CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Virtual Hearing

Service Tax Appeal No. 20193 of 20 17

[Arising out of Orders-in-Appeal No. COC-EXCUS-000-APP-388-390/16-17 dated 28.10.2016 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals - I) Cochin]

GRK and Company
Marketing Office
PO Box No. 156, Palace Road
Cochin – 682 002 **...........Appellant(s)**

VERSUS

Commissioner of Central Excise,
Customs and Service Tax
Cochin
C.R. Building, I.S. Press Road
Ernakulam
Cochin – 682 018 **..........Respondent(s)**

With

Service Tax Appeal No. 20195 of 2017

[Arising out of Orders-in-Appeal No. COC-EXCUS-000-APP-388-390/16-17 dated 28.10.2016 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals - I) Cochin]

GRK and Company
Marketing Office
PO Box No. 156, Palace Road
Cochin – 682 002 **...........Appellant(s)**

VERSUS

Commissioner of Central Excise,
Customs and Service Tax
Cochin
C.R. Building, I.S. Press Road
Ernakulam
Cochin – 682 018 **..........Respondent(s)**

And

Service Tax Appeal No. 20196 of 2017

[Arising out of Orders-in-Appeal No. COC-EXCUS-000-APP-388-390/16-17 dated 28.10.2016 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals - I) Cochin]

GRK and Company
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VERSUS

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Customs and Service Tax
Cochin
C.R. Building, I.S. Press Road
Ernakulam
Cochin – 682 018 **..........Respondent(s)**

APPEARANCE:

Mr. V. Unnikrishnan, Consultant for the Appellant
Mr. M.A. Jithendra, Assistant Commissioner (AR) for the Respondent

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

FINAL ORDER NOS. 20952 - 20954 /2026

DATE OF HEARING: 19.06.2026
DATE OF DECISION: 19.06.2026

PER: P.A. AUGUSTIAN

The issue in the present appeals is regarding refund of service tax paid wrongly on payment of commission to foreign agent while exporting spices for the financial year 2010-2011 to 2012-2013. Appellant is an exporter of spices and they have taken assistance from foreign agents for arranging sale in abroad as part of their routine business. During audit in the year 2013, it is alleged that the appellant is liable to pay service tax on RCM basis for the services availed from the foreign agents. To avoid delay in clearing the exported goods, appellant was forced to pay service tax with interest as applicable. Thus, the payment of service tax was not voluntarily, and it is paid only to avoid the audit objection and avoid delay in clearing the exported goods. Thereafter, when appellant came to know that the service provided by an overseas agent which is coming under Business Auxiliary Services is exempted from service tax vide Notification No.18/2009-ST dated 07.07.2009, appellant filed refund application. On scrutiny of the refund application, show-cause notice was issued on 27.01.2014 and adjudication authority as per the Order-in-Original No. 12/2014 dated 28.02.2014 rejected the refund claims. Aggrieved by said orders, appeals were filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned orders rejected the appeals. Aggrieved by said order, present appeals are filed.

2. When the appeals came up for hearing, learned Consultant for the appellant submits that the appellant has filed refund claim for the service tax paid by them towards the service provided by the overseas agents during the year 2010-11. Out of Rs. 2,87,869/- claimed by them, Rs. 2,15,526/- is paid towards Service Tax and the balance amount i.e. Rs. 72,343/- was the interest for the delayed payment. Though the payment was due in 2010 - 2011, the amount was paid by them in February 2013 along with interest vide Challan No.11790 dated 06.02.2013. Similarly, in Appeal No. ST/20196/2017, the appellant has filed refund claim for the service tax paid by them for the year 2011-12. Out of Rs. 7,25,023/- claimed by them, Rs. 6,22,639/- paid towards Service Tax and the balance amount i.e. Rs. 1,02,384/- is the interest for delayed payment. Though the payment was due in 2011 - 2012, the amount was paid by them in February 2013 along with interest vide Challan Nos.100 & 107 dated 09.02.2013. In Appeal No. ST/20193/2017, appellant has filed refund claim for an amount of Rs. 3,47,767/- for the year 2012-2013.

3. Learned Consultant further submits that as per Notification No. 18/2009-ST dated 07.07.2009, service provided by a Commission Agent located outside India and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him is exempted subject to the conditions mentioned in column No.4 of the said Notification. Learned Consultant further submits that as per the findings in the impugned order, the reason for rejecting the refund is that they have not filed Form EXP1 (before availing the exemption) and Half Yearly Return in Form EXP2 to the Deputy Commissioner. Adjudication Authority also finds that from the statement submitted by the appellant, they have paid 1% commission in respect of Sl. Nos. 7, 10, 15 to 20, 25 to 31, 1.5% in respect of Sl. Nos. 9, 11 to 14, 24, 2% in respect of Sl. Nos. 5, 21 to 23, 3% in respect of Sl. Nos. 1 to 4, 4% in respect of Sl. Nos. 4, 5% in respect of Sl. No. 8 which they have not declared in the Shipping Bill or Bill of Export except in respect of cases against Sl. Nos. 4, 7, 8, 9 & 11 to 31 of statement, as per the condition mentioned above.

4. Learned Consultant submits that above said findings is *prima facie* unsustainable since the information required to be furnished as per the half yearly return is available on record and there is no allegation that the appellant was liable to pay service tax for the services availed by them from the foreign agents. In this regard, learned Consultant draws our attention to the Notification No. 18/2009-ST dated 07.07.2009 and Form EXP1. As regarding the finding of the adjudication authority that the substantial condition of endorsement in the shipping bill, learned Consultant submits that as per the impugned order, the adjudication authority accepted that in most of the shipping bills, such endorsement are available on record and only in few cases, it was not declared in the shipping bill. It is due to the reason that the exact amount of commission to the agents who is ordering shipment is not specified in the contract and it is

subject to the availability of the product in the market. In such cases, it is not possible to make endorsement regarding exact commission amount in the shipping bill. To substantiate the above, learned Consultant draws our attention to the contract entered by the appellant with overseas agencies.

5. Learned AR reiterated the findings in the impugned order and submits that as per the Notification, the upper limit for service tax exemption is 1% and in appellant's case, the exemption paid to the service provider is ranging up to 5% as stated in the Order-in-Original. Thus, the refund claimed by the appellant is not sustainable as per the said Notification. Learned AR also draws our attention to the decision of the Tribunal in the matter of **M/s. N.M. Zackriah & Co. Vs. CST, vide Final Order No. 40748/2023 dated 01.09.2023** where it is held that –

> "12. Neither from the pleadings before the lower authorities nor before us, either in the statement of facts or in the grounds of appeal, do we see any effort being made by the appellant to dislodge the above factual findings of the original authority. Though they have contended inter alia that the details of exemption paid could not be furnished within the time-limit prescribed for filing EXP-2 return, the issue was only procedural factor and no exporter can fulfil the above condition, the exemption was claimed on Service Tax payable on commission paid to foreign commission agents, etc., the fact however remains that the production of shipping bills showing commission paid, agreement with such foreign agents and original documents, which were necessary documents, are not filed by the appellant. It is therefore clear that the appellant has not fulfilled the conditions of the exemption Notification.
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> 13. In this regard, the following observations of the Hon'ble Supreme Court in the case of Dilip Kumar & Company

(supra) are relevant wherein, after considering various decisions, it was ruled as under: -

> "52. To sum up, we answer the reference holding as under –
>
> (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
>
> (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
>
> (3) ….
>
> .."

14. In view of the above discussion, we do not find any merit in the appellant's case and consequently, the appeal is dismissed."

6. In rejoinder, learned Consultant submits that though the upper limit of claiming refund was restricted to 1% of the service tax, as per the Circular issued by the Board vide Circular No. 118/12/2009-ST dated 23.11.2009 it is clarified that :

> "3. The current rate of service tax being ten per cent and the maximum allowable limit of foreign agency commission being ten percent of FOB, one percent of the FOB value of export goods is the maximum exemption of service tax. To settle all doubts to rest, for the purpose of service tax refund, maximum allowable foreign agency commission on export goods continues to be at the pre-budget level of ten percent of the fob value of export goods till further changes are notified."

7. Fact being so, the claim made by the appellants are within the period as prescribed by law and appellant is also eligible to get interest paid by them at the time of filing the refund. Further as regarding the finding recorded by the adjudication authority, non-payment of service tax was brought to the notice of the Revenue when audit was conducted in the year 2013 and to avoid delay in clearing the exported goods, as directed, appellant was forced to pay service tax with interest as applicable. Thus, the payment of service tax was not voluntarily and it is paid only to avoid the audit objection and once it is admitted that appellant is not liable to pay service tax, amount collected by the Department has to be considered as collected without authority of law and provisions of Section 11 of the refund are not applicable. In this regard, learned Counsel relied on the following decisions:

i) Faizan Shoes Pvt. Ltd. Vs. CST, Chennai - 2014 (34) S.T.R. 205 (Tri.-Chennai)
ii) J.P. Transformers Vs. CCE, Kanpur - 2014 (34) S.T.R. 207 (Tri.-Del.)

8. Heard both sides. It is an admitted fact that at the time of export of the goods, the appellant was liable to pay service tax and exemption was subject to compliance of the conditions as per the Notification No. 18/2009 dated 07.07.2009. However, when audit pointed out the issue, they have paid the amount with interest and therefore, made the claims regarding refund of the said amount which is according to them are paid without any authority of law. I find that though the payment has made at belated stage, if the exemption notifications are subject to condition and if conditions are not complied, they are liable to pay service tax on RCM basis. Fact being so, the appellant is bound to comply with the condition of the Notification. In the present case, I find that after considering the refund applications, objections were made regarding non-submission of the Form EXP2 and also refund is denied on the ground that

there is no endorsement regarding payment of service tax in the shipping bill. In this regard, as per the submission made by learned Consultant, such endorsement are there in most of the shipping bills and in few cases where there is no specific commission mentioned in the contract, such endorsement at the time of shipment is not made and commission is subject to availability of the product in the market. I find that the endorsement in the shipping bill is mandatory condition as per the above Notification and failure of the appellant to mention the amount payable towards commission payable to foreign agents will defeat the very same claim of the refund application. However, if the appellant is able to convince the authority regarding reason for their failure to endorse the condition in the shipping bill by way of producing contract or any other documents, and also the evidence regarding remittance towards such payment against particular shipping bills, the adjudication authority can consider the issue for extending the benefit of the Notification. As far as the condition of producing EXP2, I find that this is only procedural condition as per the Notification and all the information as sought by the authorities are available on record. Thus, in the absence of such requirement, which is a procedural compliance for extending the benefit of exemption notification, same can be condoned as held by this Tribunal in various other cases.

9. Considering the facts and circumstances of the case, I find that it is a fit case for remanding the matter to the adjudication authority to consider the issue afresh and to pass appropriate order in accordance with law. Accordingly, impugned orders are set aside. Regarding reason for non-endorsement of the commission payable by them in the shipping bill, Appellant is directed to produce entire documents as relied by them while making submissions before this Tribunal to substantiate their claim of refund and if adjudication authority is satisfied with the submission made by the appellant for their failure to comply with such condition of endorsement

in shipping bill, refund can be allowed. As regarding non-submission of EXP2 form, since it is only a procedural lapse, the adjudication authority is directed to consider the refund claims without considering such procedural lapse since the benefits are extended for promoting export of goods and for saving foreign exchange. Thus, refund claim against those shipping bills where endorsement regarding commission payable to agents are mentioned are allowed and claim against remaining shipping bills are remanded to Adjudication Authority for De novo adjudication.

10. Appeals are partially allowed by way of remand.

(Operative portion of the order was pronounced in open court on conclusion of hearing)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

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