CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 12 Of 2012

[Arising out of OIA No. 167-168/CE/APPL/LDH/2011 dated 05.10.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

M/s Winsome Yarns Limited (Unit-III) : Appellant (s)
Village Kurawala, Barwala Road, Dera Bassi, Mohali

Vs

CCE, Chandigarh-I : Respondent (s)
C.R. Building, Sector 17-C, Chandigarh-160017

with

(ii) Service Tax Appeal No. 13 Of 2012 (M/s Winsome Yarns Limited (Unit-III)

[Arising out of OIA No. 167-168/CE/APPL/LDH/2011 dated 05.10.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

(iii) Service Tax Appeal No. 17 Of 2012 (M/s Winsome Yarns Limited (Unit-III)

(iv) Service Tax Appeal No. 18 Of 2012 (M/s Winsome Yarns Limited (Unit-III)

[Arising out of OIA No. 175-176/CE/APPL/LDH/2011 dated 05.10.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

APPEARANCE:
Shri Surjeet Bhadoo a/w Shri Veer Singh, Advocates for the Appellant
Shri Ravinder Jangu, Authorised Representative for the Respondent

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

ORDER No. A/60495-60498/2023

Date of Hearing:08.09.2023

Date of Decision:13.10.2023

Per : S. S. GARG

These four (4) appeals are directed against the impugned order dated 05.10.2011 and 24.11.2011 passed by the Commissioner
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(Appeals) of Central Excise, Chandigarh-II whereby the Ld. Commissioner (Appeals) has rejected the appeals of the appellant.

2. Since the issues involved in all four (4) appeals are common and therefore, all are taken up together for discussion and disposal, the details of which are given herein below in tabular form:-

S. NO.	APPEAL NO.	NOTIFICATION NO	ISSUE, PERIOD & AMOUNT
1	ST/13/2012	41/2007-ST dated 06.10.2007	Jan 2009 to March, 2009 Refund Amount Rs. 3,49,262/- **CHA-SERVICE** Name of CHA on shipping bill is different than invoice submitted for refund. **ROAD TRANSPORT** Invoice submitted for refund is of different entity than entity issuing consignment note- Rs. 1,502/- **EXPORT COMMISSION AGENT** Not submitted proof of payment of commission or payment of Service Tax. **TERMINAL HANDLING CHARGES** Not a prescribed service under Notification No. 41/2007
2.	ST/12/2012	41/2007-ST Dated 06.10.2007	Jan 2009 to March, 2009 Refund Amount Rs. 2,17,472/- **CHA-SERVICE** Name of CHA on shipping bill is different than invoice submitted for refund. **ROAD TRANSPORT** Invoice submitted for refund is of different entity than entity issuing consignment note. **EXPORT COMMISSION AGENT** Not submitted proof of payment of commission or payment of Service Tax. **TERMINAL HANDLING CHARGES** Not a prescribed service under Notification No. 41/2007

3.	ST/17/2012	41/2007-ST dated 06.10.2007	April 2009 to June, 2009 Refund Amount Rs. 1,71,291/- **CHA-SERVICE** Name of CHA on shipping bill is different than invoice submitted for refund. **TERMINAL HANDLING CHARGES** Not a prescribed service under Notification No. 41/2007 **ROAD TRANSPORTATION** Name of port not mentioned in Invoice.
4.	ST/18/2012	41/2007-ST dated 06.10.2007	April 2009 to June, 2009 Refund Amount Rs. 1,51,103/- **CHA-SERVICE** Name of CHA on shipping bill is different than invoice submitted for refund. **ROAD TRANSPORT** Invoice submitted for refund is of different entity than entity issuing consignment. **TERMINAL HANDLING CHARGES** Not a prescribed service under Notification No. 41/2007-ST dated 06.10.2007

3. Briefly the facts of the case are that the appellant are engaged in the manufacturing and export of 100% Cotton yarn falling under Chapter 52 & 55 of the First Schedule to the Central Excise Tariff Act, 1985 and are registered with Central Excise Department. The Appellant is clearing its final product for export by utilizing various services during the course of export on payment of service tax.

- The Appellant filed various refund claims as stated in the table above in respect of service tax paid on services used for export of goods for the quarters as shown in the table above before the adjudicating authority within prescribed time limit.

- Thereafter, Revenue issued show cause notices proposing rejection of the refund claims on various grounds as stated in the table above.
- The appellant filed detailed reply to the show cause notices and the Assistant Commissioner of Central Excise vide their order rejected the refund claims on various ground as stated in the table above.
- Aggrieved by the said orders, the appellant filed appeals before the Ld. Commissioner (Appeals) who rejected their appeals.
- Hence, the present appeals.

4. Heard both the parties and perused the records.

5. Ld. Counsel appearing for the appellant submitted that the impugned orders qua rejecting the refund of service tax paid to various persons for facilitating the export of goods is not sustainable in law as the same has been passed without properly appreciating the requirement of Notification No. 41/2007-ST dated 06.10.2007. He further submitted that the rejection of the refund on the impugned services have already been decided in the appellant's own case for the previous period and he also cited other authorities to justify his claim for refund of service tax on the impugned services.

