

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE MEMBER BENCH

COURT NO.1

Appeal No.ST/1033-1036/2010-SM

[Arising out of the OIA No.188-191/MA/RTK/2010 dt.16.4.2010 passed by the CCE (Appeals), Delhi-III, Gurgaon)

Appeal No.ST/1099/2010-SM

[Arising out of the OIA No.223/MA/RTK/2010 dt.5.5.2010 passed by the CCE (Appeals), Delhi-III, Gurgaon)

Appeal No.ST/1323-1336/2010-SM

[Arising out of the OIA No.269-282/BK//RTK/2010 dt.12.7.2010 passed by the CCE (Appeals), Delhi-III, Gurgaon)

Appeal No.ST/117-124/2011-SM

[Arising out of the OIA No.397-421/BK//RTK/2010 dt.11.10..2010 passed by the CCE (Appeals), Delhi-III, Gurgaon)

Appeal No.ST/280-287/2011-SM

[Arising out of the OIA No.397-421/BK/RTK/2010 dt.11.10.2010 passed by the CCE (Appeals), Delhi-III, Gurgaon)

Appeal No.ST/306-309 & 321-322/2011-SM

[Arising out of the OIA No.397-421/BK//RTK/2010 dt.11.10.2010 passed by the CCE (Appeals), Delhi-III, Gurgaon)

Appeal No.ST/443-445/2011-SM

[Arising out of the OIA No.39-41/BK/RTK/2010 dt.25.1.2011 passed by the CCE (Appeals), Delhi-III, Gurgaon)

Date of Hearing: 08.03.2017

Date of Decision: 21.03.2017

- 1.Mittal International
- 2.Mittal Overseas
- 3.International Braid Maker
- 4.International Braid Maker
- 5.Shri Krishna Home Furnishings
- 6.Pan Overseas
- 7.Venus Exports
- 8.Adarsh Fabs
- 9.Paliwal Overseas Pvt.Ltd.
- 10.Vikram Exports
- 11.Spartan Trends Inc.
- 12.Mittal International
- 13.Spartan Trends Inc.
- 14.Akash International
- 15.Gupta International

Appellant

Ashwani Mehta

16. Gupta International
17. Paliwal Overseas Pvt.Ltd.
18. Venus Exports
19. Vikram Exports
20. Venus Exports
21. Linen Rugs
22. ShriKrishna Home Furnishings
23. Spartan Trends Inc.
24. Ess Kay Enterprises
25. Paliwal Overseas Pvt.Ltd.
26. Ess Kay Enterprises
27. Mittal Overseas
28. PP International
29. RP International
30. Spring International
31. Paliwal Home Furnishings
32. SPJ Textile Pvt.Ltd.
33. Pachranga International (P) Ltd.
34. Ravi Exports
35. EssEss Exports
36. Raj Overseas
37. Ravi Overseas
38. Oriental Rugs Co.
39. Oriental Rugs Co.
40. Rohan Overseas
41. Jyoti Spinners
42. Jay Gee Overseas Pvt.Ltd.
43. Gupta Textiles
44. Textile World

Vs.

CCE, Rohtak/Gurgaon

Respondent

Appearance

Shri Dinesh Verma, Advocate- for the appellants
 Shri Harvinder Singh, AR for the respondent

CQRAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

FINAL ORDER NO - 60416 - 6045 11/04/2017 *

Per **ASHOK JINDAL:**

As the issue is common in all the appeals, therefore, all are
 disposed of by this common order.



2. The facts of the case are that the refund claims were denied to the appellants by the authorities below. The appellants filed refund claims under Notification No.41/07-ST dt.6.10.2007, wherein the exporter is entitled to claim refund on export of the goods of the specified services received used in relation to the export of the goods and the said refund claim as per procedure prescribed under the said notification.

3. I find that the refund claims were denied on the various reasons which are dealt with separately:

(a) Refund claim was denied on the ground that the said goods have been exported and drawback is allowed on the export of goods.

4. The case of the Revenue is that as the appellants have claimed drawback on export of the goods, therefore, they are not entitled for refund claim on the services used in export of goods.

5. I find that vide Order-in-Appeal No.01 dated 21.4.2009 passed by the Director of Drawback, Ministry of Finance, Department of Revenue has observed as under:

"I find that all the nineteen services mentioned by the applicant in his application are covered by notification no.41/2007-ST dated 6.10.2007 as amended last by notification No.24/2008-ST dated 10.5.2008. The services covered by the aforementioned notification are not in the nature of input services but are linked to exports. Drawback, therefore, could not have been given on these services.

6. As observed hereinabove, the services which were used by the appellants for export of the goods does not form part of the drawback claim, therefore, the appellants are entitled for refund of

As observed hereinabove

the service tax paid on the said specified services. The refund claims cannot be denied on this account.

(b) Refund claim rejected on fumigation service as the appellants have not arranged the copy of the written agreement for availing those services.

7. I find that in some of the cases, the refund claims were filed on account of fumigation services availed by the appellants and the copy of the written agreement have not been provided to the adjudicating authority. Therefore, the appellants are required to provide a copy of the agreement for such specified services. To examine the issue, the matter is remanded back to the adjudicating authority to consider written agreement availed by the appellants thereafter allow the refund claims to the appellants.

