

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

~~~~~

REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 1126 Of 2011**

[Arising out of OIA No. 26-28/ST/Apl./CHD-I/2011 dated 21.04.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-I]

**M/s Steel Strips Wheels Ltd.**

**: Appellant (s)**

Vill. Somalheri/Lehil. P.O. Dappar, Teh. Dera Bassi  
Mohali, Punjab

Vs

**CCE-Chandigarh-I**

**: Respondent (s)**

C.R. Building, Sector 17-C, Chandigarh

**(ii) Service Tax Appeal No. 1127 Of 2011 (M/s Steel Strips Wheels Ltd.**

**(iii) Service Tax Appeal No. 1128 of 2011 (M/s Steel Strips Wheels Ltd.**

[Arising out of Common OIA No. 26-28/ST/Apl./CHD-I/2011 dated 21.04.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-I]

**APPEARANCE:**

Shri Sudeep Singh Bhangoo, Advocate for the Appellant

Shri Ravinder Jangu, Departmental Representative for the Respondent

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

**ORDER No. A/60507-60509/2023**

Date of Hearing:25.09.2023

Date of Decision:17.10.2023

***Per : S. S. GARG***

These three appeals are directed against the common impugned order dated 21.04.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-I whereby the Ld. Commissioner (Appeals) has upheld the order-in-original passed by the original authority except with regard to clearing, shipping & forwarding & freight charges etc.

2. Since, the issues involved in all three appeals are identical and disposed of by way of a common order. Therefore, all these appeals are taken up together for discussion and disposal, the details of which are given herein below:-

| Sr. No. | Appeal No.   | OIA No. and date                                   | Refund Involved | Period involved               |
|---------|--------------|----------------------------------------------------|-----------------|-------------------------------|
| 1.      | ST/1126/2011 | OIA No. 26-28/ST/Appl./CHD-I/2011 dated 21.04.2011 | Rs. 2,19,728/-  | October 2008 to December 2008 |
| 2.      | ST/1127/2011 | OIA No. 26-28/ST/Appl./CHD-I/2011 dated 21.04.2011 | Rs. 1,23,965/-  | January 2009 to March 2009    |
| 3.      | ST/1128/2011 | OIA No. 26-28/ST/Appl./CHD-I/2011 dated 21.04.2011 | Rs. 5,09,574/-  | July 2008 to September 2008   |

3. Briefly the facts of the present case are that the appellant are registered with the department for payment of service tax under the category of Transport of goods by Road in a goods carriage and also engaged in manufacturer of Rims/Wheels of Automobiles and part of their production is exported out of India. The goods intended for exports are stuffed in the containers in the factory which is adjacent to ICD, Dapper and these are further transported to the final Port of Export and the movement of containers takes place partly by Road and partly by Rail.

- The appellant has entered into an agreement with one party named as M/s Kuehne and Nagel Pvt Ltd (in short M/s KNL) who are paid lump-sum amount per MTs for arranging of all services relating to export of goods right from the factory of the appellants to the final destination to the goods in the Foreign country. In exceptional circumstances services of other service providers were also availed. The said M/s KNL also availed services of other service providers involved in transportation of goods from factory to final destination which includes the services of Container Corporation, of clearance of goods and documentation with the Customs, various services involved in the Port Area where goods remain stored pending export and the Corporation undertaking transportation of goods in containers by Rail. M/s KNL has been issuing Bills/invoices for recovery of service charges which contained evidence of payment of Service Tax partly by them and partly by other service providers.
- The appellant filed refund claim of service tax paid on export of goods. The appellant along with appeal has also attached documents furnished at the time of filing the refund claim. The appellant has also annexed the copy of the appeal filed before the Commissioner disclosing the certificate issued by M/s KNL to the effect that they had appointed M/s Sunrise Freight and Forwarders Private Ltd. as a sub contractor for customs clearance and related works. The appellant has also enclosed the certificate from M/s Sunrise Freight and Forwarders Private Limited to the effect that they have been appointed as a sub-contractor by M/s KNL for doing customs clearances and related works.

- The original authority after considering the submission of the appellant rejected the refund claim which was upheld by the Ld. Commissioner (Appeals) except clearing, shipping & forwarding & freight charges etc.

- Hence, the present appeal.

4. Heard both the parties and perused the records.

5. 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 facts and the law. He further submitted that the Ld. Commissioner (Appeals) in principle has accepted that M/s KNL was providing the service which were being used for the export of the goods and he has himself allowed the refund on the portion of freight by rail. He further submitted that the invoices for the entire service has been issued by the M/s KNL who in turn had availed the services of the agency who had transported the goods by rail. He further submitted that when the refund of service tax for transportation of goods by rail has been allowed by the Ld. Commissioner (Appeals) then on the same logic, the refund on the other services also ought to have been allowed.

- Ld. Counsel further submits that the refund of service tax paid on CHA has been denied on the ground that the appellant could not submit the copies of invoices of the CHAs issued to M/S KNL to show that CHAs were engaged by M/s KNL to provide service to the appellant. He further submits that the Ld. Commissioner (Appeals) has totally overlooked the fact that the CHA M/s Sunrise Freight Forwarders (P) Ltd. has provided a certificate that they had provided the service of customs clearance and related works to the clients of

M/s KNL and even M/s KNL had given a certificate that M/s Sunrise Freight Forwarders (P) Ltd. had provided the service of custom clearance and related works to their clients. He further submits that the Ld. Commissioner (Appeals) should have accepted the certificate and allowed the refund to the appellant.

- Further, as regard the service tax paid on terminal handling service, the Ld. Counsel submitted that this service is covered under the Port Service as held by many decisions of the Tribunal.
- He further submits that M/s KNL issued a consolidated invoices for all the services, therefore, the refund of entire service tax should have been allowed.

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

7. After considering the submission of both the parties and perusal of material on record, I find that the appellant has only engaged M/s KNL who was further allowed to avail the services of CHA and other service providers for export of goods from the factory of the appellant to the final destination of the goods in the foreign country.

7.1 It is also a fact that M/s KNL availed the services of other parties in order to effect the export of goods.

7.2 As far as, the CHA services are concerned, the appellant had produced that the CHA M/s Sunrise Freight and Forwarders Private Limited has provided a certificate that they had provided the service of customs clearances and related works to the clients of M/s KNL and even M/s KNL had given a certificate that M/s Sunrise Freight and Forwarders Private Limited had provided the service of customs clearance and related works to their clients but both the authorities

have not been considered the certificate, therefore, in my view, the appellant are entitled to refund of service tax paid to CHA subject to verification of the certificate produced by the appellant.

7.3 As regards the refund of service tax paid on Transportation of goods, I find that once the Ld. Commissioner (Appeals) has allowed some portion of freight by Rail then on the same logic, the refund of service tax paid on Transportation of goods by Road should have been also allowed. Hence, I hold that the appellant is entitled to refund of service tax paid on transportation of goods.

7.4 As regard to the service tax paid on Terminal Handling Service is concerned, I find that the said 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-III 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-I 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-III 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 my discussion above, I am of the view that the appellant are entitled to refund of service tax and for determining the quantum of the same, all the matters are remanded back to the adjudicating authority for verification and sanctioning the refund claims filed by the appellant.

9. All the appeals are allowed by way of remand.

*(Pronounced on 17.10.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)