

## M/s Spray Engineering Devices Ltd. @Hash CCE And ST- Shimla

**Court:** Customs, Excise And Service Tax Appellate Tribunal Chandigarh

**Date of Decision:** Jan. 11, 2021

**Acts Referred:** Finance Act, 1994 " Section 73(3)

**Hon'ble Judges:** Ashok Jindal, J

**Bench:** Single Bench

**Advocate:** Naveen Bindal, Bhasha Ram

**Final Decision:** Allowed

### Judgement

1. The appellant is in appeal against the impugned order wherein the refund claim has been rejected by the authorities below.

2. The facts of the case are that initially the proceedings were initiated against the appellant for non payment of service tax under reverse charge

mechanism for commission paid to the foreign based commission agent. During the course of audit, the objection was raised, the appellant paid entire

amount of service tax alongwith interest and prayed that the proceedings against the appellant is to be closed but the department issued show cause

notice by invoking the extended period of limitation. The matter was adjudicated, the demands of service tax alongwith interest paid by the appellant

were appropriated and the penalties were also imposed. Against the said order, the appellant filed appeal before this Tribunal and prayed that in this

case the extended period of limitation is not invocable as whatever service tax is to be paid by them, they are entitled to take credit of the same.

Therefore, it is a case of revenue neutrality. Therefore, the demand against the appellant is not sustainable. On the basis of this, this Tribunal came to

the conclusion that the extended period of limitation is not invocable. Accordingly, the appeal was allowed with consequential relief. In consequent to

the order of this Tribunal, the appellant filed refund claim of service tax paid for the extended period of limitation and interest thereon. Initially, the

adjudicating authority rejected the refund claim holding that the appellant has not contested the service tax liability, therefore, the refund claim of

service tax paid is not admissible. On appeal before the Ld. Commissioner (Appeals), it was concluded that the appellant has already paid service tax

alongwith interest in terms of Section 73(3) of the Finance Act, 1994, the proceedings stand concluded, therefore, the refund of the amount claimed by

the appellant is not admissible. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that as this Tribunal has already settled that the extended period of limitation is not invokable, in that

circumstances, the appellant is entitled to claim refund of the service tax paid for the extended period of limitation alongwith interest as the order of

this Tribunal dated 29.05.2019 has become final. Hence, the impugned order is to be set-aside.

4. On the other hand, the Ld. AR submits that in the earlier round of litigation, the appellant has not raised the issue of extended period of limitation

before the authorities below and for the first time, the issue was raised before this Tribunal. He further submits that the appellant has admitted the

service tax liability paid thereof alongwith interest and also requested for conclusion of proceedings. In that circumstances, as held by the Hon'ble

Apex Court in the case of CCE Madras vs. Systems & Components Pvt. Ltd. 2004 (165) ELT 136 (S.C .w) whatever admitted by the assessee, the

same is not required to be proved and the same is final. He also drew my attention in the case of Subhash Chand Surana vs. CCE, Indore 2019 (27)

GSTL 518 (Tri.-Del.) to say that when assessee has admit their tax liability, in that circumstances, the same cannot be challenged later on.

5. Heard the parties and considered the submissions.

6. The fact which is admitted by both the sides that in the earlier round of litigation, this Tribunal passed the order and dropping the demand of service

tax for extended period of limitation alongwith interest and the said order is final. In that circumstances, the refund claim filed consequent that order is

admissible in the eyes of law. As the said order has become final, therefore, the decisions relied by the Ld. AR in the case of Systems & Components

Pvt. Ltd. (supra) and Subhash Chand Surana (supra) are not applicable to the facts of the case. Further, the observation made by both the authorities

below in the impugned order are contrary to the law as they have accepted the order of this Tribunal dated 29.05.2019.

7. In view of the above discussion, I set-aside the impugned order and allow the refund claim alongwith interest to be paid by the department within

one month from the date of receipt of this order.

(Dictated & pronounced in the Court)