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

7. Now, we will take up all the services on which refund has been rejected.

(i) CHA Services:-

In this regard, the service tax paid on CHA Services was rejected on the ground that the name of the CHA on the shipping bill is different then invoice submitted for refund. It is pertinent to note that the Revenue has not disputed the services in such exports. Moreover, in the appellant's own case, the Tribunal vide its order No. A/60910-60912/2017 dated 09.05.2017 allowed the refund of service tax paid on CHA Services.

Further, we find that in the case of Evergreen Suppliers vs. Commissioner of Central Excise, Mangalore 2008 (9) STR 467 (Tri.-Bang.), it has been held that there is no restriction in the service tax law or in the Notification which restricts the activity of sub-contracting by CHA.

In view of above, we hold that the appellants are entitled to refund of service tax paid on CHA Services.

(ii) Road Transport:-

As regards, the service tax paid on GTA Services, the Revenue authorities rejected the refund on the ground that the invoices submitted for refund is of different entity then the entity issuing consignment note.

In this regard, we find that in the appellant's own case, this Tribunal vide its order cited (supra) has allowed the refund of service tax on GTA used for export of goods.

We find that in order to facilitate the export, Baid International Services acted as a pure agent of the appellant for providing GTA Services. Baid International Services paid the GTA to M/s Bhagrangbali Roadways on behalf of the appellant and such payments were later on reimbursed by the appellant to M/s Baid International Services.

The Ld. Commissioner rejected the refund claim of service tax on transportation of goods on the sole ground that the appellant has not furnished any documents which would show that the charges were for transportation of goods from ICD to port of export whereas as per the appellant, they have furnished all these documents with the invoices issued by the service provider at the time of filing the refund.

In view of these facts, we hold that the appellant is entitled to refund of service tax on GTA Services paid by them subject to verification by the lower authorities.

(iii) Export Commission Agent:-

As regards, the refund of service tax paid to commission agent abroad, we find that this issue has also been decided in favour of the appellant in the appellant's on case cited (supra).

Further, we find that the Ld. Commissioner (Appeals) in the impugned order has held that the appellant has failed to comply with the condition of the notification by not submitting the copies of agreement/contract or any other documents with commission agent located outside India.

In this regard, we note that as per the Notification No. 41/2007-ST dated 06.10.2007, it is not necessary that the exporter must provide the agreement or contract rather any other document showing the payment of commission to foreign agent is sufficient to claim refund of service tax. Though, the appellant has filed copies of the agreement/contract and other document but the same was not considered by the revenue authorities.

In view of these facts, we hold that the appellant has satisfied the conditions laid down in the Notification and is entitled to refund of service tax subject to verification by the lower authorities.

(iv) Terminal Handling Charges:-

As regards, the claim of refund of service tax paid for terminal handling charges services, the refund has been rejected on the ground that the said service is not a prescribed service under Notification No. 41/2007-ST dated 06.10.2007.

In this regard, we note that the refund of service tax on terminal handling services has been allowed in favour of the appellant in their own case decided by the Tribunal cited (supra).

Further, we find that the terminal handling services are rendered for handling the export containers at the port of exports. These services are rendered within the port area by various service providers and thus the same are in the nature of port service.

This issue has been decided by various benches of the Tribunal wherein refund was granted in respect of service tax paid in respect of terminal handling services under the said notification. The decisions on this issue are cited herein below:-

- Commissioner of Central Excise v AIA Engineering Pvt. Ltd. 2015 (1) TMI 1044 - Gujarat High Court
- M/s Nahar Fibres v CCE, Chandigarh 2016 (46) S.T.R. 542 (Tri. - Del.)
- M/s Nahar Fibres v CCE, Chandigarh 2017 (3) TMI 314 - CESTAT Chandigarh
- Commissioner of Central Excise v Ramdev Food Products Pvt. Ltd. 2010(19) STR 833 (Tri. Ahmd.)

- Macro Polymers Pvt. Ltd. v Commissioner of Central Excise, 2010(19) STR 679 (Tri.-Ahmd.)
- TRL Riceland Pvt. Ltd. Versus CCE, Delhi-lll 2017 (7) TMI 492 - CESTAT Chandigarh
- M/S Lekh Raj Narinder Kumar Versus C.S. T-Delhi 2019 (11) TMI 537 - CESTAT Chandigarh
- M/S Trident Limited (Formerly Abhishek Industries Limited) Versus CCE, Chandigarh-l 2017 (6) TMI 472 - CESTAT Chandigarh
- M/S Namdhari Food International Pvt. Ltd. Versus CCE, Rohtak 2017 (5) TMI 1343 CESTAT Chandigarh
- M/S TRL Riceland Pvt. Ltd. Versus CCE, Delhi-lll 2017 (8) TMI 219 – CESTAT Chandigarh
- M/S Shahi Exports Pvt. Ltd. Versus CCE, Delhi-IV 2017 (3) TMI 1543 – CESTAT Chandigarh
- M/S Winsome Yarns Limited Versus CCE, Chandigarh 2017 (6) TMI 683 - CESTAT Chandigarh

8. In view of above findings cited (supra), the matters are remanded back to the adjudicating authority for verification and sanctioning of the refund claim filed by the appellant.

9. All the appeals are disposed of in above terms.

(Pronounced on 13.10.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.