CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 2259 of 2012

(Arising out of Order-in-Appeal No. 108-113/2012-CE dated 08.05.2012 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

Commissioner of Central Excise
Bangalore-II Commissionerate
C.R. Building, P. B. No.5400, Queen's Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

M/s. Sesa Goa Limited
Near Megalahalli, Village,
Bheemasamundra,
Chitradurga District – 577 520.

Respondent(s)

WITH

Central Excise Appeal No. 2260 of 2012

(Arising out of Order-in-Appeal No. 108-113/2012-CE dated 08.05.2012 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

Commissioner of Central Excise
Bangalore-II Commissionerate
C.R. Building, P. B. No.5400, Queen's Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

M/s. Sesa Goa Limited
Near Megalahalli, Village,
Bheemasamundra,
Chitradurga District – 577 520.

Respondent(s)

AND

Central Excise Appeal No. 2261 of 2012

(Arising out of Order-in-Appeal No. 108-113/2012-CE dated 08.05.2012 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

Commissioner of Central Excise
Bangalore-II Commissionerate
C.R. Building, P. B. No.5400, Queen's Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

M/s. Sesa Goa Limited
Near Megalahalli, Village,
Bheemasamundra,
Chitradurga District – 577 520.

APPEARANCE:

Shri Akshay Kumar with Shri Sanjay Venkat, Superintendent (ARs) for the Revenue.

None for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21183 - 21185 /2024

DATE OF HEARING: 29.11.2024
DATE OF DECISION: 29.11.2024

PER: D.M. MISRA

None present for the respondent. The matter had been listed on 24.07.2024, 14.08.2024, 23.09.2024, 17.10.2024 and today i.e., 29.11.2024. The learned Authorized Representative (AR) for the Revenue submits that further adjournment will not yield any result. Consequently, since the issue lies in a very narrow compass, the appeals are taken up for hearing and disposal.

2. These three appeals are filed by the Revenue common Order-in-Appeal No.108-113/2012-CE dated 08.05.2012 passed by the Commissioner of Central Excise (Appeals), Bangalore.

3. Briefly stated the facts of the case are that the respondent had filed six refund claims under Notification No.17/2009-ST dated 07.07.2009. On adjudication, three refund claims were disposed of in favour of the assessee-respondent and remaining three were decided against the assessee. Aggrieved by the orders viz., Order-in-Original No.14/2010; 15/2010 and 16/2010 all dated 04.11.2010, the Revenue filed appeals before the learned Commissioner (Appeals). Similarly, the respondents had also filed the appeals where the refund claims were rejected. Consequently, the learned Commissioner (A) by a common Order-in-Appeal No.108-113/2012-CE dated 08.05.2012 disposed of all the appeals. Revenue has filed appeal against the said order, which is the subject matter of the present appeals.

4. Reiterating the grounds of appeal, the learned Authorised Representative (AR) for the Revenue submits that without discussing the issue on merit, the learned Commissioner (A) has not entertained the appeals on the ground that the appeals before her was filed under Section 35E(2) of the Central Excise Act, 1944 but the said Section has not been incorporated under Section 83 of the Finance Act, 1994. Consequently, she has observed that the appeal is beyond the period of three months, hence barred by limitation. He submits that the refund of service tax was allowed under Notification No.17/2009-ST dated 07.07.2009 and the procedure for extending the exemption has been prescribed under the said Notification. He submits that under Clause 2(b) of the said Notification, the exemption is required to be claimed by an exporter by filing the refund of Service Tax before the jurisdictional Assistant Commissioner or the Deputy Commissioner of Central Excise having jurisdiction over the factory where the product is manufactured and by filing declaration under clause 2(c) of the said Notification; therefore,

the appeal against the adjudication order is required to be filed under Section 35E(2) of the Central Excise Act, 1944. Further, he submits that the impugned orders dated 04.11.2010 has been received by the Office of the Commissionerate on 09.11.2010 as is evident from the acknowledgement seal placed on the said orders. Hence, the due date for filing the appeal was 09.02.2011; whereas all these appeals had been filed on 08.02.2011. Thus, the appeals were filed within time.

5. On going through the records, we find that the learned Commissioner (A) has rejected the appeals on the ground that Section 83 of the Finance Act, 1994 does not cover appeals filed under Section 35E of the Central Excise Act, 1944 and consequently, that the appeals are barred by limitation prescribed under provisions of the Act. We find that the refund is claimed under Notification No.17/2009-ST dated 07.07.2009, the relevant portion reads as follows:

"(1) ……..

(2) the exemption shall be given effect to in the following manner, namely :-

(a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;

(b) exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;

(c) service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that -

(i) the refund of service tax paid on the specified services is claimed as a percentage of the declared FOB value of the said goods, on the basis of rate specified in the Schedule;

(ii) no further refund shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the refund obtained is less than the service tax paid on the specified services;

(e) service tax paid on the specified services eligible as refund under this exemption, shall be calculated by applying the rate specified for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;

(f) amount so calculated as refund shall be deposited in the bank account of the exporter;

(g) shipping bill or bill of export on which refund has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, is not eligible for refund claim on the basis of documents, specified in paragraph 3;

(h) where the refund involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;

……………………………………………………………………….."

6. A plain reading of the subclause (c) of Clause 2, it is clear that manufacturer/exporter can claim exemption by filing the refund of service tax paid on specified services with the Assistant Commissioner within the jurisdiction of the factory. In the present cases, the respondents are engaged in the manufacture of iron ore lumps and iron ore fines, are not registered with the Central Excise but required to file refund claim in Form A-2 as per subclause (c) Clause (2). Thus, the appeal is required to be filed under Section 35E(ii) in view of specific mention of the

procedure under the said Notification No.17/2009-ST dated 07.07.2009.

7. On the issue of time limit in filing the appeals, we find from the records that the impugned order was communicated to the appellant-department on 09.11.2010 and the appeals were filed on 08.02.2011; hence, these Appeals were filed within time.

8. In the result, matters are remanded to the extent of rejecting the appeals of the Revenue to consider the same on merit and pass an appropriate order. Needless to mention that principles of natural justice be followed. Appeals are allowed by way of remand.

(Dictated and pronounced in Open Court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv