IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Sl. No.	Appeal No.	Appellant	Respondent	Order-in-Appeal
1.	ST/930/2010	MCB Exports	CCE Jaipur-II	45-KKG-ST-JPR-II-2010 dated 15/02/2010, by the CCE Jaipur
2.	ST/1221/2010	Lariya Art (P) Ltd.	CCE Jaipur-II	58-KKG-ST-JPR-II-2010 dated 15/02/2010, by the CCE Jaipur
3.	ST/1222/2010	Lariya Art Palace (P) Ltd.	CCE Jaipur-II	397-KKG-ST-JPR-II-2009 dated 13/01/2010, by the CCE Jaipur
4.	ST/1223/2010	Lariya Art Palace (P) Ltd.	CCE Jaipur-II	51-KKG-ST-JPR-II-2010 dated 24/02/2010, by the CCE Jaipur
5.	ST/1441/2010	Ambadi Enterprises Ltd.	CCE Delhi-II	302-BK-GGN-2010 dated 21/07/2010, by the CCE Delhi
6.	ST/1593/2010	Curio Crafts	CCE Jaipur-II	263-277-CB-ST-JPR-II-2010 dated 13/08/2010, by the CCE Jaipur
7.	ST/1594/2010	Lariya Art Palace (P) Ltd.	CCE Jaipur-II	263-277-CB-ST-JPR-II-2010 dated 13/08/2010, by the CCE Jaipur

Appearance:

None present for the Appellants
Shri Dharam Singh & Shri R.K. Mishra, DR for the Respondent

CORAM:

Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 13.01.2017

FINAL ORDER NO.50414-50420/2017-ST(SM)

Per V. Padmanabhan:

In respect of all the appellants, the issue involved is common and hence all the appeals are being decided through a common order. The appellants in all these cases have claimed refund under the notification no. 41/07 dated 06.10.2007.

2. None present on behalf of the appellant.

3. Ld. DR submits that the appellant is not eligible for the refund in view of the condition 1(e) of the Notification No. 41/2007. He submitted that this condition denies grant of refund in respect of those cases where drawback has been claimed. Inasmuch as, the appellant has exported the goods under drawback claim, they are hit by condition 1(e) of the Notification as has been categorically held by the Tribunal in its recent decision in Final Order No.59294-54379/2016.

3. Heard Ld. DR and perused the records. It is on record that the appellant has exported the goods under claim for drawback. The refund under notification 41/2007-ST, dated 6.10.2007 is not to be granted in cases where the export has been made under claim for drawback. In the recent final order, Tribunal has held as follows:

> *"2.The appellants/respondents are exporters and filed refund claims in respect of Notification No. 41/2007-ST 06.10.2007. The said Notification allows refund of service tax paid on various services utilized at port area for export of the*

goods. However, there are certain conditions in the Notification, which are required to be fulfilled before such refund claims can be allowed. One of the conditions, which is the subject matter of the dispute in the present appeals is the condition 1(e) of first proviso to the Notification. In terms of the said condition, no refund of service tax would be admissible if the goods have been exported by availing drawback of service tax paid on these specified services.

3. The said disputed issue was the subject matter of various earlier decisions of the Tribunal. For the sake of easy reference, Tribunal's ***Final Order No. 51013-51019/2016, dated 10.03.2016*** *passed in the case of* ***Art & Craft Inc. & Others Vs.CCE, Jaipur-II*** *is taken into consideration. All the issue raised by the Ld. Consultant and ld. Advocates appearing for the assessees today were considered by the Tribunal in the said decision and the same were not appreciated by the Bench. In as much as, it is an admitted case of export of goods under drawback, the Tribunal held that the said condition 1(e) of the first proviso of the Notification does not stand satisfied, thus leading to non-refund of service tax paid on the services. While holding so, Tribunal also considered another order passed by the Division Bench of the Tribunal in the case of* ***Rajasthan Textile Mills Vs. CCE, Jaipur [2015 (37) 410 (Tri.-Del)].*** *In fact, another decision passed in the case of* ***Bhadresh Trading Corporation Ltd. Vs. CST [2016 (41) STR 85 (Tri.-Mumbai)],*** *which is also being relied upon today by the ld. Advocates were also considered and the ratio of the said decisions was held inapplicable to the facts of the present exporters in as much as the same was passed in different facts and circumstances. All ld. Advocates though agree that the issues stand decided by the above referred decision in the case of* ***Art & Craft Inc. & Others Vs. CCE, Jaipur-II (supra),*** *but drew our attention to the earlier orders of the Tribunal allowing refund claims in such decisions. On going through the said decisions, it is found that they are passed by Single Member*

Bench of the Tribunal in the year 2010 or 2011. In fact, one Single Member decision of the Tribunal, in respect of the applicability of the Notification No. 33/2008-ST, dated 07.12.2008 with retrospective effect was not accepted by the Bench in the case of ***CCE, Madurai Vs. Shiva Tex Yarn [2012 (25) STR 56 (Tri.- Chennai].*** *Apart from that and in any case, we find that the issue having been decided by different two Member Benches in the recent past, has to be given preference over Single Member Bench decision. As such, we find that the Tribunal decision passed in the case of* ***Art & Craft Inc. & Others Vs. CCE, Jaipur-II(supra),*** *being the latest Division Bench decision after considering all the issues raised by the ld. Advocates, following another Division Bench decision of the Tribunal in the case of* ***Rajasthan Textile Mills Vs. CCE, Jaipur (supra)*** *is required to be followed. Ld. Advocates before us have raised the same very issue, which already stands considered but not accepted.*

4. In fact, we find that the present bunch of appeals are being repeatedly adjourned at the requests of Mr. O.P. Agarwal, ld. Consultant, who is representing most of the assessees on the ground that Tribunal has decided against them in the above referred decision in the case of ***Art & Craft Inc. & Others Vs. CCE, Jaipur-II (supra)*** *and they are making efforts at the Ministry level to get retrospective exemption. However, it is seen and as clarified by the ld. Advocate today that in spite of representations made by them, no decision has been taken by the Ministry. This fact itself leads to the conclusion that the issue stand decided against the assessees by the above referred decision in the case of* ***Art & Craft Inc. & Others Vs. CCE, Jaipur-II (supra)*** *and this fact stands accepted by the ld. Advocates representing the assessees.*

5. In all these appeals, accordingly we hold that the goods having been exported under claim of drawback is a violative of the condition 1(e) of the Notification, thus leading to the fact of *non-refund of service tax paid on various services utilized at the port area for the export of goods".*

6. In view of the above, the impugned order is upheld and the appeal is dismissed.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu