CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 778 of 2011

[Arising out of Order-in-Appeal No. 35/ST/APPL/LDH/2011 dated 31.01.2011 passed by the Commissioner (Appeals), Chandigarh II]

M/s Sportking Synthetics **......Appellant**
Village Kanech, Sahenwal, G.T. Road, Ludhiana

VERSUS

Commissioner of CGST, Ludhiana **......Respondent**
Central Excise House, F Block Rishi Nagar, Ludhiana

APPEARANCE:

Present for the Appellant: Shri Surjeect Bhadoo and Ms. Sanya Thakur, Advocates
Present for the Respondent: Ms. Shivani, Authorized Representative

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

FINAL ORDER NO. 60344/2023

DATE OF HEARING: 01.09.2023
DATE OF DECISION: 08.09.2023

PER S. S. GARG

The present appeal is directed against the impugned order dated 31.01.2011 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the refund claim of Rs. 1,73,033/-.

2. Briefly the facts of the present case are that the appellant engaged in the manufacture and export of their finished products.

The appellants on 05.06.2008 filed a refund claim for 1,73,033/-, in terms of Notification No. 41/2007-ST dated 06.10.2007 for the quarter ending 31.03.2008 in respect of service tax paid on services used for export of their finished goods. The department observed that the refund claimed against the bills issued by M/s NSL Agency (India) Pvt. Ltd., Mumbai & M/s Sahib Cargo Logistics, Ludhiana was in respect of Customs House Agent Service, that M/s Hind Terminals Pvt. Ltd, Mumbai had paid service tax on Factory stuffing charges and the registration No. & ST No. had not been mentioned on the bills; that refund claimed against the bills issued by M/s Interport Global Logistics, Mumbai was in respect of Cargo Handling Service and that Container Corpn. Of India had paid service tax on LDD TSC charges which are not specified service under Notification ibid and thus, refund thereof was not admissible. Accordingly, a show cause notice was issued proposing rejection of the refund claim. The adjudicating authority vide O.I.O order allowed part of refund of 68,231/- to the appellant but rejected the refund of 1,04,802 on the grounds that services like THC, BC charges, handling, LDD. TSC. documentation charges are not specified service under Notification No. 41/2007-ST dated 06.10.2007. Aggrieved by the order of the original authority rejecting the refund claim of Rs. 1,04,802/-. Appeal was filed before the Commissioner (Appeals), the commissioner (Appeals) has allowed the refund claim of Rs. 4,369/- against the service tax paid by NSL Agency (India) Pvt. Ltd., Mumbai, M/s Interport Global Logistics, Mumbai and M/s Sahib Cargo Logistics, Ludhiana. Hence, the present appeal.

3. Heard both the parties and perused the record.

4. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the notification No. 41/07-ST dated 06.10.2007 and the circular issued by CBEC no. 112/06/2009-ST dated 12.03.2009. He further submitted that as per the notification No. 41/07-ST dated 06.10.2007 export can claim refund of service tax paid on the services specified therein and availed for export of goods. He further submitted that the appellant applied for refund of service tax amounting to Rs. 1,73,033/- for the quarter ending March, 2008. He further submitted that the Revenue instead of sanctioning the refund claim, issued the show cause notice dated 16.01.2009 proposing to deny the refund of Rs. 1,04,802/- out of the total amount. Vide Order-in-Original dated 18.12.2009 as affirmed by the Order-in-Appeal dated 31.01.2011, the refund amounting to Rs. 1,00,433/- was rejected on the ground that the service tax paid on Terminal Handling Charges, demurrage charges, total logistic solution, BL Charges and documentation charges, nomination charges, etc. are not covered under port service and therefore are not covered by exemption under Notification No. 41/07-ST dated 06.10.2007.

5. The Ld. Counsel further submitted that as per the circular of CBEC dated 12.03.2009 cited (Supra) 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 of service 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.

6. He further submitted that the registration under a particular service is not necessary for the purpose of exemption under Notification no. 41/2007 in support of his submissions he relied upon the decision of the ***Union of India Vs. Arihant Tiles and Marbles Pvt. Ltd- 2019 (20) GSTL 21 (Raj.).***

7. On the other hand, Ld. AR defended the impugned order and submitted that the refund rightly be rejected on the ground that the services provided by the service provider are not specified services under Notification No. 41/07-ST dated 06.10.2007. He further submitted that service eligible for refund under the said Notification have been specified and therefore the strict requirement exist for ascertaining the actual services which has been used in the export of goods.

8. After considering the submission of both the parties and perusal of the material on record, I find that the refund claim has been rejected only on the ground that the service tax paid on Terminal Handling Charges, demurrage charges, total logistic solution, BL Charges and documentation charges, nomination charges are not covered under port services and therefore exemption provided under Notification No. 41/07 dated 06.10.2007 are not applicable.

9. Further, I note that CBEC's vide Circular No. 112/6/2009-ST dated 12.03.2009 has clarified this issue, the relevant portion is reproduced here in below:

"Notification No. 41/2007 provides exemption by way of refund from specified taxable services used for export of goods. Granting refund to exporters, on taxable services that he receives and uses for export do not require verification of registration certificate of the supplier of service. Therefore, the refund should be granted in such cases, if otherwise in order. The procedural violations by service provider need to be dealt separately, independently of the process of refund."

10. Further, I find that there is no dispute with regard to availing of the services for the purpose of export as well as payment of service tax thereon. This issue has been considered by the Hon'ble High Court of Rajasthan in the case of Union of India Vs. Arihant Tiles and Marbles Pvt. Ltd cited (Supra) wherein the Hon'ble High Court has held 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."*

11. In view of the decision of the Hon'ble High Court of the Rajasthan in the case of Union of India Vs. Arihant Tiles and Marbles Pvt. Ltd cited (Supra) I am of the considered opinion that registration under a particular service is not necessary for the purpose of exemption under Notification No. 41/07, hence, I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any as per law.

(Order pronounced in the open court on 08.09.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

Kailash