Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Service Tax Appeal No. 244 of 2011

[Arising out of Order-in-Appeal No OIA-COMMR-A-37-VDR-I-2011 dated 31.01.2011 passed by Commissioner (Appeal) of Central Excise & ST, Vadodara]

Sopariwala Exports Pvt. Limited .... **Appellant**
Opp. To Railway Station, At-
Borasad, Anand, Gujarat

VERSUS

Commissioner of Central Excise & ST, Vadodara .... **Respondent**
1st Floor, Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

<u>APPEARANCE</u> :

Shri Saurabh Dixit, Advocate for the Appellant
Shri L. Patra, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11852 / 2019

DATE OF HEARING: 03.09.2019
DATE OF DECISION : **<u>30.09.2019</u>**

<u>RAJU</u> :

This appeal has been filed by M/s. Sopariwala Exports Pvt. Limited against denial of refund under Notification No. 41/2007-ST dated 06.10.2007.

2. Ld. Counsel for the appellant pointed out that they had availed services for the purpose of export and filed refund claim on 12.05.2009 in respect of commission paid to overseas agents. On 25.09.2009, the appellant filed documents along with copy of challans dated 11.08.2009 for an amount of Rs. 18,34,646/-. The notice was issued to the appellant proposing rejection of the refund claim of Rs. 18,34,646/- for the service tax

amount paid in respect of commission paid to commission agent located outside India, for the quarter October 2008 to December 2008, when the goods were exported. The said claim was rejected on the ground that the claim pertaining to the period October 2008 to December 2008 was filed on 28.05.2009 i.e. within the period of six months as prescribed in notification however, without the duty paying challans which was dated 11.08.2009. It was held that since the duty paid challan was submitted on 11.08.2009, therefore the complete refund claim was not filed within a period of six months and therefore, the same was held as barred by limitation. Ld. Counsel pointed out that in identical circumstances, their refund claim has been allowed by this Tribunal vide order reported at *2019 (22) GSTL 274 (Tri. Ahmd.)*. He argued that since the quantification of commission payable to foreign service provider took time and therefore, the service tax was paid on reverse charge basis and after quantification of the same.

3. Ld. AR relies on the impugned order.

4. We find that in identical circumstances, in the appellant's own case, the issue has been decided by the Tribunal reported in 2019 (22) GSTL 274. In the said order, the Tribunal ordered as follow:-

> "**5.** Heard both sides and perused the records. We find that there is no dispute of the fact that the goods have been exported by the appellant during the quarter July, 2008 to Sept., 2008 by utilizing the services on which service tax was payable for the exported goods. The only issue is that even though the refund claim was filed within 6 months from the stipulated date i.e. from the date of the exported goods, but, it was disallowed on the ground that the payment of service tax on reverse charge mechanism was effected on 07.05.2009. We find force in the contention of the Ld. Advocate for the appellant inasmuch as that Notification No. 41/2007-S.T., dated 6-10-2007 exempts the taxable services received by the exporter and used for export of the goods from the whole of the service tax leviable thereon under Section 66 and Section 66A of the Finance Act, 1994. In the present case, there is no dispute of the fact that the goods have been exported and sales commission service on which service tax paid had been used in export of the goods. Also, the refund claims have been filed for the quarter July, 2008 to Sept., 2008 within 6 months i.e. on 16.03.2009. The only objection of the

department is that payment was made to the overseas sales commission agent on 9-5-2009, therefore, the refund is barred by limitation. The relevant clause reads as follows :-

Rule 2 *(a) ……*

(b) ……

(c) …….

(d) ……

(e) the claim for refund shall be filed on a quarterly basis, within six months from the end of the relevant quarter during which the said goods have been exported.

We find that the department has not rejected the refund claim and returned the same to the appellant for deficit of document, namely, proof of payment of service tax, after it was filed on 16-3-2016. In these circumstances, in our opinion, the refund claim cannot be rejected on the ground of time bar, since, they have complied with the condition of filing the refund claim within 6 months from the date of export of goods for the relevant quarter i.e. from July, 2008 to Sept., 2008. In the result, the impugned order is set aside and the appeal is allowed.**"**

Following the said decision, the appeal is allowed with consequential relief.

(Order pronounced in the open court **30.09.2019***)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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