CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20191 of 2021

[Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP-220-2020 dated 29/07/2020 passed by Commissioner of Central Tax (Appeals), COCHIN]

M/s Western Plastics
K 70 KINFRA IIT Park Kanjikode
PALAKKAD - 678621
KERALA

Appellant(s)

VERSUS

Commissioner Of Central Tax &
Central Excise, Calicut
C.R. Buildings, Mananchira
Calicut - 673001
Kerala

Respondent(s)

APPEARANCE:
Shri Sivadas Chettoor, Chartered Accountant for the Appellant
Shri K.B.Nanaiah, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20667 / 2021

Date of Hearing: 12/08/2021
Date of Decision: 12/08/2021

Per : S.S GARG

The present appeal is directed against the impugned order dated 29.07.2020 passed by the Commissioner (Appeals), Cochin whereby the appeal for claim of refund is rejected.

2. Briefly the facts of the present case are that the appellant filed a refund claim of Rs.1,47,686/- on 27.09.2017 as per Section 104 of the Finance Act, 2017 before the Deputy Commissioner, Palakkad. As per

Notification No.41/2016 dated 22.09.2016 taxable services (like premium, salami, cost, price, development charges etc) provided by the State Government or KINFRA by way of providing long term lease exceeding 30 years or more is exempt from service tax and the said exemption was available from the period from 01.06.2007 to 21.09.2016; along with refund claim, the appellant filed all the requisite documents. Thereafter, a SCN dated 08.11.2017 issued to the appellant proposing to reject the refund claim on the ground of non-submission of necessary documents. After following the due process, the Deputy Commissioner vide Order-in-Original No. 113/2017 dated 02.12.2017 rejected the refund claim of the appellant on the ground that the application for refund did not meet the requirements under Section 11B of the Central Excise Act, 1944 as made applicable to Finance Act, 1944 vide Section 83 of the Act. Aggrieved by the said order, the appellant filed appeal before the Commissioner who also rejected the appeal. Hence, the present appeal.

3. Heard both the parties and perused the records of the case.

4. Learned Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts, the law and the binding judicial precedents. He further submitted that Section 104 of the Finance Act, 1994 is an independent standalone provision and is a special provision dealing with the specific circumstances mentioned in Section 104 and the same cannot be controlled or limited or restricted by the general provision like Section 83 of the Finance Act, 1994 read with Section 11B of the Central Excise Act, 1944. He further submitted that it is a settled law that a specific provision in an enactment would override a general provision. He further submitted that the appellant produced documentary evidences justifying the payment of service tax to the KINFRA and a certificate from KINFRA certifying that they have paid the service tax to the Government and has not claimed CENVAT credit. He further submitted that Section 104 of the Finance Act itself declares that there will not be any levy or collection of tax, its impact cannot be nullified or controlled or limited by another provision contained in the very same enactment i.e. Section 83 of the Finance Act. For this submission, he relied upon the decision of the Hon'ble Madras High Court in *Enmas Andritz Pvt. Ltd. Vs Asstt. Commissioner of S.T. Chennai* reported in *2020 (38) GSTL 314*

(Mad.). He further submitted that though Section 11B of the Central Excise Act is not applicable in the present case but assuming for the sake of argument that Section 11B of the Central Excise Act, 1944 is applicable even then the appellant has complied with fully or substantially with the requirements specified therein. He further submitted that the application was filed on 27.09.2017 which is within six months from the relevant date, i.e. date of introduction of Section 104 of the Finance Act, 2017. He further submitted that the appellant had not passed the incidence of tax and duty to any other person. He further submitted that initially when he filed the Challan, he did not have the copy of invoices/bills issued by KINFRA but he produced the other documentary evidences to show that they have paid service tax to KINFRA and in turn KINFRA had paid the same to the Government.

5. On the other hand, learned AR defended the impugned order and submitted that the refund has rightly been rejected on account of non-submission of requisite documents.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant filed refund claim which arose as a consequence of introduction of Section 104 of the Finance Act w.e.f. 31.03.2017. Further, I find that Notification No.41/2016 dated 22.09.2016 has exempted taxable service provided by the State Government Industrial Development Corporation/Undertakings to industrial units by way of granting long term lease on industrial plot from so much of service tax leviable thereon under Section 66B of the said Act, as is leviable on the one time upfront amount payable for such lease. Vide Section 104 (1), exemption was provided from said services for the period from 01.06.2007 to 21.09.2016 and it was provided that the refund claim should be filed within a period of six months from the date from which Finance Act, 2017 is promulgated and come into force. Further, I find that in the present case, the appellant filed the refund claim within time and the only ground for which the refund was rejected by the Original Authority and upheld by the Appellate Authority is that the appellant did not produce sufficient documents in the form of invoices/bills showing that they have paid the service tax to KINFRA. During the pendency of the appeal, the appellant filed various invoices/bills issued by KINFRA showing the payment of service tax

by the appellant for which the refund claim has been filed by the appellant. Further, I find that KINFRA has also issued a certificate dated 02.02.2021 certifying that they have not availed any CENVAT credit on the service tax paid by the appellant. Further, I find that these bills/invoices issued by KINFRA clearly show the payment of service tax by the appellant to KINFRA and KINFRA in turn has paid the same to the Government. Though these invoices/bills were not produced before the Original Authority but various Challans issued by KINFRA were produced along with worksheets showing the payment of service tax to KINFRA by the appellant. This Tribunal in identical case of *M/s Phoenix Rubbers* vide Final Order No.20637/2021 dated 15.07.2021 and in the case of *M/s Comfort Night Linen Products* and *M/s Process Instrumentation and Engineers* vide Final Order No.20652-20653/2021 dated 03.08.2021 has allowed the appeals of the appellant.

7. In view of the facts that now the appellants have produced sufficient documents to prove the payment of service tax, I do not find any justification for rejection of the refund claim and hence, I set aside the impugned order by allowing the appeal of the appellant.

(Order pronounced in the open court on **12/08/2021**)

(S.S GARG)
JUDICIAL MEMBER

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