CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. IV

Service Tax Appeal No. 51475 Of 2018

[Arising out of Order-in-Appeal No. 164(SRM)ST/JDR/2018 dated 12.02.2018 passed by the Commissioner (Appeals) of Central Excise & Central Goods and Service Tax, Jodhpur]

Deekay Trexim India Private Limited : **Appellant**
F-260-261, 3rd Phase, RIICO Industrial Area
Shilwara (Rajasthan)

Vs

Commissioner of Central Goods, Service Tax, Central Excise, Udaipur : **Respondent**
142-B, Sector 11, Hiran Magri, Udaipur,
Rajasthan

APPEARANCE:
Shri Jitin Singhal, Advocate for the Appellant
Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50802/2025

Date of Hearing:16.04.2025

Date of Decision: 29.05.2025

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Deekay Trexim India Private Limited[1] to assail the Order-in-Appeal No. 164(SRM)ST/JDR/2018 dated 12.02.2018 wherein the Commissioner upheld the order of the adjudicating authority and rejected the appeal.

2. The brief facts of the case are that the appellant is manufacturer of man-made fabric and is engaged in export of fabric and had availed

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1 The appellant

the certain services for the purpose of export of goods as listed below:-

(a) Goods Transport Agency (GTA) services for the purpose of transportation of goods meant for export from factory to port;

(b) Services from commission agent located outside India for the purpose of procuring export orders from the foreign nation.

The aforesaid services were received by the appellant for export of goods which are exempt under Notification No. 18/2009-ST dated 07.07.2009. However, a show cause notice was issued by the department alleging that the appellant had failed to produce:

In the case of Goods Transport Agency: -

a. The Consignment note issued in his name,

b. The original invoice, bill or challan or any other document on which exemption is availed,

c. The certificate to the effect that GTA services has been used for export of goods.

In the case of Commission paid to Overseas Agent: -

a. No original document in respect of commission paid to them,

b. No copy of agreement or contract entered into with them.

2.2 Therefore, as the appellant had failed to satisfy all the conditions of Notification No. 18/2009-ST dated 07.07.2009, the exemption claimed was liable to be rejected and the demand of Rs. 8,85,388/- was liable to be recovered under section 68 read with section 73 of Finance Act, 1994. The Adjudicating Authority confirmed the said demand on the ground that appellant has not submitted the original invoices/documents as required under the notification no. 18/2009-ST dated 07.07.2009. On appeal, the Commissioner (Appeals), Jodhpur rejected the appeal on the grounds that failure to submit original document leads to the contravention of the basic condition of notification and therefore, appellant was not entitled to the exemption. Aggrieved by the said order, the appellant has filed the present appeal.

3. Learned counsel for the appellant submitted that the Commissioner (Appeals) rejected the appeal on the ground that original documents need to be filed and the agreement was not part of the order-in-original. He submitted that with respect to GTA, the appellant had filed certified copies of all the required documents and hence the conditions of the notification had fulfilled, however, there was no condition in the notification to produce original documents. As regards the denial of benefit for services related to commission agent is concerned, learned counsel contended that the denial was on the ground that the agreement was not part of the order-in-original. He contended that this was a perverse finding, inasmuch as the agreement had been submitted before the Adjudicating Authority, but the authority had failed to consider the same. Further, the learned counsel stated that there was no dispute, qua the export of goods. Thus, on this ground alone, the impugned order was liable to be set aside.

3.1 Learned counsel further submitted that it is settled law that taxes are not exported and to make such exports competitive in the international market, necessary tax exemptions and benefits are provided. He submitted that notifications are to be read so as to achieve the objective which is sought to be achieved. Notification No. 18/2009-ST dt. 07.07.2009 was introduced to provide servcie tax exemption to the exporters. He submitted that the mandatory requirement of notification for claiming exemption of certain services as follows:-

(i) Services received by exported of goods, and

(ii) Services should be used for export of goods

Further, directory requirement of notification is submission of invoices, contracts, establishment of payment etc. in relation to certain services, basically being auxiliary to the mandatory requirement. Minor lapses in fulfilment of directory provision does not vitiate the benefits accrued through fulfilment of mandatory provisions. Mere technical/procedural default on the part of the appellant of submitting certified copies of invoices instead of original invoices for GTA services cannot be held as ground for denying exemption. In support of his submission, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal**[2]**.**

