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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 20/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71116-71117/2017-SM[BR] dated 13/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/683/2010	ADDI INDUSTRIES LTD. A-106, Sector-IV, Noida (UP)
2	ST/1458/2010	ADDI INDUSTRIES LIMITED, A-105-106, SECTOR-4, NOIDA.(U.P)

Name and Address of Respondent

3 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

4 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

R. Krishnan
297-E, Pocket-II, Phase-1,
Mayur Vihar,
Delhi
110091

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/683 & 1458/2010-EX[SM]

(Arising out of Order-in-Appeal No. 191-ST/APPL/NOIDA/2010 dated 12/07/2010 & `Order-in-Appeal No. 99-ST/APPL/NOIDA/2010 dated 25/03/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Addi Industries Limited **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri R. Krishnan, Advocate for Appellant
Shri D. K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 13/01/2017

FINAL ORDER NO. 71116-71117/2017

Per: Anil Choudhary

The issue in these appeals are whether the appellant an exporter is entitled to refund of service tax paid on 'clearing and forwarding agent services' utilized for the purpose of export with respect to export transaction during the period from July to September, 2008, in view of amendment to Notification No. 41/2007 vide Notification No. 33/2008-ST dated 07/12/2008, when in the Schedule to the earlier notification Item No. 19 was inserted for services received by an exporter that were provided by a 'clearing and forwarding agent' in relation to export or goods exported by the exporter.

2. The brief facts are not disputed that the appellant received clearing and forwarding services with relation to export of their goods during the period July to September, 2008. The appellant filed refund claim on such services amounting to Rs.23,033/- on 29/12/2008. Whereas in the other Appeal No. 1458/2010 vide the impugned order the refund claim was rejected and it was in respect of port charges for the period October to December, 2007 Rs.19,211/-, for January to March, 2008, Rs.55,722/- & for April to June, 2008, Rs.29,237/-. The refund claims were filed on 29/02/2008, 03/06/2008 & 05/09/2008 respectively. Vide separate Orders-in-Original, the refund claims were rejected on the ground, that the appellant have also claimed duty drawback. Accordingly, they are not eligible for refund of the input services utilized in export by virtue of

Clause (d) in Notification 41/2007 wherein under the proviso it was provided – the said goods have been exported without availing drawback of Service tax paid on the specified services under the Customs, Central Excise duties & Service Tax Drawback Rules, 1995. The other grounds for the rejection of the claim was that C & F Services have been added to the Schedule under Notification No. 41/2007 with effect from 07/12/2008 and as the transactions related to previous period that is prior to 07/12/2008 they would not entitled to refund for the previous period as the amendment was not retrospective in nature.

3. Being aggrieved, the appellant-assessee preferred appeals before Commissioner (Appeals) who was pleased to dismiss the appeal & upheld the Order-in-Original.

4. Being aggrieved, the appellant is before this Tribunal. The ld. Counsel for the appellant says that the issue is no longer *res-integra* and takes me through the ruling of a Division Bench of this Tribunal in the case of WNS Global Service (P) Ltd. *versus* Commissioner of Service Tax, Mumbai reported at 2008 (10) S.T.R. 273 (Tri. – Mumbai) wherein the facts were that the appellant was engaged in providing Business Auxiliary Service and the export of the said services and was availing Cenvat credit under Cenvat Credit Rules, 2004, in respect of the input services used by them in export of auxiliary services. Since the appellant-assessee was unable to utilize the Cenvat credit in respect of the inputs services

