IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 42401 of 2013

(Arising out of Order-in-Appeal No. MAD-CEX-000-APP-105-13 dated 30.08.2013 passed by the Commissioner of Central Excise (Appeals), Lal Bahadur Shashtri Marg, C.R. Buildings, Madurai – 625 002)

M/s. Sundaram Industries Limited **: Appellant**
Rubber Factory, Post Box No. 6,
Usilampatti Road, Kochadai,
Madurai – 625 016

VERSUS

The Commissioner of Central Excise **: Respondent**
Lal Bahadur Shashtri Marg, C.R. Buildings, Bibikulam,
Madurai – 625 002

APPEARANCE:

Shri M.N. Bharathi, Learned Advocate for the Appellant

Shri M. Ambe, Learned Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40276 / 2023

DATE OF HEARING: 03.04.2023

DATE OF DECISION: 17.04.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts which are relevant for our consideration, as could be gathered from the impugned order, are that the appellant was paying Service Tax on clearing and forwarding services for the goods manufactured and exported for the period up to June 2008. It appears that from July 2008, they stopped paying the Service Tax for the reason of exclusion in terms of Rule 3 of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

2. Accordingly, a Show Cause Notice dated 15.06.2011 was issued proposing *inter alia* to demand Service Tax apart from appropriate interest and penalties from the appellant and after due process, the Order-in-Original No. 136/2012 dated 11.10.2012 came to be passed, thereby confirming the demands proposed.

3. The appellant preferred an appeal before the First Appellate Authority against the demands raised against it and it appears that the First Appellate Authority, after hearing, also having dismissed the same, the present appeal has been filed before this forum.

4. Today when the matter was taken up for hearing, Shri M.N. Bharathi, Learned Advocate appeared for the appellant and Shri M. Ambe, Learned Deputy Commissioner represented the Revenue.

5. The Learned Advocate for the appellant would submit at the outset that the issue of demand in this case, as confirmed in the impugned order, is no more *res integra* as the same is settled in favour of the appellant by the following orders of this very Bench of the CESTAT, in the appellant's own cases: -

(i) Final Order No. 42475 of 2018 dated 25.09.2018 – CESTAT, Chennai;

(ii) Final Order No. 43100 of 2018 dated 10.12.2018 - CESTAT, Chennai [2018 (12) TMI 947 – CESTAT, Chennai];

and also the order of this Bench in the case of *M/s. Bnazrum Agro Export Pvt. Ltd. v. Commissioner of Central Excise & Service Tax, Madurai [2018 (4) TMI 1239 – CESTAT, Chennai]*

6. *Per contra*, the Learned Deputy Commissioner relied on the findings in the orders of lower authorities.

7. After hearing both sides, we find that the only issue that crops up for our consideration is: whether the demand raised on the appellant for the period from July 2008 onwards under the category of clearing and forwarding agency services is justifiable?

8.1 Having heard both sides and having gone through the orders relied upon, we find that the services have been wholly performed outside India, which the Revenue wants to tax since the sale proceeds were being collected in India. It is in this context that Rule 3(ii) of the Rules *ibid.* which is framed, comes to the rescue of an exporter who would earn in foreign exchange.

8.2 We also find the assertion of the Learned Advocate for the appellant that the very same issue has been decided by this very Bench in the appellant's own cases (*supra*), to be correct, which apparently have reached finality. It has been held in Final Order No. 43100/2018 (*supra*), as under: -

> *"7. There is no dispute that the service is provided outside the territory of India, but the Revenue wants to tax the assessee since it collects sale proceeds in India. But the legislature in its wisdom, has framed Rule 3(ii) to encourage exports and in turn foreign exchange remittances. We find force in the contention of the Ld. Advocate that the activity of the appellant being wholly performed outside India, is excluded from service tax liability as per Rule 3(ii) of the Taxation of Services (provided from outside India and received in India) Rules, 2006. Further, we note that on an identical set of facts this very Bench of the Tribunal in the case of M/s. Bnazrum Agro Export Pvt. Ltd. (supra) has held that such activity would not be exigible to service tax by virtue of Rule 3(ii) of the Rules. The relevant portion of the judgement is extracted below for the sake of convenience:*
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> > *" 5. We find that the Ld. Advocate is correct in his assertion that since services have been wholly performed outside India, the activity will not be*

> *exigible to service tax by virtue of Rule 3 (ii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. We find that the case laws relied upon fully support his assertion. Following the ratio already laid down, we find that the impugned order cannot sustain and will have to be set aside, which we hereby do. Appeal is allowed with consequential relief, if any, as per law."*

> *8. We are therefore of the considered opinion that the issues being similar, the above ratio is required to be followed in the case on hand. Hence, following the same we are of the view that the impugned Order is unsustainable for which reason we set aside the same."*

9. In view of the above, we are of the view that the demand, as confirmed in the impugned Order-in-Appeal, cannot sustain, for which reason the same is set aside.

10. In the result, the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **17.04.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd