CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.ST/595/2011 to ST/604/2011

[Arising out of Order-in-Appeal No.43/2011 (M-III-ST) to 52/2011 (M-III-ST) dt. 28.7.2011 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Central Excise,
Chennai-III   Appellant

Versus

1. Farida Prime Tannery Pvt. Ltd.
2. K.H. Shoes Pvt. Ltd.
3. M.A. Khizar Hussain & Sons
4. K.H. Arind Pvt. Ltd.
5. Delta Shoes Pvt. Ltd.   Respondent

Appearance :

Shri A. Cletus, ADC (AR)
For the Appellant

Shri A.R. Raghunathan, C.A.
For the Respondent

CORAM :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 18.04.2018

FINAL ORDER No. 41166,41178-41186 / 2018

Per Archana Wadhwa

All the present appeals of the Revenue are being disposed of by a common order as the issue involved in all of them is identical.

2. After hearing both sides, duly represented by Shri A. Cletus, A.R and Shri A.R. Raghunathan, Consultant, we note that the respondents are exporters of goods and filed refund claims in terms of Notification No.41/2007-ST relatable to service tax paid on services utilized for export of the goods. The said refund claims were initially rejected by the original adjudicating authority on the ground that exports stands made by the assesses under drawback and as per the conditions attached to the notification in question, refunds would not be admissible.

3. On appeal against the said order, the Commissioner (Appeals) took note of subsequent Notification No.33/2008-ST dt. 07.12.2008, which allowed the refund of service tax paid on various services utilized at the port area, for export of the goods, even if goods stands exported under drawback claim and by treating the said notification as clarificatory and being in force at the time of grant of the refund, he allowed the appeals. Hence the present appeals by the Revenue.

4. We find that the issue is no more *res integra.* The Tribunal vide its Final Order No.51013-51019/2016 dt. 10.03.2016 in the case of *Art and Craft Vs Commissioner* has considered the effect of amending Notification No.33/2008-ST dt. 07.12.2008 and has held that the same cannot be held to be retrospective or applicable to the refunds arising out of the exports made prior to the said date, under

the claim of draw back. The said decision stands followed by the Tribunal in a number of decisions. One such reference can be made to the Tribunal decision in the case of *Commissioner of Central Excise, Jaipur Vs Shriram Rayon* - 2017 (3) GSTL 174 (Tri.-Del), by which the Revenue's appeal was allowed.

5. We also note that another Bench of Tribunal in the case of *Commissioner of Central Excise Kanpur Vs Kay Trading* - 2015 (40) STR 340 (Tri.-Del.) has observed that the amending Notification No.33/2008-ST has to be held as applicable prospectively and not with any retrospective effect. In as much as the issue is settled in favour of the Revenue, we set aside the impugned order of the Commissioner (Appeals) and allow the appeals of the Revenue by restoring the orders of the original adjudicating authority.

(dictated and pronounced in court)

(Madhu Mohan Damodhar) **(Archana Wadhwa)**
Member (Technical) **Member (Judicial)**

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