CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNALBANGALORE

REGIONAL BENCH

SERVICE TAX APPEAL NO: 00039 OF 2010

[Arising out of Order-in-Appeal No: 442/2009 dated 27th October 2009 passed by the Commissioner of Central Excise (Appeals), Mangalore.]

Doddanavar Brothers (EOU Division)
Doddanavar Compound, Near Fort, PB Road
Belgaum – 590016 ...***Appellant***

versus

Commissioner of Central Excise
No.71 Club Road, Belgaum – 590 001 ***...Respondent***

APPEARANCE:

Shri Ashok Deshpande, Advocate for the appellant

Shri K A Jathin, Authorised Representative for the respondent

CORAM:

HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MRC J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/ 20330/2023

DATE OF HEARING: 11/01/2023
DATE OF DECISION: 13/04/2023

PER: C J MATHEW

M/s Doddanavar Brothers (EOU Division), prompted by the partial rejection of claim for refund of tax charged under Finance

Act, 1994 on services procured by them in connection with export of goods, is in appeal with the plea that their application, filed within the time stipulated and limited only to eligible 'input services' in accordance with notification no. 41/2007-ST dated 6th October 2007, should not have been rejected. The appellant is an exporter of 'iron ore' and had, in connection thereof, procured several services, including that of 'technical testing and analysis' on payment of tax which could be claimed as refund by exporters in a procedure corresponding, by and large, to rule 5 of CENVAT Credit Rules, 2004. The appellant had claimed refund of ₹ 96,58,828 and the original authority, having accepted entitlement to ₹ 20,97,907, had declined sanction of ₹ 75,61,731. Resort to appellate remedy before Commissioner of Central Excise (Appeals), Mangalore yielded them no relief in the order[1] now impugned before the Tribunal.

2. According to Learned Counsel for the appellant, there are two components to the rejected portion of the claim of which ₹ 10,560, pertaining to 'technical testing and analysis' at their site by M/s Met Chem Laboratories, was found ineligible as documentary evidence in support thereof was not available and the said supplier not listed in the contract between appellant and the buyer overseas, and ₹ 75,51,171 for not having been filed within 60 days from the end of the quarter in which exports had been effected.

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[1] [order-in-appeal no. 442/2009 dated 27th October 2009]

3. This scheme for reimbursement of tax, included in the invoice raised by supplier of service, to recipient who has exported the related goods has been designed for entities such as the appellant operating under the 'export-oriented unit (EOU)' scheme of the Foreign Trade Policy (FTP); the goods, domestic or foreign, required for production of export articles are available to them without payment of duties of central excise or of customs. As such units are, usually, without any domestic offtake that could be used for adjustment of credit of tax paid on 'input service', the reimbursement offered thereby may have advantages over 'monetisation' of accumulated credit under rule 5 of CENVAT Credit Rules, 2004.

4. It is also of no less import that though the essential principle of not loading taxes onto the value to be charged from customers outside the taxable territory is enabled through several mechanisms, attendant procedures, intended to ensure that the goods/services relating to the reimbursement/monetisation have been deployed for generating exports, are often resorted to for rejection of such claims. The judicial determination of disputes emanating from a 'much too rigorous' administrative scrutiny has been to permit some latitude in compliance so that the spirit of the intent prevails over the letter of the prescriptions.

5. Insofar as the 'technical testing and analysis' service provided by M/s Met Chem Laboratories is concerned, Learned

Counsel for the appellant submitted that the contract with the overseas customer enjoined testing at load port and that the impugned service at their site was intended to ensure that there would be no scope for dispute after shipment of export consignments from the premises of the appellant. He further submitted that the notification, against which the reimbursement was claimed, has not restricted the procurement of such service to a specific, or even single, location and that a contract, specifying such ascertainment, suffices for undertaking of tests more than once. He also contended that the allegation of some part of the claim being barred by limitation is incorrect inasmuch as the prescribed deadline stood altered to six months from the sixty days stipulated till then and that the finding of the first appellate authority that the amending notification[2] had no retrospective effect is inconsistent with the decision of the Hon'ble Supreme Court in ***Suchitra Components Ltd vs. Commissioner of Central Excise, Guntur***[3] reiterating an earlier ruling in ***Commissioner of Central Excise, Bangalore vs. Mysore Electricals Industries Ltd***[4] for all beneficial circulars to be intended for retrospective implementation. According to him, it is clear from circular[5] of the Central Board of Excise & Customs (CBEC), elaborating upon the scope of the amendment in the scheme of reimbursement, that claims for exports made in March 2008 - June 2008 could be claimed up to

[2][notification no. 32/2008-ST dated 18th November 2008]
[3][2008 (11) STR 430 (SC)]
[4][2006 (204) ELT 517 (SC)]
[5][circular no. 112/6/2009-ST dated 12th March 2009]

31st December 2008 and that the superseding notification[6], while revising the deadline to one year from the date of export, was also not limited only to exports effected thereafter. Learned Counsel for appellant also placed before us the decision of the Tribunal in ***Gran Overseas Ltd vs. Commissioner of Central Excise, Delhi-I***[7], in ***Commissioner of Central Excise, Pune vs. Chandrashekhar Exports***[8], in ***Adani Enterprises Ltd vs. Commissioner of Central Excise & Service Tax, Ahmedabad***[9] and in ***KN Resources Pvt Ltd vs. Commissioner of Central Excise, Raipur***[10] besides several others on similar lines.

