was to be computed from 14-5-2016 as stipulated under Section 102 of Finance Act, 1994. The plea of the assessee that the Service Tax having been paid mistakenly during the aforesaid period as the same was not payable, the claim for refund thereof was not hit by bar of limitation period, was misconceived as the exemption granted vide Notification Nos. 12/2012-s.T. and 25/2012-S.T. was withdrawn w.e.f. 1-4-2015 and subsequent restoration thereof vide Notification No. 9/2016-S.T., dated 1-3-2016 was prospective in nature of which they were well aware but still made deposit with interest."

11. In the light of entire above discussion, irrespective the delay in filing the refund claim is a procedural lapse but there is no reasonable explanation for the occurrence of said delay. A litigant is required to be diligent. The Commissioner (Appeals) has failed to follow the judicial discipline. The order under challenge is accordingly, set aside and both the appeals filed by department is allowed.

(Pronounced in open Court on 25.06.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

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