



Inasmuch as all the appeals are arising out of the same impugned order passed by the Commissioner (Appeals) and involve the same question, a common order is being passed in respect of all the appeals.

2. As per facts on record, the appellants are engaged in the manufacture & export of frozen/chilled meat and are registered with the Department for payment of Service Tax. They were discharging their service tax liability on reverse charge mechanism in respect of the 'Goods Transport Agent' service received by them for transportation of frozen meat from their factory to their depot in Mumbai. Inasmuch as the service tax was exempted for transportation of the food stuffs, vide Notification No.25/2012-ST dated 20.06.2012, the appellants filed refund claims in respect of the service tax paid by them on the GTA services.

3. The said refund claims were rejected by the Original Adjudicating Authority on the ground that while exporting the goods, the appellants were claiming the benefit of rebate in terms of Notification No.41/2012-ST, which debars sanctioning of refund claims of duty paid on the services specified therein and used for export of the goods in case the export has taken place under rebate. The Order-In-Original passed was upheld by Commissioner (Appeals) and hence the present appeals.

4. On going through the impugned order, we find that the sole ground for rejection of the refund claim is that the appellants have exported their goods under the claim of rebate and in terms of Notification No.41/2012-ST refund of service tax paid on various services utilized for export purposes would not be admissible. However, we find no merits in the above reasoning of the Lower Authorities. Notification No.25/2012-ST dated 20.06.2012, as amended by Notification No.3/2013-ST dated on 01.03.2013 exempts the services provided by good transport agents by way of transportation in a goods carriage for foods stuffs including Flours, tea, coffee, jiggery, sugar , milk products, salt and edible oil, excluding alcoholic beverages. There is no dispute that frozen meat is food stuff and transportation of the same stands exempted vide the said notification from payment of service tax. The said fact has also been admitted by Lower Authorities that the assessee is entitled to the benefit of the said Notification.

However, they have denied the refund on the sole ground that Notification No.41/2012 debars the refund of service tax paid on specified services, where the goods stand exported under the claim of rebate. Apart from the fact that GTA service is not one of the specified service in Notification No.41/2012, we note that the applicability of the said notification to the facts of the instant case, as adopted by the

Lower Authorities is not justified inasmuch as the Notification No.25/2012-ST is an independent notification. The refund claim having been made in terms of the said notification is required to be adjudged in the light of the wordings of the said notification. There is nothing in the said notification to deny the exemption in case the GTA services has been utilized for transportation of the food stuffs which ultimately stand exported under claim of rebate. Inasmuch as the said notification fully applies to the facts of the present case, we have to hold that assessee is entitled to the refund of the service tax paid on reverse charge basis in respect of the GTA services so received by them.

As such, we set aside the impugned order and allow all the appeals with consequential relief to the appellants.

(Pronounced in Court on 11.12.2018)

Sd/-  
**(Anil G. Shakkarwar)**  
**Member (Technical)**

Sd/-  
**(Archana Wadhwa)**  
**Member (Judicial)**

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