6. Learned Counsel also drew our attention to the decision of the Hon'ble Supreme Court in ***Rochiram & Sons vs. Union of India***[11] holding that

> *'9. It is a cardinal principle of law, which has been settled by a Bench of seven Judges of this Court in the case of Mafatlal Industries Ltd. v. Union of India, 1997 (89) ELT 247 (S.C.), that refund of a claim made by the assessee can be denied on the principle of undue enrichment if the assessee has passed of the burden to the consumers. This principle would be equally applicable to the revenue as well as it cannot have the double advantage. Applying the same principle, revenue cannot be allowed to enrich itself by denying the duty drawback as well as by refusing adjustment of duty paid by way of debit in DEPB.*

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[6][notification no. 17/2009-ST dated 7th July 2009]
[7][2017 (52) STR 286 (Tri-Del)]
[8][2015-TIOL-2448-CESTAT-MUM]
[9][2020 (40) GSTL 468 (Tri-Ahmd)]
[10][2017 (47) STR 303 (Tri-Del)]
[11][2008 (226) ELT 20 (SC)]

> *Admittedly, in this case the parts imported by the assessee were re-exported. Once the imported parts which were found to be defective/unusable are re-exported, assessee became entitled to either refund of the duty, if paid in cash or adjustment of the duty if paid by way of debit in DEPB book either by reversing the entry or by issuing a fresh DEPB book, as provided in the public notice dated 30-6-2000. Public Notice dated 30-6-2000 is procedural in nature and it does not make any substantive change in the policy. Procedural laws cannot be equated with substantive laws. Substantive laws are generally not retrospective unless specified to the contrary by the Legislature. Insofar as procedural laws are concerned, they may be retrospective unless shown to the contrary. Otherwise also, once the imported parts which were found to be defective are re-exported, assessee under the policy itself without reference to the public notice would be entitled for adjustment of the duty paid by way of adjustment in DEPB. The revenue cannot be permitted to take the stand that it would not refund the duty as it was not paid in cash or deny the adjustment in DEPB book after the goods have been re-exported.*

which, according to him, espoused that very principle.

7. Learned Authorised Representative placed reliance on the decision of the Tribunal in ***Commissioner of Central Excise, Indore vs. KS Oils Ltd***[12] which had held that, except when provided for in the relevant notification, there was no scope for extension of time limit. According to him, the Tribunal, in ***Louis Dreyfus Commodities India Pvt Ltd vs. Commissioner***

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[12] [2017 (52) STR 261 (Tri-Del)]

(Appeals), Service Tax, Delhi*[13]*, had held that refund sanctioning authorities were not competent to even consider the plea for overriding any deadline prescribed in the empowering notification. We may, at this point, take note that the said decision, having been rendered in the factual matrix of claim having been filed beyond the revised deadline prescribed for exports effected prior to the amending notification, does not sit well with the facts in the present dispute.

8. The present dispute relates to refund claimed by application dated 8th August 2008 in relation to exports effected before April 2008 that should, under the prevailing procedure, have been filed by end of May 2008. By amendment of November 2008, claims were permitted to be filed within six months from the last date of the quarter in which the exports took place and, considering the difficulties expressed by the trade, Central Board of Excise & Customs (CBEC) clarified in March 2009 that the new deadlines would be applicable to exports of the last quarter of the financial year preceding the amendment also, subject to such applications having been filed.

9. That the reimbursement scheme, which at the time of effecting the exports requiring claims to be filed within two months from closure of the relevant quarter and, since then, extended to six months from closure of the relevant quarter, enabled the appellant, thereby, to seek relief thereon till 30th

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[13] [2019 (29) GSTL 472 (Tri-Del)]

September 2008 in relation to exports effected till 31st March 2008 is a reasonable deduction. More so, as it is apparent from the subsequent clarification of Central Board of Excise& Customs (CBEC) that the amendment effected in November 2008 did not specify that the lengthened window for making claims was intended only for future consignments. The decisions of the Tribunal in ***KS Oils Ltd*** and in ***Louis Dreyfus Commodities India Pvt Ltd*** have confirmed that it was only claims lodged, in relation to exports made during the same period, more than six months after the close of the quarter that did not merit consideration; impliedly, any claim filed within the stipulation, as amended, may not be denied. The impugned order has also not adduced any reason for not extending the benefit that the clarification circular of the Central Board of Excise & Customs (CBEC) considered appropriate for refunds pertaining to the period of dispute.

10. Insofar as non-compliance with serial no. 3 in the Schedule to the notification prescribing the manner of reimbursement is concerned, the sole condition is that a written agreement between the buyer and the seller should stipulate ‘testing and analysis' of the export goods. As pointed out by Learned Counsel, there is no restriction on the number of, or location at which, tests are to be carried out. The precaution of carrying out such tests before shipment, to minimise the risk of non-acceptance of cargo before loading on outbound conveyance, is

not beyond the scope of the eligible service in the impugned notification; nor has it been attributed to any activity other than in relation to the export goods. The denial of refund on such a rigorous consideration is not in accordance with the spirit of reimbursement designed as a policy instrument.

11. In view of the above, we find no reason to sustain the impugned order. Accordingly, we set aside the rejection of refund claim to allow the appeal.

(Pronounced in open court on 13th April 2023)

(JUSTICE DILIP GUPTA)
President

(C J MATHEW)
Member (Technical)

**/as*