CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No.55811 of 2013

[Arising out of OIA No.178-192/ST/CHD-1/12 dated 11.10.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-I]

M/s Cosmo Ferrites Limited : **Appellant (s)**
Unit-II, Jabli, Solan, HP-174101

Vs

The Commissioner of Central Excise
Chandigarh-I : **Respondent (s)**
Central Revenue Building,
Sector-17C, Chandigarh-160017

With

(2.) Excise Appeal No. 55812 of 2013
(3.) Excise Appeal No. 55813 of 2013
(4.) Excise Appeal No. 55814 of 2013
(5.) Excise Appeal No. 55815 of 2013
(6.) Excise Appeal No. 55816 of 2013
(7.) Excise Appeal No. 55817 of 2013
(8.) Excise Appeal No. 55818 of 2013
(9.) Excise Appeal No. 55819 of 2013
(10.) Excise Appeal No. 55820 of 2013
(11.) Excise Appeal No. 55821 of 2013
(12.) Excise Appeal No. 55822 of 2013
(13.) Excise Appeal No. 55823 of 2013
(14.) Excise Appeal No. 55824 of 2013
(15.) Excise Appeal No. 55825 of 2013
(16.) Excise Appeal No. 55826 of 2013
(17.) Excise Appeal No. 55827 of 2013
(18.) Excise Appeal No. 55828 of 2013
(19.) Excise Appeal No. 55829 of 2013

[All Arising out of OIA No.178-192/ST/CHD-1/12 dated 11.10.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-I]

<u>APPEARANCE:</u>
Shri Sunil Arora, Advocate for the Appellant
Shri Pawan Kumar, Authorised Representative for the Respondent

CORAM :
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)
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FINAL ORDER Nos.60351-60369/2023

Date of Hearing:24.08.2023

Date of Decision:08.09.2023

Per: P.ANJANI KUMAR

The appellant, M/s Cosmo Ferrites Limited, is engaged in the manufacture and export of soft ferrites powder and soft ferrites components; the appellant has filed various refund claims, with the Deputy/ Assistant Commissioner of the Central Excise Division, during the period October 2008 to March 2011 claiming refund of services used in the exports; Deputy/ Assistant Commissioner, while sanctioning the refunds, rejected the refund in respect of ARE-1/ Shipping bills wherein the refund amount was less than Rs.500/-. On an appeal filed by the appellants, Commissioner (Appeals) upheld the order of the lower authority. Appeals filed are as below:

Sl No.	Appeal No.	Impugned Order
1.	Excise Appeal No. 55811 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
2.	Excise Appeal No. 55812 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
3.	Excise Appeal No. 55813 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
4.	Excise Appeal No. 55814 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
5.	Excise Appeal No. 55815 of 2013	OIA No.178-192/ST/CHD-1/12 dated

		11.10.2012
6.	Excise Appeal No. 55816 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
7.	Excise Appeal No. 55817 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
8.	Excise Appeal No. 55818 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
9.	Excise Appeal No. 55819 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
10.	Excise Appeal No. 55820 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
11.	Excise Appeal No. 55821 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
12.	Excise Appeal No. 55822 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
13.	Excise Appeal No. 55823 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
14.	Excise Appeal No. 55824 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
15.	Excise Appeal No. 55825 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
16.	Excise Appeal No. 55826 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
17.	Excise Appeal No. 55827 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012
18.	Excise Appeal No. 55828 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012

19.	Excise Appeal No. 55829 of 2013	OIA No.178-192/ST/CHD-1/12 dated 11.10.2012

2. Shri Sunil Arora, learned Counsel for the appellant submits that refund claims have been processed after the due verification report submitted by the jurisdictional Range Officer; the authorities down below erred in rejecting part of the refund where the amount in each of the shipping bills was less than Rs.500/-; the authorities have mis-read the Notification No.17/2009 dated 07.07.2009 stating that in respect of each of the shipping bills, the amount of refund claim should be less than Rs.500/-; the unambiguous language in the Notification which provides that details of refund claim should be given in Proforma shipping bill-wise, would make it clear that it cannot be interpreted that refund claim should be lodged shipping bill-wise.

3. Shri Pawan Kumar, learned Authorized Representative for the Department reiterates the findings of the impugned orders and submits that the language of the Notification is very clear and the refund claims have to be filed service-wise and shipping bill-wise; there is no provision in the Notification to permit filing of refund claims on a quarterly basis; the wordings of the Notification being very clear do not give any scope for interpretation. He further argues that in case the appellant's proposition, it leads to the conclusion that in case if the refund is not admissible in a particular shipping bill, the entire refund claim needs to be rejected. He submits that the decision of the Tribunal, in the case of Lucid Colloids Limited- 2017 (52) STR 152 (Tri.

Del.), has been appealed against and the appeal that has been admitted by the Hon'ble High Court of Rajasthan.

4. Heard both sides and perused the records of the case. The entire case rests on the question as to whether the Notification No.17/2009 indicates that the refund claims have to be filed shipping bill-wise and in case, the refund claimed in a particular shipping bill is less than Rs.500/-, the subject refund is liable to be rejected. We find that for a proper appreciation of the facts of the case, a look at the Notification is required. The relevant extracts of the Notification are reproduced below:

> "G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of theFinance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of theGovernment of India in the Ministry of Finance (Department of Revenue) notification No.41/2007-ServiceTax,datedthe6th October,2007,publishedintheGazetteofIndia,Extraordinary,videnumber
>
> G.S.R. 645(E), dated the 6th October, 2007, except as respects things done or omitted to be done beforesuch supersession, the Central Government, on being satisfied that it is necessary in the public interestso to do, hereby exempts the taxable services specified in column (3) of the Table below (hereinafterreferred to as specified services) received by an exporter of goods (hereinafter referred to as theexporter)andusedforexportofgoods(hereinafterreferredtoassaidgoods)pertainingtosub-clausesofclause(105)ofsection65ofthesaidActspecifiedinthecorrespondingentryincolumn(2)ofthesaid Table, fromthe whole of the service tax leviable thereon under section 66 and section 66A of thesaidAct,subjecttotheconditionsspecifiedinthecorrespondingentryincolumn(4)ofthesaidTable:
>
> Providedthat–
>
> (a) theexemptionshallbeclaimedbytheexporterforthespecified servicereceivedandusedbyhimfor exportof the said goods;
>
> (b) theexemptionclaimedbytheexportershallbeprovidedbyway ofrefundofservicetaxpaid onthe specifiedservice used for exportofthe said goods;
>
> (c) theexporterclaimingtheexemptionhasactuallypaidtheservi

cetaxonthespecifiedserviceto its provider;

(d) noCENVATcreditofservicetaxpaidonthespecifiedserviceusedforexportofsaidgoodshas been taken underthe CENVAT Credit Rules, 2004;

(2) theexemptionshallbegiveneffecttointhefollowingmanner,namely:-

(a) the person liable to pay service tax under section 68 of the said Act on the specifiedservice provided to the exporter and used for export of the said goods shall not beeligibleto claimexemption for the specifiedservice;

(b) the manufacturer-exporter, who is registered as an assessee under the Central ExciseAct, 1944 (1 of 1944) or the rules made thereunder, shall claim the exemption by filingaclaimforrefundofservicetaxpaidonspecifiedservicetotheAssistantCommissioner of Central Excise or the Deputy Commissioner of Central Excise, as thecase maybe,having jurisdictionover thefactory of manufacture,in FormA-1;

(c) theexporterwhoisnotsoregisteredundertheprovisionsreferredtoinclause(b),shall before filing a claim for refund of service tax, file a declaration in Form A-2 withthe Assistant Commissioner of Central Excise or the Deputy Commissioner of CentralExcise, as the case may be, having the jurisdiction over the registered office or the headoffice,as the casemaybe,of such exporter;

(d) the Assistant Commissioner of Central Excise or the Deputy Commissioner of CentralExcise,asthecasemaybe,shall,afterdueverification, allotaservicetaxcode(STC)

number to the exporter, referred to in clause (c), within seven days from the date ofreceiptof the said FormA-2;

(e) theexporter,referredtoinclause(b)or(c),shallfiletheclaimfor refundofservicetax to the Assistant Commissioner of Central Excise or the Deputy Commissioner ofCentral Excise, as the case may be, having jurisdiction over the factory of manufacture,registeredofficeorthehead office,asthecasemaybe,ofsuch exporterinFormA-1;

(f) the claim for refund shall be filed within one year from the date of export ofthe saidgoods.

Explanation.-For the purposes of this clause the date of export shall be the date onwhich the proper officer of

Customsmakesan order permitting clearance and loadingof the said goods for exportation under section 51 of the Customs Act, 1962 (52 of1962);

(g) for each taxable service specified in column(3) of the said Table, the exporter shallenclose all the documents specified in corresponding entry in column (4) of the saidTableand the FormA-1 with the claimof refund;

(h) no refund claim shall be allowed if the same is for an amount less than rupees fivehundred;

(i) where-

(A) thetotalamountofrefundsoughtunderaclaimisupto0.25%ofthetotaldeclaredfreeon board value of export;

(B) theexporterisregisteredwithExportPromotionCouncilsponsoredbytheMinistryof Commerce or the Ministryof Textiles;

(C) subjecttotheprovisionsof(A)and(B)above,eachdocumentspecifiedinclause (b)andincolumn(4)ofthesaid Tableshallbeenclosedwiththeclaim;

(D) invoice, bill or challan, or any other document issued in the name of the exporter,showing payment for such service availed and the service tax payable shall besubmittedinoriginalafterbeingcertifiedinthemanner specifiedinsub-clauses (E) and(F);

(E) theexporterisaproprietorshipconcernorpartnershipfirm,thedocumentsenclosed with the claim shall be certified by the exporter himself and where theexporter is a limited company, the documents enclosed with the claim shall becertifiedbythe person authorisedbythe Board of Directors;

(F) thedocumentsenclosedwiththeclaimshallcontainacertificatefromtheexporter or the authorised person to the effect that specified service, to which thedocument pertains, has been received, the service tax payable thereon has beenpaidandthespecifiedservicehasbeenusedforexportofgoodsundertheshippingbillnumber;

(j) where the amount of refund sought under a claim is more than 0.25% of the declaredfreeonboardvalueofexport,suchcertification,shallbedonebytheCharteredAccountant who audits the annual accounts of the exporter for the purposes of theCompanies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961), as the casemaybe;

Form-A1

[seeParagraph2(b)and2(e)]

Application for claiming Refund of Service Tax paid under Notification No.17/2009-S.T., dated07 -07-2009

To,

TheDeputy/AssistantCommissionerofCentralExcise

Sir

I/WeclaimrefundofRs...........(Rupeesinwords)underNotificationNo.17/2009-ST.dated07.07.2009inrespect of service taxpaidon services used forexportof goods

1. Nameoftheexporter:
2. MembershipnumberOftheExportCouncil:
3. NameoftheExportCouncil:
4. Addressoftheregistered/headofficeofexporter:
5. TelephoneNumberande-mailIDoftheexporter:
6. Division.........Commissionerate..............
7. CentralExcise/ServiceTaxRegistrationNumber/STC(formerchantexporter)
8. ImportExportCodeNumber..............
9. DetailsofBankAccount(NameofBank,branchaddressandaccountnumber)
10. Detailsoftherefundclaim(separately foreachShippingBill):

(Rupeesinthousand)

