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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.578 of 2012-SM
(Arising out of OIA-725-727/2012/COMMRA-A-/RBT/RAJ dated 17/08/2012 passed by Commissioner of Central Excise, C USTOMS (Adjudication)-RAJKOT)

Welspun Global Ltd **........Appellant**
Opp. Welspun City Main Gate & Others,
Village : Varsamedi, Taluka : Anjar,
Kutch, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.......Respondent**
Central Excise Bhavan,Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

Service Tax Appeal No.579 of 2012-SM
(Arising out of OIA-725-727/2012/COMMRA-A-/RBT/RAJ dated 17/08/2012 passed by Commissioner of Central Excise, C USTOMS (Adjudication)-RAJKOT)

Welspun Global Ltd **........Appellant**
Opp. Welspun City Main Gate & Others,
Village : Varsamedi, Taluka : Anjar,
Kutch, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.......Respondent**
Central Excise Bhavan,Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

AND

Service Tax Appeal No.580 of 2012-SM
(Arising out of OIA-725-727/2012/COMMRA-A-/RBT/RAJ dated 17/08/2012 passed by Commissioner of Central Excise, C USTOMS (Adjudication)-RAJKOT)

Welspun Global Ltd **........Appellant**
Opp. Welspun City Main Gate & Others,
Village : Varsamedi, Taluka : Anjar,
Kutch, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.......Respondent**
Central Excise Bhavan,Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri. S. Suriyanarayanan, Advocate for the Appellant
Shri. Tara Prakash, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 12207-12209 /2022

DATE OF HEARING: 08.12.2022
DATE OF DECISION: 08.12.2022

Raju

These appeals have been filed by the M/s. Welspun Global Ltd against the denial of refund of Cenvat credit in terms of Notification No. 17/2009-ST dated. 07.07.2009.

2. Learned Counsel appearing for the appellant pointed out that they are engaged in the export of goods and in respect of services utilized for export of goods, they were claiming refund under Notification No. 17/2009-ST dated. 07.07.2009 He pointed out that the refund of Cenvat Credit of Service Tax paid on movement of empty containers into the factory was denied by the lower authorities. He pointed out that in terms of the decision of Tribunal in the case of Inox INDIA LTD-2012 (26) STR 120 and GARWARE POLYESTER LTD.-2012 (27) STR 288 (Tri-.Mumbai) the said credit is admissible.

3. Learned Counsel further pointed out that refund in respect of Service Tax paid on business promotion of Foreign Commissione Agent has been denied. Learned Counsel pointed out that they had availed the said service of Foreign Commission Agent and paid Service Tax under Business Auxiliary Service on reverse charge basis. Learned Counsel pointed out that the issue regarding admissibility of refund in respect of Foreign Commission Agent has been examined by Tribunal in the case of M/s. VST INDUSTRIES LTD-2017 (10) TMI 24 (CESTAT-HYDERABAD), in the case of Manner EXPORTs-2018-4-TMI-66 (CESTAT.-MUMBAI) and in case of BHANSALI INTERNATIONAL LTD-2017 (7) TMI-1109 (CESTAT-NEW DELHI).

4. Learned AR relies on the impugned order.

5. I have considered the rival submission. I find that the issue involved is admissibility of refund of Service Tax paid on:-

1. Inward and outward movement of empty containers from factory

2. The Service Tax paid on Foreign Agent Commission under Business Auxiliary Service.

5.1 I find that the first issue covered by the decision of Tribunal in the case of Inox INDIA LTD. In para 3 of the said Order following has been observed.

> "**3.** The first ground on which the refund claim has been denied is that the appellant has paid Service tax for transportation of the empty containers to their premises for outward transportation of containers from their factory. Ld. Counsel submits that without transporting the empty containers, there cannot be any export since the stuffing can be done only in the empty containers. Further, he also points out that in terms of Notification No. 41/2007-S.T., refund is admissible in respect of Service tax paid on services *in relation* to transportation of the goods from the place of removal to ICD or Port. He draws my attention to the word "in relation to" and submits that these words show that the activities in relation to transportation are also covered. He submits that it cannot be denied that transportation of the empty containers is obviously relatable to transport of export goods in the containers. I am in agreement with these submissions. The use of words "in relation to" would cover the empty containers also and in any case, the empty containers have to be transported and further brought back to the Port area or ICD".

Relying on the said decision the appeal on this count the appeal is allowed.

6. As regard, the Second issue relating to refund of Service Tax paid on foreign Agent Commissioner under Business Auxiliary Service, the issue regarding admissibility of refund has been examined by Tribunal in the case of M/s. VST INDUSTRIES LTD. (Supra) wherein, the said order following has been observed:-

> 7. I have considered the submissions made by both sides. As already reproduced herein above, there is no dispute as to the fact, that goods have been exported and service tax liability has been discharged under reverse charge mechanism for the commission for the commission paid by appellant.
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> 8. I find that the appellant had filed the refund applications under Notification No. 17/2009 dt. 07.07.2009 while he should have filed the refund claim under Notification No. 18/2009. It is the finding of the lower authorities that appellant had not complied with the conditions

of Notification no. 18/2009 in order to authorities that appellant had not complied with the conditions of Notification No. 18/2009 in order to extending the benefit of refund. I find that the first appellate authority has not mentioned as to which conditions have not been satisfied by the appellant in order to deny him the benefit of Notification no. 18/2009 which entitles the appellant to claim the refund. I find that Ld. Counsel was correct in relying upon the judgment of this Bench in the case of M/s. Coromandel Stampings & Stones Ltd. Wherein identical set of facts arose before the Bench and after considering the condition so Notification No. 18/2009, he Bench held in paragraph no. 5 as under:

> "5. It is submitted by the learned Consultant appearing for the appellant that all the conditions except the condition that the appellant has to intimate the concerned Ass/Dy. Commissioner by filing For,-EXP-1 was not complied. So also, appellant failed to submit the reform in Form EXP- 2 as stipulated in sub-clause (c) of the conditions stated in the Notification. Needless to say that exemption/refund/rebate etc. are export oriented schemes. If the fact of export has been established, refund is not to be denied on merely technical interpretation of procedure. In Suksha International Vs UOI 1989(39) ELT 503(SC) the Hon'ble Apex Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided, so that it may not take a way with one hand, what the policy gives with the other. The Hon'ble Apex Court in Mangalore Chemicals and Fertilisers Ltd Vs Dy.Commissioner 1991 (55) ELT 437(SC) while drawing a distinction between procedural condition of a technical nature and substantive condition, held that procedural conditions of technical nature can be condoned. The procedures prescribed in the notification are to facilitate verification of the claims. Since there is no dispute with regard to the export made or the service tax paid, the non-fulfilment of the conditions in my view is condonable. Following the judgments laid in the above cases, am of the view that the non-fulfilment of the conditions is only a procedural lapse and can be condoned. In view thereof, I hold that the appellants are eligible for refund."

9. In my view, identical issue having been settled by this Bench, ratio needs to be followed and I do not find any reason to deviate from such a view. The facts on which the Ld. DR try to distinguish is also not applicable in the case in hand.

Relying on the said decision of the Tribunal the appeal on this count is also allowed.

7. Consequently, the impugned order is set aside, the appeals are allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Prachi