CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 55367 of 2014

[Arising out of Order-in-Appeal No. LUD-EXCUS-000-APP-205-14-15 dated 14.08.2014 passed by the Commissioner (Appeals), CE & Cus., Chandigarh]

Gardex **......Appellant**
C-7, Focal Point, Jalandhar,
Punjab 144004

VERSUS

Commissioner of Central Excise and Service Tax, Ludhiana **......Respondent**
GST Bhawan, F Block Rishi Nagar,
Ludhiana, Punjab 141001

<u>APPEARANCE:</u>

Shri Ravi Chopra, Advocate for the Appellant

Shri Harish Kapoor, Authorized Representative for the Respondent

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

FINAL ORDER NO. 60137/2025

DATE OF HEARING: 11.02.2025
DATE OF DECISION: 13.02.2025

<u>S. S. GARG:</u>

The present appeal is directed against impugned order dated 14.08.2014 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has rejected the refund of Rs.82,962/-.

2. Briefly stated facts of the present case are that the appellant are engaged in the manufacture and export of excisable goods falling under Chapter 82 of the Central Excise Tariff Act, 1985 and are registered with the Central Excise department. They filed a refund claim of Rs.2,96,888/- for refund of service tax paid by them on services used in export of goods during the quarter October-December, 2008 in terms of Notification No. 41/2007-ST dated 06.10.2007. A show cause notice dated 30.09.2010 was issued to the appellant by the Deputy Commissioner, Jalandhar proposing to deny the refund claim on the following grounds:

(a) claim for Rs.9,474/- was time barred;

(b) documents evidencing export of goods in respect of claim for Rs.1,22,979/- were not submitted;

(c) claim for Rs.82,962/- was filed in respect of services not specified under the said notification;

(d) the original documents were not produced for verification of refund claim.

The appellant filed reply to the above show cause notice and given sufficient proof that the appellant are entitled to refund for the amount claimed by them. After following the due process, the learned Deputy Commissioner sanctioned the refund of Rs.90,947/- (out of total claim of Rs.2,96,888/-), but rejected the refund claim for Rs.2,05,941/- (Rs.1,22,979/- + Rs.82,962/-). Aggrieved by the said order, the appellant filed appeal before the learned Commissioner (Appeals) who, vide impugned order, has set aside the rejection of refund of Rs.1,22,979/-, however, upheld the rejection of refund of Rs.82,962/- on the ground that the services of

Customs House Agent (in short, "CHA") were brought under the category of specified services vide Notification No. 17/2009-ST dated 07.07.2009, whereas the refund claim filed by the appellant pertains to the quarter October-December, 2008. Against the rejection of refund claim of Rs.82,962/-, the appellant are in appeal before us.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the impugned order rejecting the refund claim of Rs.82,962/- is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law. He further submits that the learned Commissioner (Appeals) has wrongly held that the services of CHA, which are taxable under Section 65(105)(h) of the Service Tax Act, 1994, were brought under the category of specified services vide Notification No. 17/2009-ST dated 07.07.2009, whereas in fact the services of CHA were brought under the category of specified services w.e.f. 01.04.2008 vide Notification No. 17/2008-ST dated 01.04.2008 vide which Notification No. 41/2007-ST dated 06.10.2007 was amended. He further submits that during the relevant period, the services of CHA were duly covered under the category of specified services. He also submits that both the authorities below have failed to appreciate that the services under reference i.e. DEPB Charges, Terminal Handling Charges, Postage Charges etc. were provided and billed by the CHA and due service tax on the same was charged from the appellant by the CHA and the services of CHA were clearly

specified under the said Notification. He further submits that the payment of service tax on the impugned services under the category of CHA was not being disputed by the department and service tax on the same was collected at the CHA's end, therefore, scope of the said services under CHA could not be disputed at the appellant's end. In support of his submissions, he has also produced the invoices wherein the CHA had charged the service tax on the impugned services. Further, in support of his submission that the identical services have been held to be specified services under the said Notification, he relies on the following decisions:

- Minpro Industries vs. CCE – 2018 (10) GSTL 52 (Tri. Del.)
- CCE vs. AIA Engineering Pvt Ltd – 2014 (36) STR 1236 (Guj.)
- Century Pulp & Paper vs. CCE – 2017 (4) GSTL 419 (Tri. All.)
- Union of India vs. Arihant Tiles And Marbles P Ltd – 2019 (20) GSTL 21 (Raj.)

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that the refund of Rs.82,962/- has been rejected only on the ground that the services of CHA, taxable under Section 65(105)(h) of the Service Tax Act, 1994, were brought under the category of specified services vide Notification No. 17/2009-ST dated 07.07.2009. This finding of the learned Commissioner (Appeals) is wrong because the services of CHA were brought under the category of specified services w.e.f.

01.04.2008 vide Notification No. 17/2008-ST dated 01.04.2008 vide which Notification No. 41/2007-ST dated 06.10.2007 was amended. So, it is wrongly held by the learned Commissioner (Appeals) that the services of CHA were not covered. Further, we find that otherwise also the impugned services namely DEPB Charges, Terminal Handling Charges, Postage Charges etc. are covered under the specified services as provided in the said Notification. We also find that service tax on the impugned services has been paid under the category of CHA and therefore, classification of the service cannot be disputed at CHA's end.

7. In view of our discussion above, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Order pronounced in the open court on 13.02.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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