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

ST/428/2010

(Arising out of Order-in-Appeal No. 43/2010 (M-IV) dated 26.03.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Chennai).

M/s. Hyundai Motor India Ltd. : Appellant

Vs.

CCE & ST, Chennai : Respondent

Appearance

Shri S. Muthuvenkataraman, Advocate,
for the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **01.05.2018**

FINAL ORDER No. **<u>41431/2018</u>**

Per Bench

Appellants have applied for refund on 25.08.2008 for an amount of Rs. 74,98,409/- for the period April 2008 to June 2008 in respect of service tax paid on various services received by them and used for export of their motor vehicles, in terms of Notification No. 41/2007-ST dated 06.10.2007 as amended. A

SCN dated 12.09.2008 was issued to the appellants wherein, interalia, appellants were asked to show cause in respect of the following apparent short comings:-

a) Non production of documents evidencing export of goods as envisaged under para (f) of the Notification.

b) Non production of documents to establish that the services have been used in respect of export of goods.

c) Part of the claimed amount off Rs. 10,23,976/- is related to export clearances made prior to 01.04.2008 and appears to be time barred.

d) In respect of claim of refund of service tax paid on port services and commission agent, the service providers are not registered for the specified services. The original adjudicating authority vide an order dated 24.10.2008 rejected the claim of Rs. 74,79,959/- and sanctioned only an amount of Rs.18,540/-, which decision was upheld by the Commissioner (Appeals) in the impugned order dated 26.03.2010. Hence this appeal.

2. Today when the matter came up for hearing, the Ld. Advocate Shri Muthuvenkataraman submits that the appeal has been rejected on four grounds.

a) First ground for rejection of refund is that certain services have been received prior to April 2008. In this regard he places reliance on the Board’s Circular No. 112/6/2009-ST dated 12.03.2009, wherein the Sl.No. 1 it has been clarified that refund of claims of service tax on specified services used for exports of goods made in the quarter March 2008 to June 2008 could be filed upto 31.12.2008. Hence, the claim amount of Rs.10,23,976/- rejected on the ground that export clearances have been made beyond the period specified in the notification may be set aside.

b) Another major portion of the refund claim has been denied on the ground that M/s. Natvar Parekh Industries are not the persons authorized by the Port and hence services in respect of Port services claimed by the appellants have not been allowed. In this regard, the Ld. Advocate relies upon the Tribunal decision in the case of *SRF Ltd vs. CCE, Jaipur* – 2015 (40) STR 980 (Tri.-Del), where it has been clearly laid down that the exporter should not be unduly burdened with a condition to establish a service provider was registered under port services, when making a claim for refund for such services under Notification No. 41/2007-ST.

c) Part of the refund claim of around Rs.3,00,000/- has been rejected on the ground that the appellant had not produced relevant documents as envisaged in the Notification viz., contract or agreement or any other document requiring the commission agent located outside India to provide services to the exporter in relation to sale of goods outside India. However, Ld. Advocate submits that the appellant is not pressing this part of the demand.

d) Around Rs. 78,000/- claimed as refund, relating to Courier services has been rejected on the ground that the invoices do not specify IEC code. The Ld. Advocate relies upon the case law *Antak Agencies (International) Vs. CCE, Noida* – 2017 (52) STR (Tri.-All), where the Tribunal after being satisfied that the courier charges had been incurred in the process of export of goods manufactured by the appellant therein, held that non mentioning of IEC code in the invoices appellant as consignor, should not be a bar for sanctioning the refund under Notification No. 41/2007-ST.

3. On the other hand, the Ld. AR makes the following submissions:-

a) while acknowledging the fact of Board's Circular dated 12.03.2009, it appears from the SCN produced by the Ld. Advocate and also the adjudication order, that refund of service tax amount has been claimed for input services for the period prior to April 2008. The Ld. AR draws our attention to para-10 of the adjudication order, where in it has been indicated that part of the claim relating to such period prior to April 2008 is to the extent of Rs.10,23,976/-.

b) On the issue of rejection of refund claim pertaining to Port services, Ld. AR contends that the related invoices were issued by the Customs House Agent M/s. Natvar Parekh Industries and hence these services provided by them in respect of port services cannot be claimed for refund purposes.

c) On the rejection of refund on the ground that invoices issued by courier agent do not bear IEC code. The Ld. AR submits that there has to be some co-relation between the invoices issued by the courier agent. He submits that even in the decision relied upon, the Tribunal had found that all the necessary particulars for such co-relation were available on the courier invoices which is not being the case here.

4. Heard both sides and have gone through the facts.

5. (i) On the issue of invoices issued by M/s. Natvar Parekh Industries relating to port services, we find that the matter is fully covered by the Tribunal decision in the case of SRF Ltd. (supra), the relevant portion of which is reproduced for ready reference:-

> "**8.** The above clarification throws light on difficulties faced by exporters to produce documents in accordance with Section 65(105)(zn) as there is no procedure of issuing permission letters or authorization to such service providers. The Board in its circular dated 12-3-2009 has clarified that granting refund does not require the verification of registration of service provider and refund can be granted if otherwise in order. The implication of these two clarifications read together, along with the amendment brought forth in the definition of port services, in our view, is that the exporter should not be unduly burdened with a condition to establish that the service provider was registered under port services. The learned counsel for appellant has placed reliance on the judgment in *Commissioner* v. *Adani Enterprises Ltd*. - 2014 (35) S.T.R. 741 (Guj.) wherein the Hon'ble High Court has considered the very same issue and held in favour of the assessee. The said decision squarely covers the issue in the present case the facts being similar. Revenue placed reliance on the decision rendered by CESTAT in *Rajasthan*

> *Textile Mills* v. *Commissioner of Central Excise, Jaipur* reported in 2015 (37) S.T.R. 410 (Tri.-Del.). The refund claim therein was denied as the appellants had availed drawback also in respect of goods exported by them. Facts being different the said case is distinguishable from the case in hand.

In the event, that part of the impugned order rejecting the refund claims relating to invoices for port services issued by M/s. Natvar Parekh Industries is set aside and appeal on that score is allowed. So ordered.

ii) Amount of refund claimed for services availed of commission agent, rejected by the adjudicating authority and upheld in the impugned order, is not pressed by the Ld. Advocate and hence we do not interfere with the impugned order on that score. So ordered.

iii) On the issue of the exact period of refund, we find there is some confusion. The SCN produced by the appellant in para 4 (iii) indicates that the amount of Rs. 10,23,976/- is related to export clearances made prior to 01.04.2008. However, that aspect is not forthcoming from the annexure to the SCN. We therefore deem it fit to remand this issue to the adjudicating authority for reconsideration of this issue as per law, laid in provisions, notification, Circular and case laws applicable thereon.

iv) So also, with regard to the portion of the refund claim pertaining to courier services, the matter is being remanded to enable the appellants to produce all the related invoices issued by the service provider. Once the appellant is able to establish the co-relation between the goods exported and/or export documents and the invoices issued by such service provider, the refund should be sanctioned as held by the Tribunal in Antak Agencies (International) (supra). So ordered.

6. Appeal is disposed of in above terms.

(Order dictated and pronounced in the open Court)

(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)	(SULEKHA BEEVI C.S.) MEMBER (JUDICIAL)

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