

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/1378/2010 – SM[BR]

Date 04/01/2011

Assistant Registrar
C.E.S.T.A.T., New Delhi

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR II

Appellant
Vs
Respondent

M/S SHREE RAJASTHAN SYNTEX LTD.,

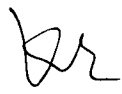
I am directed to transmit herewith a certified copy of **Final order No. 6 / 2011-SM[BR]** dated 15.12.2010

passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S SHREE RAJASTHAN SYNTEX LTD.,
DUNGARPUR, DISTT.
DUNGARPUR (RAJASTHAN)
2. Adv. / Consult **SHRI BIPIN GARG ADV.**
B-1/1289-A,VASANT KUNJ NEW DELHI
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd..No.2(Old No. 36). Vaithyaram Street, T. Nagar.Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall.Above Star India Bazar,Satellite Road,
Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file


Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:15.12.2010

Service Tax Appeal No.ST/1378/10-SM

[Arising out of Review Order No.06/ Review/ 2010 dated 01.10.10 passed the Committee of Chief Commissioners' in respect of Revision order No.37/JP-II/ST/Commissioner, dated 02.07.10 passed by the Commissioner, Central Excise Commissionerate-II, Jaipur].

CCE, Jaipur-II

...Appellant

Vs.

M/s. Shree Rajasthan Synthetics Ltd.

... Respondent

Present for the Appellant :Shri.A. Khanna, DR
Present for the Respondent:Ms. Sukriti Das, Advocate

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

final **ORDER NO. 06/2011 SM (Br)** **DATED:15.12.2010**

PER: D.N.PANDA

Revenue has come in appeal against Revisional Order passed under section 84 of the Finance Act 1994 dropping the proceeding, which was initiated on the conception that the order passed by the Id. Adjudicating Authority on 21.7.2008 was erroneous. But the revision resulted with relief to the assessee. Ld. Adjudicating authority in para 14 of the order found that the service tax paid on the taxable services which are not used as input service in the manufacture of export goods, is not taken into consideration while fixing All Industry Rates of Duty Drawback. Under such circumstance the appellant succeeded to seek refund before the adjudicating authority.

2. The Revisional order considered the benefit available to the appellant under Notification 41/07-ST dated 6.12.2007 as amended on the same subject. Ld. Revisional authority in para 4 (iii) had made following finding and dropped the Revisional proceeding noticing revision unwarranted. The said para is reproduced below for appreciation of the proposition before the Revisional Authority.

(iii) I further find that all the services specified under Notification No.41/07-ST dated 06.10.2007 as amended on which refund has been allowed are availed after clearance of goods from the factory, therefore these services cannot come under the purview of taxable services used as input services in the manufacturing of processing or for containing or packing of export goods. Thus while fixing the rates of drawback, the incidence of service tax paid on such specified services of Notification No.41/07-ST dated 06.10.2007 used for export of goods is not taken into consideration. Further condition I(e) has been withdrawn from Notification No.41/07-ST dated 06.10.2000 by issuing notification No.33/2008-ST dated 07.12.2008 to remove the ambiguity. Further, if the intention of the Govt. has been to deny refund claim under Notification No.41/07-ST dated 06.10.2007 as amended wherever claim under drawback scheme has been filed, then it would have simply put the condition that provided that no drawback has been claimed whereas I find that instead of that it puts a condition that goods have been exported without availing drawback of service tax paid on specified services under Customs, Central Excise Duties and Service Tax drawback Rules, 1995.

In view of above I hold that since the goods in question have been exported without availing

drawback of service tax under the Customs, Central Excise Duties and Service Tax drawback Rules, 1995, therefore recovery of refund claim of service tax paid on specified services on the ground that goods have been exported under claim of drawback is not tenable. Held accordingly.

3. It is the preliminary submission of the Id. Counsel appearing on behalf of the respondent that Tribunal in the case of Commissioner of Central Excise, Meerut vs. Anand Track & Field Equip. Pvt. Ltd. reported in 2010 (19) S.T.R. 379 (Tri.-Del.) has already considered the issue and Revenue's appeal on the similar footing was dismissed.

4. Ld. DR appearing and supporting appeal of Revenue finds fault with the Revisional Order on the ground that the Notification No.41/07-ST does not grant any benefit to the service tax prayers because no credit shall be available in respect of the movement of the goods till the export point.

5. Heard both sides and perused the records.

6. No doubt, at the first instance, the case of the respondent is covered by the Single Bench decision aforesaid cited by the Id. Counsel. But the reasoning given in the order passed by Revisional Authority almost concurring with the original authority also grants relief to the respondents. When the adjudication was reviewed, Revisional authority found that original order also was passed correctly to grant the refund. Scrutiny of both the authorities also get sanction from the citation made by the Id. Counsel. Consequently, Revenues appeal is dismissed. It may also be stated that there is no

information with Revenue to suggest whether the Single Member Bench decision cited as aforesaid is carried by Revenue in appeal to any higher Court and whether that order has been stayed by such Court. Accordingly, Revenue appears to have no grievance further against the Single Member decision for which appeal is also liable to be dismissed. That is ordered accordingly.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita