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Limitation for claiming refund – An unending battle

You may win a war, but the battle continues!! This statement cannot be more true apropos indirect tax laws in India where a legal dispute does not get over with the taxpayer accomplishing a favorable decision on merits. In fact, it is a beginning for another unending battle in claiming refund of the amount pre-deposited or deposited earlier.

The myopic approach of Revenue in refund cases is apparent from the multifold disputes. Unwritten protocol is to outrightly return the refund claim by pointing out deficiencies which do not find place in law books. If the refund claim does get entertained, Revenue inevitably issues a notice seeking rejection thereof on the ground of limitation, merits, unjust enrichment *et al.*

Notwithstanding availability of relevant documents and evidence on record, and availability of ample jurisprudence to govern such settled issues, Revenue invariably turns a blind eye to the same. The probing continues till it becomes impossible for the taxpayer to satisfy Revenue's subjective, irrational and unfathomable requirements. Thus, Revenue is successful in rejecting the refund claim mostly on arbitrary, perverse and extraneous grounds, pushing the taxpayer into long drawn litigation. As for the taxpayer, his legal right to refund after winning on merits is scuttled in the conundrum of legal battle.

Amongst several parameters used by Revenue to reject the refund claim, this article focuses on certain aspects relating to limitation for filing refund claims arising out of a judgment, decree, order or direction ('Order') passed by an Appellate Authority, Appellate Tribunal or Court ('Court'). For claiming refund arising from an Order passed by any Court, Section 27 of the Customs Act, 1962, Section 54 of the Central Goods and Services Tax Act, 2017 (identical provision under the State GST Acts) and Section 11B of the Central Excise Act, 1944 are the relevant provisions which provide for the refund claim to be filed within one / two year from the date of the Order.

Consider a taxpayer having deposited tax pursuant to assessment, investigation, show cause notice or adjudication order confirming demand or pre-deposit pending appeal. Assume that the appeal filed by the taxpayer is allowed by Commissioner (Appeals) and the demand of tax is set aside. Revenue unsuccessfully challenges the Order-in-Appeal of Commissioner (Appeals) before the Appellate Tribunal. Revenue accepts the Final Order of Tribunal, which attains finality on merits.

In this scenario, first issue that arises is whether limitation of one / two years will be computed from date on which Order-in-Appeal / Final Order is passed or received by the taxpayer? The second issue that arises is whether taxpayer is required to file refund claim for the amount deposited / pre-deposited pursuant to Order-in-Appeal passed by Commissioner (Appeals) or Final Order passed by Appellate Tribunal?

Statutory provisions governing refund

As stated, law provides that refund claim should be filed within one / two years from the relevant date. Relevant date in case where the tax becomes refundable **as a consequence of** an Order of any Court, is the **date of** the Order. Law further provides for the modes of service of an Order and exclusion of period taken in obtaining copy of an Order. In some cases, law provides for limitation to be computed from the date of service or communication of the Order.

In light of the above provisions, on the first issue, it is fairly settled that limitation for refund claim needs to be computed from the date of receipt of favourable Order by the taxpayer.

On the second issue, it can be seen in the scenario discussed above that Order-in-Appeal was in favour of the taxpayer. Therefore, taxpayer is entitled to file a refund claim on the strength of Order-in-Appeal, being a favorable Order. Law does not bar filing of refund claim on the basis of favourable Order even if the same is challenged by the Revenue by filing appeal before Appellate Tribunal. Therefore, in absence of any stay by the Appellate Tribunal, taxpayer was eligible to file refund claim on the basis of Order-in-Appeal.

The above view is fortified from the decisions passed in the case of ***Voltas Limited v. UOI [1999 (112) ELT 34 (Del.)], Gayathri Timber Private Limited v. Department of Revenue, New Delhi [2018 (360) ELT 84 (AP)], Ispat Traders v. CC [2011 (263) ELT 305 (Tri.-Ahmd.)] and Premier Machinery MGF v. CCE [2007 (219) ELT 632 (Tri-Ahmd)],*** wherein refund claims were rejected by the Revenue on the ground that the decision against which refund claims were filed, were pending before Appellate fora or pending for denovo adjudication under remand orders. Courts took the view that refund claim can be filed against a favorable decision absent stay of the favourable decision by the Appellate Court. As refund provisions do not bar filing of refund claims based on favouable Orders in cases where such Orders are further challenged by Revenue in appeal before Appellate fora.

But what if the taxpayer does not file refund claim on the basis of first favourable Order and files refund claim after the matter is finally settled on merits in favour of the taxpayer? For instance, in the scenario above discussed, what if the taxpayer files refund claim after Final Order of Appellate Tribunal dismissing Revenue's appeal, which Final Order was accepted by the Revenue? And what if the refund claim so filed by the taxpayer is within limitation from the Final Order but beyond limitation if computed from Order-in-Appeal? In such a

scenario, can Revenue reject the refund claim by treating it as barred by limitation by computing the period from Order-in-Appeal being the first Order in favour of taxpayer instead of computing the limitation from the Final Order?

The answer to above question is in the negative. In the case of ***Petronet LNG Limited v. Assistant Commissioner of Customs [2020-VIL-10-Guj-CU],*** Order-in-Appeal on merits in favour of the taxpayer was passed in December 2013, which was challenged by Revenue before Tribunal. Final Order of Appellate Tribunal dated September 8, 2014 was received by taxpayer on September 29, 2014 rejecting Revenue appeal. Taxpayer filed refund claim on September 9, 2015 under Section 27 of the Customs Act, 1962 within limitation period of one year from the receipt of Final Order, which was rejected by Revenue as barred by limitation computed from the date of passing of Order-in-Appeal. Refund rejection order was maintained till Appellate Tribunal.

When the issue came up before Gujarat High Court, placing reliance on the case of ***Dena Snuff (P) Ltd. v. CCE [2003 (157) ELT 500 SC] and Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536],*** the Court held that the issue on merits did not attain finality as the Order-in-Appeal was challenged by way of an appeal before the Appellate Tribunal by Revenue itself. Only when the matter on merits attained finality upon passing of Final Order by the Appellate Tribunal and received by the taxpayer, the refund claim could be filed. The Court held the refund claim to be within limitation and directed the Revenue to refund the amount.

Conclusion

In our view, though the refund claim can be filed within limitation period from the date of receipt of Order attaining finality on merits, it is recommended to file the refund claim within limitation basis of first favourable decision on merits in favour of the taxpayer, unless stayed by Appellate Court. This would avoid unwarranted and protracted litigation with the Revenue and shorten the battle for the taxpayer.

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