CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. IV

Service Tax Appeal Nos.40140 to 40142 of 2020-SM

[Arising out of Order-in-Appeal Nos.321 to 323/2019, dated20.11.2019 passed by Commissioner of GST & Central Excise (Appeals), Madurai]

M/s. Transworld Garnet India Pvt. Ltd. **Appellant**
Palayam Kottai Road,
(Opp: Tuticorin Airport)
Kuttudankadu,
Tuticorin 628 103.

VERSUS

Commissioner of GST & CE, **Respondent**
No.4, Lal Bahadhur Shastri Marg,
C.R. Building, Madurai -2.

APPEARANCE :

Shri A.K. Jayaraj, Advocate for the Appellant
Shri L. Nandakumar, Authorized Representative for the Respondent

CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)

Date of Hearing : 16.03.2021
Date of Decision :16.03.2021

FINAL ORDER No.41431-41433/2021

All these appeals being the same were heard together and disposed by this common order.

2. The appellants are engaged in the manufacture of Garnet Abrasive falling under Chapter sub-heading 25 of 1985. They exported the goods and claimed rebate of service tax paid on taxable input services used for exportation of goods as under Notification No.41/2012-ST, dated 29.06.2012 and 27/2012-CE, dated 18.06.2012. During the period from July,2016 to

December, 2016, they filed refund claims of the service tax paid on input services used for export of goods. It appeared to the department that the appellants are not eligible for refund as they have exported the Garnet Abrasive, which were processed out of beach sands by illegal mining. The Government of Tamil Nadu vide its order G.O. MS No.156, dated 08.08.2013 and G.O. MS No.173, dated 17.09.2013 had banned mining of beach sand minerals. A District Review Committee under the Chairmanship of District Collector, Tirunelveli noted in their minutes dated 09.11.2016 that the appellant had unlawfully done mining of raw sand and other prohibited minerals in excess of the permitted quantity during the period from 2008-09 to 2012-13. The department, therefore, held that the appellants are not eligible for refund claim inasmuch as, the minerals have been exported by illicit mining and transportation. Show-cause notices were issued proposing to reject the refund claim. After adjudication, the Refund Sanctioning Authority rejected the refund holding that the appellant cannot avail benefit of the notification as goods were processed out of illicit mining of beach sand. The said order was appealed before Commissioner (Appeals), who vide impugned order herein, upheld the rejection of refund claim. Hence the appellants are now before the Tribunal.

3. The learned counsel Shri A.K. Jayaraj appeared and argued for the appellant. He submitted that the appellant has complied with all the conditions in the notification to avail the benefit of refund/rebate. So also, the department does not have a case that the appellant has not exported the goods or not paid the Service Tax. Any violation under the State law

would be dealt with as per the provisions of the said Act and the department cannot reject the refund claim, when the appellant has already suffered the tax on the goods which have been exported. He relied upon the decision of the Tribunal in the appellant's Own case for a different period vide Final Order NO.40031/2020 dated 02.02.2020. He prayed that the appeal may be allowed.

4. The learned Authorised Representative Shri Arul C. Durairaj supported the findings in the impugned order.

5. Heard both sides.

6. The reason for rejection of refund is that the appellant has contravened the provisions of the G.O. of the Government of Tamil Nadu, which banned mining of beach sands and minerals. The appellant has fulfilled the conditions as per the notification and also exported the goods. In such circumstances, department cannot deny the refund claim of the service tax paid on the goods which have been already exported. The said issue was under consideration in the appellant's own case for a different period and the Tribunal held as under:-

> "5. On perusal of the impugned order as well as after hearing the submissions of both sides, I find that the ground for rejection is on an allegation that the appellant has done unlawful mining of raw sand and other minerals in excess of the permission granted to them. This aspect has to be looked into by the Govt. of Tamil Nadu as well as the committee formed for this purpose. The provisions of Mines and Minerals Act of the State has to look into the legal consequences of unlawful mining. When the appellant has exported the goods paying service tax on the services availed for exporting the goods, the department cannot deny the refund stating reasons beyond the Customs Act as well as Finance Act. Notification 41/2012 emanates from the Finance Act and therefore only if there is violation under the said Act as well as the notification, refund can be rejected. Since the department does not have a case that the appellants have violated provisions of the Finance Act or the notification, I am of the opinion that the rejection of refund claim cannot sustain."

7. I do not find any reasons to take a different view in these appeals. After appreciation of facts and following the above decision, I am of the view that the rejection of refund is not sustainable. The impugned order is set aside, the appeals are allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(Sulekha Beevi C.s.)
Member (Judicial)

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