

GIB/TN/M.G.M.INTERNATIONAL/31.03.2021/HC-208

High Court Category : REFUND OF SERVICE TAX

State : MADRAS

Order No.: GIB/TN/M.G.M.INTERNATIONAL/31.03.2021/HC-208

Name of Entry :

M/S.M.G.M.INTERNATIONAL EXPORTS LTD

Date : 31-03-2021

Breif Issue :

FACTS AND ISSUE OF THE CASE:

The petitioner was a recipient of service from M/s.IMC Limited. The said company had charged service tax on the petitioner for utilizing the storage facility. This Writ Petition has been filed for a writ of mandamus to direct the respondent to refund the tax amount of Rs.1,10,999/- with minimum interest borne by the petitioner under mistake of law.

The petitioner has filed this Writ Petition for a writ of mandamus to direct the respondent for refund of the amount borne by the petitioner as service tax as a receipt of service of M/s.IMC Limited. The learned counsel for the petitioner further submitted that the petitioner is not aware as to the status of the refund claim filed by M/s.IMC Limited. She however submits that the petitioner has come to know the writ petition was pending before this Court at the behest of M/s IMC Limited.

Decision of Advance Ruling Authority :

DECISION:

The Hon'ble Supreme Court in UOI Vs. Mafatlal India Ltd., while dealing with refund of tax, classified refunds into two categories. The first one on account of unconstitutional levy and second one on account of illegal levy - Explaining the second category of refund, the Court also held that where a duty of tax has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law. So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained.

The theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to

have been, filed only under and in accordance with Rule 11/Section 11B and under no other provision and in no other forum. An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee.

The refund of tax if any borne by the petitioner had to be made only within a period of limitation prescribed under Section 11B of the Central Excise Act, 1944 notwithstanding the fact that the petitioner became aware of the wrong payment of tax only after the Central Board of Excise and Customs issued clarification bearing reference Order No. 2/1/2002-ST dated 24.4.2002. Thus, the period prescribed under section 11B of the Central Excise Act, 1944 had expired long before the above were clarification was issued.

Petition dismissed