S. No.	Detailsofgoodsexportedonwhichrefundofservicetaxclaimed.								
	Details of shipping bill/ Billofexport, etc. **(2)**			Detailsofgoodsexported. **(3)**					
	No.	Date.	Date of Letexport order.	Bill ofladin g orAirw aybill Number.	Date.	Descriptionofgoodsexported.	Quantity.	Unit.	FOB value.
1									

5. Ongoing through the Notification, we find that the Notification does not stipulate that the refund claims should be filed shipping bill-wise. Important conditions that are relevant for the dispute in the impugned case are as follows:

(i) Condition No.2(b) provides that a manufacture-exporter who is registered with Central Excise shall use the Form A-1.

(ii) Condition No.2(h) provides that no refund claim shall be allowed if the same is for an amount less than Rs.500/-.

(iii) Sl No. 10 of the entry in the Form A-1 specifies that details of refund claim (separately for each shipping bill) be mentioned.

(iv) The table prescribed under Form A-1 has a column to show the details of shipping bill under the Head details of goods exported on which refund of service tax claimed.

6. A harmonious reading of the Notification makes it very clear that there is no restriction that a refund claim must be filed for each shipping bill and that one refund claim can be filed for more than one shipping bill. For this reason, only, necessity of giving details of each shipping bill is stressed upon in the Notification. Moreover, the table in Form A-1 provides Column for details of shipping bill/ bill of export etc. and understandably, the same needs to be given for each of the shipping bills. If the Revenue's contention was correct, there was no need to mention that the details of the refund claim should be given separately for each shipping bill. Therefore, a conjoint reading of the Notification and the Form A-1 appended to the Notification, gives an

unambiguous and the only understanding that there is no restriction on the number of shipping bills in a refund claim. The only condition mentioned at 2(h) being that no refund claim shall be allowed if the same is for an amount less than Rs.500/-. Therefore, the reasoning given in the impugned order is not in tune with the wordings of the Notification. Interpreting the Notification to say that refund claims shall be filed shipping bill-wise would lead to avoidable duplication of work and wastage of paper and would unnecessarily burden the appellants as well as the Department with the arduous task of filing numerous claims. Therefore, for a harmonious understanding of the Notification, provisions which are not spelt out need not be brought in by using an extraneous logic or reason.

7. Moreover, we find that the subject refund claims have been processed after obtaining a categorical report from the jurisdictional Range Officer that the refund is admissible as per law and technically correct and that all the documents are required under the Notification No.17/2009 dated 07.07.2009 have been submitted by the appellant. We find that, though, the impugned order records the report of the jurisdictional Range Officer, no findings are given controverting the report given by the jurisdictional Range Officer. The adjudicating authority proceeds on the basis his own interpretation of the provisions of Notification No.17/2009.

8. The issue has been considered by the Principal Bench of the Tribunal in the case of Lucid Colloids (supra). The Bench finds that the

show-cause notice therein was issued in various grounds being (i) original invoices with certification not submitted, (ii) Bill of Lading charges, THC were not covered under the category of Port services; (iii) refund claim in respect of certain shipping bills is less than Rs. 500/-; (iv) in case of freight, service tax is to be paid by exporter etc. It is clear that the issue discussed in the impugned case was also deliberated by the Tribunal being mentioned at (iii) above. The Tribunal concluded that the objections raised in the show-cause notice are not correct. Tribunal allowed the appeal therein partially rejecting the appeal in so far as claims filed beyond the period of limitation. The Department has appealed against the above decision of the Tribunal before the Hon'ble High Court of Rajasthan. However, a perusal of the latest position indicates that the case has been dismissed on monetary limits. We find that despite this fact, in view of our discussion above, there is no prescription in the Notification that the refund claims should be filed shipping bill-wise and that the Condition No. 2(h) should be read to mean per shipping bill.

9. In view of the above, all the appeals are allowed with consequential relief, if any, as per law.

(Pronounced on 08/09/2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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