availed by them they filed refund claim in respect of un-utilized credit for the period April, 2005 to June, 2005, July, 2005 to September, 2005 & October, 2005 to December, 2005 as per provisions of Notification No. 4/2006 dated 14/03/2006, under Rule 5 of the Cenvat Credit Rules. Since the Rule 5 prior to substitution by Notification No. 4/2006 dated 14/03/2006 did not provide for refund of unutilized credit to the producer or provider of output services, the claim was rejected by the Assistant Commissioner and the rejection was upheld by Commissioner (Appeals). On such facts, this Tribunal observed that the refund claim filed by WNS Global on 26/04/2006 onwards will be governed by the rules as it stood on those dates. The substituted Rule 5, nowhere suggests or states that it will apply for exports made after 14/03/2006 (the date on which the rule substituted) hence any claim filed on or after 14/03/2006 which satisfy other requirements of the rules and notification issued thereunder, cannot be turned down on a ground which is a condition or requirement of the rule or notification. A statute cannot be treated retrospectively mainly because it relates to the past action. A statute which takes away or impairs vested rights acquired and existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transaction already past alone is called retrospective legislation. The position that a prospective benefit under the statutory provision is measured by or depends on antecedent facts does not make the provision retrospective. Further, notice was taken by this Tribunal stated in the by G. P. Singh – The Principles of Statutory Interpretation (9th edition) that statute conferring prospective benefit on antecedent facts does not necessarily make the provisions retrospective. Reliance was also placed by this Tribunal on the ruling of the Apex Court in the case of Boucher Pierre Andre *Versus* Central Jail, Tihar, New Delhi, AIR 1975 SC 164 wherein the Apex Court held that benefit to set off pre-conviction detention period against the term of imprisonment conferred by section 428 of the Cr.P.C.,1974 where accused person has on conviction been sentenced to imprisonment for a term is also available where the sentence was imposed before the commencement of the Code to reduce the unserved portion of the sentence and that in so construing the section it was not given any retrospective effect for it did not affect the sentence already undergone but affected only that part of the sentence which remained to be served in future. Against the said ruling of this Tribunal the case of WNS Global Service (P) Ltd. (supra) Revenue had preferred appeal before Hon'ble Bombay High Court and vide order dated 10/02/2011 the Hon'ble Bombay High Court confirmed the ruling of the Tribunal observing as follows: –

> "9. The above finding of the CESTAT cannot be faulted because substituted Rule 5 of the Cenvat Credit Rules, 2004 does not make any distinction

between exports made prior to 14/03/2006 or after 14/03/2006. In other words, as per the substituted Rule 5 refund of unutilized cenvat credit in respect of exports effected in the past is available to the manufacturer as well as provider of output service. Proviso to Rule 5 as it stood prior to the amendment on 14/03/2006 clearly provides that refund of unutilized credit is available to the manufacturers as also by the provider of output service subject to the conditions set out therein. As noted earlier the appellant fulfills all other conditions. Thus, reading the Rule 5 as it stood prior to its amendment, as a whole, it is evident that refund of unutilized credit is allowable not only to manufacturers but also available to providers of output service.

10. The argument of the Revenue that Rule 5 of the Cenvat Credit Rules, 2004 permits refund of unutilized Cenvat credit only in the case of a manufacturer is without any merit.

11. For the aforesaid reason we concure with the decision of the CESTAT. "

5. Accordingly the ld. Counsel for the appellant states that the facts being similar, the issue is squarely covered and decided the appeal will be allowed with consequential benefits.

6. The ld. A. R. for Revenue who relied on the impugned order.

7. Having considered the rival contentions, I find that Notification No. 41/2007 states that the Central Government, on being satisfied that it is necessary to public interest so to do, hereby exempts the taxable services specified in column 3 of the Schedule to the notification, received by an exporter and used for export of goods, from the whole of the Service tax leviable thereon under Section 66 & 66A of the Finance Act subject to the conditions specified in the corresponding entry in column 4 of the Schedule. Thus, it is evident that the entries in the Schedule are by way of example and it was not an exhaustive list. Further, it is evident that initially there were only seven Entries in the Schedule which was amended from time to time by way of verification introducing further entries. Similarly, Clearing & Forwarding Agent Services) were also introduced with effect from 07/12/2008 and the amending notification states – the Central Government hereby makes following further amendment in the Notification of GoI in Ministry of Finance No. 41/2007 - Service Tax dated 06/10/2007 namely. Thus, it is evident that the addition of C & F Service vide Notification No. 07/12/2008 being entry number 19 in the schedule to Notification No. 41/2007 is clarificatory in nature. Accordingly, following the ruling of Hon'ble Bombay High Court in the case of WNS Global Service (P) Ltd. *versus* Commissioner of Service Tax, Mumbai

(Supra), I hold that the appellant is entitled to refund of input services including C & F services received prior to 07/12/2008 as the same hav been utilized for the purpose of export of goods. The other ground of rejection also does not stand that the appellant also availed duty drawback in view of deletion of proviso '(e)' in Notification No. 41/2007 vide amending Notification No. 33/2008. Accordingly, both the appeals are allowed and the impugned orders are set aside. I also find that in Appeal No. 1458/2010 as amended from the documents produced by the appellant that the input services received was in the nature of services which were also eligible for refund under Notification No. 41/2007.

8. To sum up, it is held that the appellant is entitled to refund rejected vide the impugned orders. The Adjudicating Authority is directed to grant the refund within a period of 60 days from the date of receipt of a copy of this order with interest, as per rules

(Dictated and pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति/Certified True Copy
03/10/17
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