3.2 Further, the learned counsel submitted that it is settled principle of law that technical lapses cannot deprive the assessee from his substantial right. At the time of filing EXP-2 return, in relation to GTA services, certified copies of the documents i.e., invoices, bills etc., had been submitted to the department, and in relation to overseas commission agent services, the original copy of the agreement and the certificate of payment of commission to commission agent, were also submitted vide additional submissions dated 29.12.2012. In support of his submissions, learned counsel relied on the following decisions:-

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2 2010 (260) E.L.T. 3 (S.C.)

(i) Praj Industries Limited vs. Commissioner of Central Excise, Pune-III[3]

(ii) Radiant Textiles Limited vs. Commissioner of Central Excise Chandigarh-II[4]

3.3 Learned counsel further contended that the show cause notice was vague and bereft of any specific allegation. He submitted that it was well settled principle of law that show cause notice is foundation on which the department had to build its case, and forms an important stage in the process of tax recovery. Consequently, it should speak out clearly about the contraventions committed by the appellant. The show cause notice in the case solely spoke about the non-tenability of exemption under notification no. 18/2009-ST dated 07.07.2009, but did not elaborate the specific section or provision under which the appellant is liable to discharge service tax. Consequently, the show cause notice is liable to be set aside. He prayed that the appeal may be allowed.

4. At the outset, the learned Authorized Representative for the Department reiterated the discussions and findings of impugned order. He submitted that the appellant had failed to provide original documents as per the condition of Notification No. 18/2009-ST, viz. (1) the consignment note issued in the name of appellant (ii) the original invoice/bill (iii) the certificate to this effect that transport of goods by road service has been received and used for export, mentioning specific shipping bill no. on the said document (v) original documents in respect of commission paid to overseas agent (vi) copy

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3 2017 (3) G.S.T.L. 341 (Tri.-Mumbai)
2017 (47) STR 195 (Tri.-Chan.)

of agreement with commission agent located outside India. The Learned Authorized Representative stated that the failure to fulfil these essential conditions had led to the denial of the said exemption. In support of his submissions, learned Authorized Representative relied upon the decision of Hon'ble Supreme Court in the case of Commissioner of Customs, (Import), Mumbai vs. Dilip Kumar & Company[5].

5. We have heard the Ld Counsel for the appellant and Ld authorized representative for the Department and perused the appeal.

6. The brief issue for our consideration is whether certain services viz., GTA services and Commission Agent service used by the appellant is eligible for exemption under Notification 18/2009-ST dated 07.07.2009.

The admitted facts are as follows:-

i. The appellant is a manufacturer and exporter of fabrics
ii. The export of fabrics by the appellant is an admitted fact
iii. The appellant used the services of Goods Transport Agency for transportation of goods meant for export
iv. The appellant used the services of a commission agent located outside India for procuring export orders
v. The exporter filed ExP1 and ExP2 before the Department
vi. The appellant submitted attested copies of the documents in support of exemption as required under the aforesaid Notification.

7. To appreciate the rival submissions, it is important to refer to the said notification and the conditions mentioned therein.

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5 2018 (631) ELT 577 (S.C.)

Notification No. 18/2009-ST dated 7.7.2009

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods (hereinafter referred to as the said goods), of the description specified in column (3) of the Table below (hereinafter referred to as the specified service), pertaining to sub-clauses of clause (105) of section 65 of the said Act specified in the corresponding entry in column (2) of the said Table, from the whole of the service tax leviable thereon under section 66 and section 66A of the said Act, subject to the conditions specified in column (4) of the said Table, namely:-

Table

Sl no	Sub-clause	Description of the taxable service	Conditions
1	(zzp)	Service provided to an exporter for transport of the said goods by road from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported; or Service provided to an exporter in relation to transport of said goods by road directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported.	The exporter shall have to produce the consignment note, by whatever name called, issued in his name
2	(zzb)	Service provided by a commission agent located outside India and engaged	1)The exporter shall declare the amount of

		under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.	commission paid or payable to the commission agent in the shipping bill or bill of export, as the case may be. (2) The exemption shall be limited to one per cent of the freeon-board value of export goods for which the said service has been used.
			3) The exemption shall not be available on the export of canalised item, project export, or export financed under lines of credit extended by Government of India or EXIM Bank, or export made by Indian partner in a company with equity participation in an overseas joint venture or wholly owned subsidiary. (4) The exporter shall submit with the half yearly

			return after certification of the same as specified in clause (g) of the proviso- (i) the original documents showing actual payment of commission to the commission agent; and (ii) a copy of the agreement or contract entered into between the commission agent located outside India and the exporter in relation to sale of export goods, outside India:

Provided that

"(a) the exemption shall be available to an exporter who,-

(i) informs the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP1, before availing the said exemption

(ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;

(iii) is a holder of Import-Export Code Number;

(iv) is registered under section 69 of the said Act;

(v) is liable to pay service tax under sub-section (2) of section 68 of said Act, read with subclause (iv) or sub-clause (v) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules,1994, for the specified service;

(b) **the invoice, bill or challan, or any other document issued by the service provider to the exporter, on which the exporter intend to avail exemption**, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax in terms of item (v) of clause (a);

(c) the exporter availing the exemption shall file the return in Form EXP2 every six months of the financial year, within fifteen days of the completion of the said six months;

(d) **the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (4) of the said Table;**

(e) the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.

(f) where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors;

(g) where the amount of service tax in respect of the service specified against serial No. 2 of the Table exceeds one per cent. of the free on board value of the export then, the amount in excess of the said one per cent. shall be paid within the period specified under rule 6 of the Service Tax Rules, 1994;

Form- EXP1

[see Paragraph (a)(i)]

S.No----------------------

To, The Deputy Commissioner /Assistant Commissioner of Central Excise Sir,

I/We intend to avail the exemption from service tax under Notification No.18/2009-ST, dated……………in respect of services for transport of said goods by road or services provided by a commission agent located outside India, which have been used for export of goods and the relevant particulars are as follows.

1. Name of the exporter.

2. Service Tax Registration No.
3. Division ……… Commissionerate ……………
4 Membership No. the Export Council
5 Name of the Export Council
6. Address of the registered / head office of exporter:
7. Tel. No. and e-mail ID of the exporter……..:
8. Import -Export Code No…………..
9.Details of Bank Account (Name of Bank, branch address and account number)

I/we undertake that I/we shall comply with the conditions laid down in the said notification and in case of any change in aforementioned particulars, I/We shall intimate the same.
Date: Place:
Signature and full address of Exporter

Receipt

Received Form EXP1 dated --/--/-- submitted by ___________.
The said intimation is accepted and given acknowledgment No. _____(S. No. Above)

For Assistant, / Deputy Commissioner

Form- EXP2
[see Paragraph (c))]

To, The Deputy Commissioner /Assistant Commissioner of Central Excise

Sir,

I/We have availed exemption of service tax under Notification No.18/2009-ST. dated 7th July, 2009 in respect of services, namely, the services provided for transport of said goods by road services provided by a commission agent, located outside India and have used the same for export of goods during the period from …… to….. .. and the relevant particulars are as follows.
1. Name of the exporter
2. Address of the registered / head office of exporter
3. Tel. No. and e-mail ID of the exporter……..:
4. Service Tax Registration No.
5. Division ……… Commissionerate
6. Membership No. Of the Export Council
7. Import Export Code No…………..
8. Name of the Export Council
9 . Details of Bank Account

Table A

	Details of goods exported (on which exemption of service tax availed) during the six months ending on…………………………..
	Details of Shipping Bill/ Bill of export (Please enclose self attested copy of Shipping Bill or Bill of Export) and Details of goods exported (in case of exports of more than one commodity, please fill in the proforma,

<table>
<tr><td rowspan="2">SI No.</td><td colspan="8">commodity-wise)</td></tr>
<tr><td>No</td><td>Date</td><td>Date of Let export order</td><td>Export invoice no</td><td>Date</td><td>Description of goods exported</td><td>Quantity (please mention the unit)</td><td>FOB value (in rupees in lakh</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
</table>

Table B

<table>
<tr><td colspan="6">the Shipping Bill or Bill of Export mentioned in Table 'A'' in respect of which the exemption has been availed during the six months ending on…………………………..</td><td rowspan="2">Documents attached showing the use of such services for export, the details of which are mentioned in Table 'A' (self attested)</td><td rowspan="2">Total amount of service tax claimed as exempti on (rupees in lakhs)</td></tr>
<tr><td>Name of service provid er</td><td>Address of service provider</td><td>Invoice no</td><td>Date</td><td>Description of specified service</td><td>Classificat ion under the Finance Act, 1994</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
</table>

9. Declaration:-

I / We hereby declare that-

(i) I have complied with all the conditions mentioned in notification No18/09-ST, dated 7th July, 2009;

(ii) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(iii) no CENVAT credit of service tax paid on the specified services used for export of said goods taken under the CENVAT Credit Rules, 2004;

(iv) I / we, am/ are enclosing all the required documents. Further, I understand that failure to file the return within stipulated time or non-enclosure of the required document, duly certified, would debar me/us for the refund claimed aforesaid.

Date:
Place:
Signature

address of Exporter

Enclosures: as above"

8. A perusal of the aforesaid notification read with the conditions and the Form EXP-2 reveals that an exporter, to claim exemption from

service tax has to file the documents in original viz, the consignment note issued in his name, the invoice, bill or challan, or any other document issued by the service provider to the exporter, on which the exporter intend to avail exemption specified in clause (b) and the certified copies of the documents specified in column (4) of the said Table. In the instant case, we find that the original adjudicating authority and the Commissioner (Appeals) have denied the exemption as the appellant did not produce the original documents. The relevant paras are reproduced hereinafter:-

Order-in-Original dated 03.01.2013

> "11. In the impugned show cause notice it has been alleged that in respect of service tax exemption on transport of goods by road service, the assessee have failure to produce.
>
> (1) The consignment note issued in his name,
>
> (2) The original invoice, bill or challan, or any other document issued by the service provider to the exporter, on which the exporter intend to avail exemption,
>
> (3) The certificate to this effect that Transport of goods by road services has been received and used for export of goods, mentioning the specific shipping bill number on the said documents
>
> In respect of service tax exemption on commission paid to overseas agent, the assessee have failed to produce
>
> (1) original document in respect of commission paid to the service provider
>
> (2) copy of the agreement or contract entered into between the commission agent located outside India & the assessee le recipient of service

> 12. Therefore it appeared that the exemption from service tax is not available to the assessee and they are liable to pay service tax amounting to Rs. Rs.8.85.388/-
>
> 13. I find that the assessee in their defense reply has accepted that they are in need of original documents, therefore. failed to submit with the EXP-2 for verification The assessee at the time of personal hearing have also failed to produce the required documents as alleged in the impugned show cause notice, for verification before me."

8.1 The Commissioner (Appeals) in the impugned order has held as follows:-

> "8. In the instant case, in respect of GTA service, I find that the appellant produced certified copies of the freight invoices and stated that they are in need the original documents as the same are required for accounting and other statutory act like Companies Act, Income Tax Act, etc., and requested to accept certified copy of the freight invoices. Regarding original documents i.e., invoices, bill, challan etc., in respect of payment of commission to the foreign agent, they have not submitted any required document. ……………………………………………………….."

8.2 The Ld Counsel has however submitted before us that as regards the exemption on the commission paid to foreign agent, the appellant had submitted the copy of the agreement between the appellant and foreign agent before the original adjudicating authority vide their additional submissions dated 29.12.2012, whereas the original authority has held that no such document was submitted. As regards the document for seeking exemption for GTA service, the Ld Counsel has submitted that certified copy of the document had been submitted along with the EXP-2 returns. The aforesaid notification lays down that the exporter can submit a consignment note or by whatever name called, issued in his name. Essentially, the notification requires the officer to verify consignment note or any other similar document issued in the name of the appellant, whereas the orders have recorded that consignment note was not submitted.

9. In view of such contradictions, we are of the opinion that the said order requires to be remanded to the original authority to once examine all the documents submitted by the appellant. The appellant may be given opportunity to submit all relevant records, and be given opportunity to be heard, before passing any order.

10. Consequently, the appeal is allowed by way of remand.

(Order pronounced in the open Court on 29.05.2025)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.