IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 19.1.2017

Appeal No. ST/262/2011-SM

(Arising out of Order-in-Appeal No. 449(CB)ST/JPR-II/2010 dated 16.11.2010 passed by the Commissioner, Central Excise, Jaipur)

M/s Shree Rajasthan Syntex Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance

Ms. Rajni Gupta, Advocate - for the appellant

Shri R.K. Mishra, D.R. - for the respondent

CORAM: **Hon'ble Mr. V. Padmanabhan, Member (Technical)**

Final Order No.50426/2017

Per V. Padmanabhan :

The present appeal is directed against the order-in-appeal dated 16.11.2010. The appellant filed a refund claim for refund of service tax paid on specified services used for the export of manufactured goods during the period Jan. 2009 to March 2009. Such refund have been claimed under Notification No. 41/2007 dated 6.10.2007. The original authority as well as the Commissioner (Appeals) in the impugned order rejected the refund claim pertaining to the following two services.

Type of Service (Relevant for this Appeal)	**Amount of Service Tax claimed as refund**	**Reason for denying refund as per Impugned Order-in-Appeal dated 29.9.2010**
Banking & Other financial services	Rs.3,510/-	Rejected on account of lack of proof of payment

[Section 65(105)(zm)]		of service tax on the charges raised by Banks as required under the Column (4) of Serial No. 14 of the Notification No. 41/2007
Sale of Goods by Foreign Commission Agent [Section 65(105)(zb)]	Rs.1,31,424/-	Rejected on account of non-payment of service tax as required under condition specified in Clause (v) of Column (4) of Serial No. 15 of the Notification No. 41/2007. It was reasoned that to avail benefit of the Notification payment of the service tax received by the exporter must be done in cash. Thus it was held that payment of service tax on reverse charge mechanism by utilising Cenvat credit cannot be considered to be payment of service tax for the purpose of the exemption Notification No. 41/2007. Reliance placed on Rule 5 of the Import of Service Rules, 2006

2. Aggrieved by the rejection of refund, the present appeal has been filed.

3. With the above background, heard Ms. Rajni Gupta, ld. Advocate for the appellant and Shri R.K. Mishra, ld. DR.

4. Ld. Counsel submits that the service tax paid on banking and other inancial services has been rejected. However, the service tax

amounts have been paid along with banking charges to the bank. The particulars of service tax paid has been specifically shown in the bank statements, copies of which have been enclosed to the appeal. I have perused the bank statements which clearly indicate not only the commission charges of the bank but also service tax amounts debited to the account of appellant. It has further been mentioned that the bank charges and service tax payment are with reference to the export carried out by the appellant. The statement has also been attested by the bank. On perusal of the same, I find that rejection of such service tax payment is not justified. Accordingly, the same is required to be allowed in terms of Sr. No. 14 of the Notification No. 41/2007.

5. Service tax amounting to Rs.1,31,424/- has been rejected in respect of foreign commission agent service. Such service tax has been paid by making use of the balance available in the Cenvat credit. Revenue has objected to such payment from Cenvat credit account and has insisted on payment of service tax in cash. The service tax having been paid out of the Cenvat credit account the refund under Notification No. 41/2007 has been rejected.

The issue whether the service tax on foreign commission agent service can be paid through Cenvat credit have been settled by the Tribunal in favour of the appellant. They have enclosed two such decisions in appellant's own case reported in Final Order No. ST/A/51187-51190/2015-CU(DB) dated 26.3.2015 in the case of ***Shree Rajasthan Syntex Ltd. Vs. CCE, Jaipur*** and Final Order No. 54999/2016 dated 6.10.2016 in the case of ***Shree Rajasthan Syntex Ltd. Vs. CCE, Jaipur.***

6. I have gone through the said decisions and find that the issue is no more res integra and it is decided that payment of service tax is allowable when paid from Cenvat credit account. There can be no case for rejection of such refund claim made under Sr. No. 15 of the Notification No. 41/2007. Accordingly, I hold that refund is allowable,

7. In view of the above discussions, the impugned order is set aside and appeal allowed with consequential benefit to the appellant.

(Dictated & pronounced in open Court)

(V. Padmanabhan)
Member (Technical)

RM