CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 882 Of 2011

[Arising out of OIA No. 61/ST/APPL/LDH/2011 dated 15.03.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

M/s Vinayak Textiles Mills : Appellant (s)
Phase-VIII, Focal Point, Ludhiana

Vs

CCE & ST- Ludhiana : Respondent (s)
Central Excise House, F-Block, Rishi Nagar

APPEARANCE:
Shri Surjeet Bhadu & Shri Veer Singh, Advocates for the Appellant
Shri Raman Mittal, Departmental Representative for the Respondent

CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

ORDER No. A/60168/2023

Date of Hearing:06.06.2023

Date of Decision:27.06.2023

Per : S. S. GARG

The present appeal is directed against the impugned order dated 15.03.2011 passed by the Ld. Commissioner (Appeals) of Central Excise, Chandigarh-II wherein the Ld. Commissioner (Appeals) has rejected the refund claim of the appellant to the tune of Rs. 1,26,820/-.

2. Briefly stated the facts of the present case are that the appellant is registered with the Central Excise Department for payment of service tax under the category of "GTA". During the period 1.04.2008 to 30.06.2008, the appellant exported the processed Fabric and availed various services in relation to such exports. As per Notification No. 41/2007 dated 06.10.2007, the exporter can claim refund of the service tax paid on the services specified therein, availed
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for export of goods. Accordingly, the appellant applied for the refund of service tax amounting to Rs. 1,77,068/- for the quarter ending June 2008. The Revenue instead of sanctioning the refund claim, issued the show cause notice dated 27.03.2009 proposing to deny the refund. Consequent to the order-in-original dated 22.02.2010 and order-in-appeal dated 15.03.2011, the refund amounting to Rs. 1,26,820/- out of total claim of Rs. 1,77,068/- is in dispute.

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

4. Ld. Counsel for the appellant submitted that the impugned order rejected the refund claim is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents. He further submitted that the three grounds for rejecting the refund claim are as under:-

(i) The first ground is that the appellant has not provided any agreement/contract or any other documents with Commission Agents located outside India. The confirmation of order for supply of goods cannot be considered for allowing the refund of service tax paid on Commission.

To rebut, the Ld. Counsel submitted that in the Notification itself it is clearly mentioned that agreement or any other document will be eligible for evidence for payment of service tax and it is no where mentioned in the condition that the proof must be of some particular nature. He further submitted that in the present case, admittedly, the appellant supplied the copy of the "Confirmation of the Contract" by which it is clear that the Commission was paid at a fixed rate on the FOB value of the export goods to the commission agent. He further submitted that this issue has been considered by the Tribunal in the

case of **Mittal International Vs. CCE - 2017 (5) G.S.T.L. 186 (Tri. - Chan.)**, has held as under: -

> *"8. I find that the authorities below have not understood the true spirit of the notification. In fact, the notification specifies that any other documents which means if the appellant provides the copy of the invoice, for the commission paid, the same will serve the condition of the notification. Therefore, if the invoice of the commission agent is on record, in that circumstance, the appellants have complied with condition of the notification and the appellant is entitled for availing the refund."*

(ii) The second ground for rejecting the refund is in relation to the claim for Service Tax paid on Services of Inland Transportation.

In this regard also, the Ld. Counsel submitted that Notification provides for refund of Service Tax paid on the Services utilized for the export of goods. He further submitted that it is not disputed by the Revenue that such services of transportation, whether relating to empty container or otherwise, were used in relation to the export consignment only. He also submitted that the Transporters bring empty containers to the factory of the Appellant where export goods are stuffed in the containers and consignment is removed for export. The transporter raises a consignment note/invoice for such transport. The charges for the service are consolidated and cannot be bifurcated in any manner. The Ld. Counsel further submitted that this issue has also been considered by the Tribunal in the case of **CAP & SEAL (Indore) Pvt. Ltd. Vs. CCE – 2017 (49) STR 547 (Tri.-Del.)**, wherein it has been held as under: -

> "*I find that no separate freight has been mentioned on the bills raised by the transporter for transportation of goods from Pithampur to Port of Export. Rather, the invoice issued by the*

service provider mentioned the claim of to and fro freight charges. Since the freight charges are in connection with transportation of export goods, in absence of any specific prohibition contained in Notification 41/2007, the benefit of refund should be available to the appellant. In this context, the Tribunal in the case of M/s. Garware Polyester Ltd. (supra) has allowed the refund claim, holding that service tax paid on transport of empty containers from the yard to the factory is admissible as refund."

(iii) The third ground for rejection of the refund by the Revenue is that the service providers are not registered for the Services such as CHA/Port Services.

To counter this objection, the Ld. Counsel for the appellant submitted that as per **CBEC's Circular No. 112/6/2009-ST dated 12.03.2009**, the service provider providing various services to the exporter, but has registration under one service, the refund cannot be denied on this ground and the discrepancy on the part of service provider has to be dealt separately with the service provider only.

He further submitted that there is no dispute with regard to availing the services for the purpose of export as well as payment of Service Tax thereon. It is only that the service provider was not registered under CHA/Port Service. He also submitted that the Registration under a particular service is not necessary for the purpose of exemption under Notification No. 41/2007. For this submission, he relied upon the decision of the Hon'ble Rajasthan High Court in the case of **Union of India Vs. Arihant Tiles and Marbles Pvt. Ltd. – 2019 (20) GSTL 21 (Raj.)**.

5. On the other hand, the Ld. DR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of material on record, we find that all the objections raised by the Revenue for denial of refund claim are not sustainable in law in view of various decisions of the Tribunal and the decision of the Hon'ble High Court of Rajasthan.

7. As far as the first objection of the department is concerned, the same is not tenable in view of the wordings mentioned in the notification itself. The appellant has produced the confirmation of the contract which clearly shows the payment of commission at a fixed rate on the FOB Value of the export and this issue has been settled by the Tribunal in the case of **Mittal International** cited (supra).

8. As far as the second objection for denying the refund claim is concerned, this issue has also been considered by the Tribunal in the case of **CAP & SEAL (Indore) Pvt. Ltd.** cited (supra) wherein the Tribunal has specifically held that the service tax paid on transportation of empty container from port to factory is admissible as refund.

9. As far as the third ground for denial of refund is that the service providers are not registered for the services such as CHA/Port Services, this issue has also been considered by the Hon'ble Rajasthan High Court in the case of **Union of India Vs. Arihant Tiles and Marbles Pvt. Ltd.** cited (supra) wherein it has been held that the Registration under a particular service is not necessary for the purpose of exemption under Notification No. 41/2007. The relevant paras of the judgement are reproduced as under:-

> ***"3.*** *The order dated 7-7-2010 was challenged before the CESTAT by the respondent assessee on various grounds but the Learned CESTAT while considering the Notification No. 41/2007 gave finding that it is an admitted fact of the record that the services*

towards terminal and other handling services were availed by the assessee within the port area, in connection with export of the goods. Thus, irrespective of classification of service, since the same are provided within the port for export of goods, the benefit of refund should be available under the head port services in terms of notification dated 6-10-2017. The Tribunal held that in case of Shivam Exports, SRF Ltd., and AIA Engineering it has been held that irrespective of the classification of service, if the services are provided within the port, the same should qualify as port service for the purpose of benefit of refund. Whiling giving aforesaid finding, the CESTAT held that in view of the factual position, the assessee is eligible for refund of Rs. 16,72,923/-.

4. *In our the finding recorded by the Learned CESTAT is based upon factual aspect of the matter and therefore, no substantial questions of law emerges for consideration in this regard*."

10. In view of the above findings, we are of the considered view that the impugned order is not sustainable in law and we set-aside the same by allowing the appeal filed by the appellant with consequential relief, if any, as per law.

(Pronounced on 27.06.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.