**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT AHMEDABAD**

**REGIONAL BENCH - COURT NO. 03**

**Service Tax Appeal No. 378 of 2011-DB**

[Arising out of OIA-RKA/92/SRT-I/2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-I]

**M/s J K Paper Ltd** **....Appellant**
Fort-Songadh, Songadh,
Tapi,Gujarat.

VERSUS

**C.C.E. & S.T.-Surat-i** **...Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,Surat, Gujarat - 395001

**APPEARANCE:**
Shri. S. Vatvani, CA for the Appellant
Shri. T.K. Sikdar, Authorized Representative for the Respondent

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

**FINAL ORDER NO. A/11480/2019**
DATE OF HEARING:15.04.2019
DATE OF DECISION: 06.08.2019

**PER: RAMESH NAIR**

This case involved the issue of refund of Rs. 1,60,786/- claimed by the appellant under Notification no. 41/2007-ST dated 6/10/2007 in respect of input services namely 'Business Auxiliary Services', 'Clearing & Forwarding Agent' services and GTA service used for export of goods. The Ld. Commissioner (Appeals) rejected their appeal on the following grounds.

A. The Business Auxiliary Services is not covered under Notification no. 41/2007.

B. The invoices of input services are not signed and no classification of service has been mentioned on the invoices and the invoices are not serially numbered.

C. The Clearing & Forwarding Agent service is not covered under Notification no. 41/2007 as the same was covered under Notification no. 33/2008 dated 07-12-2008 and export pertained to a period prior to December-2008.

Being aggrieved by the order in appeal, the present appeal was filed.

2. Sh. S. Vatwani, Ld. CA appearing on behalf of the appellant submits that as regards the refund claim of Rs. 31,301/- in respect of the Business Auxiliary Services he is not pressing the said issue. As regards the remaining amount of refund claim of Rs. 1,29,485/- which is in respect of Clearing & Forwarding Agent services and goods transport agent services, he submits that even though the Clearing & Forwarding Agent service was not covered under Notification no. 41/2007 but it was covered under Notification no. 33/2008. The refund claim was filed on 13/2/2009, as per the date of filing refund claim, the refund was very much admissible on Clearing & Forwarding Agent services. He further submits that the service of Clearing & Forwarding Agent service is in fact the service of Custom House Agent which was notified on 01/04/2008 by Notification no. 17/2008-ST, therefore, the Clearing & Forwarding Agent services being a service of Custom House Agent, is eligible for refund during December, 2008 when the export has taken place. He submits that all the invoices on which refund was claimed are signed and bearing classification/description of services. As regard to serial number of invoices related to service and invoices related to reimbursement are different. This is merely a procedural lapse. Therefore, the same may please be condoned. As regard the GTA service, he submits that the description of service has been mentioned on all the invoices. The GTA service was received for all the goods transported through road/rail.

The refund of the service tax is for all GTA services under Notification no. 41/2007 for both the services i.e. transport of goods by road and transport of goods by rail. He placed reliance on the following judgments:

* Faizan Shoes (P) Ltd. v. Commissioner of Service Tax, Chennai [2012] 24 taxmann.com 264 (Chennai-CESTAT)
* Union of India v. Arihant Tiles and Marbles (P) Ltd. 2019 (20) G.S.T.L 21 (Raj.)
* Commissioner, Central Excise & Service Tax, Ahmedabad II v. Cadila Healthcare Ltd. [2015] 61 taxmann.com 403 (Ahmedabad CESTAT)
* Durhan Spintex & Holding (P) Ltd. v. Commissioner of Service Tax, Ahmedabad [2013] 29 taxmann.com 264 (Ahmedabad CESTAT)
* Rajasthan Textile Mills v. Commissioner Of Central Excise, Jaipur-I 2018 (10) G.S.T.L 46 (Tri. Del.)
* Varmani Overseas Pvt. Ltd. v. Commissioner of Service Tax, New Delhi 2018 (19) G.S.T.L 268 (Tri. Chan.)
* Amar International v. Commissioner of Service Tax, Mumbai [2015] 58 taxmann.com 30 (Mumbai CESTAT)
* Khemchand Handicrafts v. Commissioner Of Central Excise, Jaipur [2016] 69 taxmann.com 162 (New Delhi CESTAT)
* Ginni International Ltd. v. Commissioner Of Central Excise, Jaipur [2016] 68 taxmann.com 278 (New Delhi CESTAT)
* Suncity Art Exporters v. Commissioner Of Central Excise & Service Tax, Jaipur-II [2015] 53 taxmann.com 207 (New Delhi CESTAT)
* Fateh Granite & Marbles (P.) Ltd. v. Commissioner Of Central Excise & Service Tax, Jaipur-II [2016] 75 taxmann.com 179 (New Delhi CESTAT)

3. Sh. T.K. Sikdar, Ld. Asst. Commissioner (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order.

4. We have heard both the sides and perused the records. We find that as regard the Business Auxiliary Service, Ld. CA has not pressed the same.

It is also observed that Notification no. 41/2007 did not cover the service of Business Auxiliary Service, therefore, the rejection of refund claim for Rs. 31,301/- is upheld. As regard to the refund of Rs. 65,565/- in respect of Clearing & Forwarding Agent services, we find that at the time of export, the said service was not covered under Notification no. 41/2007, therefore, if the service is of Clearing & Forwarding Agent services, the refund will not be admissible as the eligibility of refund is based on the time of export and not at the time of filing refund claim. However, the appellant made a submission that the service is of Custom House Agent services. This is a matter of verification and on verification if it is found that the service is of Custom House Agent, the appellant will be entitled for the refund. As regards to the judgment of Faizan Shoes Pvt. Ltd. (supra) relied upon by the appellant, we find that it is only on the issue of limitation whereas in the present case the issue is whether the service is covered under notification or otherwise. Therefore, the judgment of Faizan Shoes Pvt. Ltd. (supra) is not applicable. The lower authority also rejected the claim on the ground that the invoices are not signed, classification of services was not mentioned and the invoices were not serially numbered. The submission made by the appellant that all the invoices are signed and classification/description of the services as regard the serial number, since there was a difference between serial number for invoice related to the service and invoice related to reimbursement, this cannot be the reason for the rejection of refund claim. At most, it is a procedural lapse. As regard the refund claim in respect of services related to goods transported by road, we find that the lower authority has rejected the refund on the ground that the invoices are not satisfying the requirements of Rule 4A of Service Tax Rules 2004, in as much as no classification of service has been mentioned on the invoice that whether it is by rail or by the road and the same were not signed. Countering this observation, the appellant submits that the description of the service has been mentioned on all the invoices of the export goods that were transported by road and by rail. The refund under Notification no. 41/2007 is applicable on both the services i.e. transport by road and transport by rail. As per this submission, we did not find any strong reason for denying the refund claim accordingly, it is prima facie admissible subject to verification of the documents.

5. As per our above discussion, the appeal is disposed of by way of remand to the adjudicating authority for passing fresh orders by considering our above observation.

(Order pronounced in the open court on 06.08.2019)

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

**(RAJU)**
**MEMBER (TECHNICAL)**

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