(c) With regard to the business auxiliary services, the refund claim was rejected on the ground that the exporter has not provided agreement or contract or any other documents requiring the commission agent located outside India has provided the service to the exporter in relation to the sale of goods.

8. I find that the authorities below have not understood the true spirit of the notification. In fact, the notification specifies that any other documents which means if the appellant provides the copy of the invoice, for the commission paid, the same will serve the condition of the notification. Therefore, if the invoice of the commission agent is on record, in that circumstance, the appellants have complied with condition of the notification and the appellant is entitled for availing the refund.

Ashwini

(d) With regard to the services of CHA, the refund has been denied on the ground that the same appears to have been outsourced by the service provider as person who has issued the invoice is not the one who has provided the service.

9. I find that in the case Jain GraniMarmo (P) Ltd.-2016 (45) STR 430 (Tri.-Del.), the similar issue came up before this Tribunal and this Tribunal has observed as under:

6. The Central Government in exercise of the powers conferred under sub-section (1) of section 93 of the Finance Act, 1994 have issued the Notification No.41/2007-ST dated 6.10.2007, providing for refund of service tax paid on the taxable services used for exportation of the goods. With regard to the port services, the C.B.E. & C. vide Circular dated 26.2.2010 has inter alia clarified that irrespective of the clarification of service provided by the service provider, if the same relates to the services provided in the port, the same shall be considered for benefit of refund in terms of the Notification dated 6.10.2007. We find from the available records that the services received by the appellant have in fact been provided within the port, and thus, in our view, such services shall qualify for the benefit of refund contained in the Notification dated 6.10.2007, in this context, we find support from the judgement cited by the Id.Advocate that different services provided within the port shall merit consideration for refund in terms of the notification referred supra. With regard to the CHA service, we find that the service providers are duly recognised by the Customs authorities for providing such service which is evident from certificates issued in favour of service provider by the Customs Department. Hence, service provided by the CHA should also merit consideration for refund in terms of Notification dated 6.10.2007....."

10. I find that the service provider has mentioned the shipping bill number in the invoice and the service provider has been recognized as service provider and has paid service tax on the service, in that circumstance, the appellants are entitled for refund of services tax paid on CHA service.

(e) Denial of Refund claims on GTA service:

11. I find that the refund has been denied on GTA services on the ground that the appellants were required to discharge service tax liability and to produce the copy of the GR challan.

Ashwini

12. I find that the appellants have produced the copy of the invoices of the transporter who has transported the goods and paid service tax thereon. The proof of payment of service tax by the appellant does not arise as invoices have been issued by the transporter which indicate the payment of service tax, therefore, the invoice and lorry receipt is sufficient for claim of refund.

(f) Denial of Refund for the services namely, terminal handling charges, documentation charges, bill of lading charges:

13. Further, I find that the refund claim was denied on the ground that the services received by the appellant, namely, terminal handling charges, documentation charges, bill of lading charges are the services in the nature of logistics services, therefore, they are covered under the business support service and are not entitled for availment of the benefit of Notification No.41/2007-ST as business support services are not eligible for refund claim.

14. I find that the said issue came up before this Tribunal in the case of Sopariwalal Exports-2015 (39) STR 884 (Tri.-Mum.) wherein this Tribunal has observed as under:

6. Having considered the rival contentions, I find that the refund was denied to the Appellant mainly on various procedural grounds as stated hereinabove. Be that as it may, as regards refund for THC on the grounds such as invoice being raised by shipping line instead of port operator and the service provider being registered under a different service category or no proof regarding authorization from port authorities, I find that such issues stand concluded in favour of the appellant vide Board Circular dt.12.3.09 as well as various case laws as referred to and relied upon by the Appellant, especially in the case of Riddhi Siddhi GlucoBiols Ltd. and Fibre Bond Industries (supra). As such, denial of refund claim on THC services does not appear to be correct and is allowed.

15. As it is not disputed that the service tax paid by the service provider on the services availed by the appellants are at port,

Asad Syed

refund claim on THC services does not appear to be correct and is allowed.

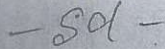
15. As it is not disputed that the service tax paid by the service provider on the services availed by the appellants are at port, therefore, all the services are covered under port services. Therefore, the appellants are entitled for refund claim.

16. In these circumstances, the legal issue raised by the authorities below for rejection of the refund claim has been answered as above. The matters are remanded back to the adjudicating authority to consider refund claim filed by the appellants in view of the above observations. If the documents are filed by the appellants are in respect of certain services as discussed, the appellants are entitled for refund claim. On filing of those documents by the appellants (if required), adjudicating authority shall consider the same and thereafter the adjudicating authority shall sanction the refund claim to the appellants.

17. I further hold that in the case where the documents are already on record the adjudicating authority shall sanction refund claim after verification of the documents at the earliest.


18. With these terms, the appeals are disposed of by way of remand.

(Pronounced in the open court on 21.03.2017.)


(Ashok Jindal)
Member (Judicial)

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अपीलीय अधिकरण / (C.E.S.T.A.T.)
एस.सी.ओ. 147-148, सेक्टर-17-C, चण्डीगढ़-160017
SCO 147-148, Sector-17-C, Chandigarh-160017