CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

E/70018/2019-EX[SM]

(Arising out of Order-in-Appeal No.MRT/CE/000/APPL-MRT/314/2018-19 dated 09.10.2018 passed by Commissioner, CGST(Appeals), Meerut.)

Commissioner of Central Excise & Service Tax, Meerut-i
(Opp. CCS University, Meerut)

...APPELLANT(S)

VERSUS

M/s.Tikaula Sugar Mills Ltd. **RESPONDENT (S)**
(2-D/1, Vakil Road, New Mandi, Muzaffarnagar)

APPEARANCE

Shri Shiv Pratap Singh, Deputy Commissioner(A.R.) for the Revenue
Shri Kapil Vaish (C.A.) for the Respondent

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)

FINAL ORDER NO.70772/2019

DATE OF HEARING : 15.03.2019
DATE OF DECISION : 11.04.2019

MRS. ARCHANA WADHWA :

Being aggrieved with the order passed by Commissioner(Appeals), Revenue has filed the present appeal.

2. I have heard Shri Shiv Pratap Singh, learned Deputy Commissioner(A.R.) appearing for the Revenue and Shri Kapil Vaish, learned C.A. for the Respondent.

3. As per facts on record, the respondent is engaged in manufacture of sugar and on account of excessive inventory level and to facilitate achievement of financial liquidity, Department of Food and Public

Distribution issued a notification dt.18.09.2015 requiring all sugar factories to export minimum indicative quota of about 12%. The said sugar could be sourced from any other sugar factory.

Vide Notification dt.02.12.2015, Ministry of Consumer Affairs notified a scheme of production subsidy of Rs.4.50 per qtl of cane crushed which was to be used for payment of cane price dues. One of the conditions for such subsidy was that sugar factories should have achieved at least 80% of the target of export quota.

To ensure legal compliance of export quota and to obtain production subsidy, respondents entered into various tripartite agreements wherein the other sugar factory agreed for providing the sugar and M/s.Indian Sugar Exim Corporation (ISEC), the service provider agreed for facilitating the export of sugar. The sugar was procured from the other factory to minimize the transportation cost.

For providing/facilitating export of sugar, ISEC charged certain amounts. The particulars mentioned in invoice is as under –

> Contract for fulfillment of obligation towards minimum indicative export quota including recovery of loss on export of sugar of Tikaula Sugar Mills Ltd. vide notification number 10/2015 dt.18.09.2015 so that Tikaula Sugar Mills Ltd. achieves its final liquidity required for the manufacture of its final products and procurement of the input as per agreement dt.11.12.2015 between Tikaula Sugar Mills Ltd. and ISEC.

ISEC charged Service tax on its service charges. Respondents availed Cenvat credit of Service Tax so charged by ISEC. However, respondents reversed the said credit in June 2016 under Rule 4(7) of Cenvat Credit Rules 2004 for the reasons that payment of proof was not available.

On receipt of payment proof, vide letter dt.08.05.2017 and vide reminder dt.29.05.2017, respondents requested for allowing re-credit. Adjudicating authority vide order dt.21.06.2017 rejected the request of allowing re-credit on the ground that services provided by ISEC do not fall in the definition of input service.

On appeal, the appellate authority allowed the appeal on following 3 grounds –

A. Request for re-credit has been rejected without issuing show cause notice.
B. No objection has been raised on initial credit. Therefore claim for re-credit cannot be rejected.
C. The appellants had availed services to fulfill the export obligation and to receive the production subsidy. Therefore the services were in respect of appellants final product.

4. It is seen that the dispute in the present appeal related to re-credit of duty reversed earlier under protest on the ground that the appellant was not having the requested papers. There was no objection by the Revenue at the time of availment of original credit, which objection cannot be raised at the time of re-credit. As such I find no justifiable reasons to entertain the present appeal of the Revenue.

5. Otherwise also I find that Commissioner(Appeals) has discussed the merits of the case and has observed as under:-

"5.2 Ì further find that the adjudicating authority has denied the re-credit by stating that ISEC had provided the services to the appellant to fulfill his export obligation and not for procurement of inputs, i.e., cane. The appellant, in this regard, has submitted that the services of ISEC had been procured for sourcing sugar from other sugar factories & to facilitate export and the sugar so procured was an input for the purpose of export. In this regard, I find that there is no dispute that the appellant was required to export minimum of 80% of the allotted quota for being eligible to receive the productionsubsidy and to fulfil the said export obligation, he took the services of ISEC. Thus, the services of ISEC were utilized for fulfillment of export obligation and ultimately, sugar was exported. Moreover, from the copies of invoices raised by ISEC to the appellant, it is seen

*that the invoices mention 'contract for fulfillment of obligation towards MIEQ including recovery of loss on export of sugar of Tikaula Sugar Mills Limited vide Notification No.F.No.1(10)/2015-SP-I dated 18th September, 2015, so that Tikaula Sugar Mills Ltd. **achieves its final liquidity required for the manufacture of its final products** and procurement of its inputs as per agreement dated 11.12.2015 between Tilaula Sugar Mils Ltd. and ISEC'. Accordingly, the services procured were in respect of manufacture of final products of the appellant. The adjudicating authority has further stated that the sugar exported was not manufactured by the appellant. In this regard, I find that Department of Food & Public Distribution (Govt. of India) vide Notification F.No.1(10)2015-SP-1 dated 18.09.2015, has stated that the quotas shall be tradable among sugar factories on mutually agreeable terms and condition and further states of a bi-partite/tri-partite agreement between/amongst quota holder sugar factory (which in this case is the appellant), Merchant Exporter (which in this case is ISEC) and the source sugar factory, i.e. from where the sugar had been sourced for export. Thus, the notification provided for sourcing of sugar from other sugar factories and therefore, such procurement was done to fulfil the export obligation."*

6. I do not find any infirmity in the above views of Commissioner(Appeals). Accordingly Revenue's appeal is rejected.

(Order pronounced in the open court on 11.04.2019.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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