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

Appeal No. ST/980/2011 [SM]

[Arising out of Orders in Appeal No. 30-42(CB)ST/JPR-II/2011 dated 31.01.2011 passed by the Commissioner (Appeals), Central Excise & ST, Jaipur]

Lucid Colloids Limited ….Appellant

vs.

Commissioner of Central Excise & S.T., Jaipur ….Respondent

Appearance:

Rep by. Shri Pradeep Jain, CA for the Appellants
Rep by. Shri R.K. Mishra, Advocate for the Respondents

CORAM:

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

Date of Hearing : 24.01.2017

FINAL ORDER NO. 55506/2017 -CU (SM)

Per V. Padmanabhan

The present appeal is filed against Order-in-Appeal No. 30-42(CB)ST/JPR-II/2011 dated 31.01.2011 passed by the Commissioner (Appeals), Central Excise & ST, Jaipur.

2. The brief facts of the case are that the appellant filed refund claim of Rs. 1,35,146/- under Notification No. 17/2009-ST for refund of service tax paid on specified services availed for the export of goods. However, show

cause notice was issued proposing to reject the refund claim on various grounds being (i) original invoices with certification not submitted, (ii) Bill of Lading charges, THC were not covered under the category of Port services; (iii) refund claim in respect of certain shipping bills is less than Rs. 500/-; (iv) in case of freight, service tax is to be paid by exporter etc. The adjudicating authority rejected the entire refund claim. On appeal before the Commissioner (Appeals), he, partly allowed the claim of the appellant for refund of some services and rejected the rest. Aggrieved by the part rejection, the appellant has filed the present appeal.

2. Heard Shri Pradeep Jain, ld. Chartered Accountant for the appellant and Shri A.K. Mishra, ld. DR for Revenue.

3. Ld. Counsel submitted that one of the grounds on which the refund claims have been rejected, is that there was procedural lapse in certifying each invoice as per the requirement of the notification but they have submitted a consolidated certification for the entire refund claim. He submitted that the refund claims should not be denied for technical lapses. Moreover, they agree to certify the original invoices, if the matter is remanded to the Original Adjudicating Authority with directions to give them an opportunity to rectify the lapses. In this regards, the appellant’s request is acceptable that the appellant should be given opportunity to rectify the deficiency if any.

4. As regards denial of refund claim on freight charges, due to clerical mistake, he submits that the refund of service tax paid on freight charges has been denied merely because there was mistake in mentioning the description and classification of services. He submits that the refund claim pertains to invoices issued by CONCOR which were in fact the refund of "transportation of goods by rail service' but was denied on the grounds that this was meant for transportation by road. He submits that the refund claim pertains to transportation of goods by rail service wherein the service tax is to be paid by service provider. He prays that the refund of service tax should be allowed based on the invoices issued by the service provider.

I find that the service tax has been denied by considering the freight as payable by the recipient. However, the appellant has clarified that the service was transportation of goods by rail service. The invoice issued by CONCOR clearly shows the payment of service tax made by them. Accordingly, the payment of service tax refund on such cases is allowable to the appellant.

5. As regards the claims less than Rs. 500/- for certain shipping bills, ld. Counsel submits that Para 2(h) states that –"*No refund claim shall be allowed if the same is for an amount of less than rupees five hundred.*" In this regard, refund claim does not mean that an individual service will form

a refund claim. The word refund claim means a total refund claim. He submits that when one refund claim is filed for a number of services, the total amount of refund claim is to be considered and if the total refund claim is less than Rs. 500/-, the same be rejected.

The impugned refund claim has been disallowed in all cases where service tax refund is less than Rs. 500/- in respect of each shipping bill. This is clearly a wrong interpretation of Para 2(h) of the relevant notification. Since the total service tax refund claim is much more than Rs. 500/-, rejecting the refund in each case is not called for.

6. The next point is rejecting the refund claim in respect of service tax paid on services such as Business Auxiliary Services, Business Support Service, Express release fees and Bill of Lading charges etc. on the ground that these services are not covered under port services. The appellants relied on following case laws:-

(a) Shree Ram Gum and Chemicals vs. CCE, Jaipur – 2016-TIOL-1717-CESTAT-DEL.

(b) Shivam Exports vs. CCE, Jaipur – 2016-TIOL-376-CESTAT-DEL.

(c) Suncity Art Exporters vs. CCE, Jaipur – 2014-TIOL-2319-CESTAT-DEL

(d) Chowgule & Co. (Salt) Pvt. Limited vs. CCE, Rajkot – 2013 (31) STR 334 (Tri. Ahmd.)

(e) Max India Limited vs. CCE, Chandigarh – 2012 (28) STR 248 (Tri. Del.)

(f) Gujarat Tea Processors & Packers Limited vs. CCE Ahmd. – 2012 (27) STR 158 (Tri. Ahmd.)

The various services for which the refund has been denied are rendered within the Port and hence, may be considered as Port services which are listed in the relevant notification for sanction of refund of service tax. This view finds support from various case laws relied upon by the appellant. I am of the view that the service tax refund is allowable in respect of the services under category of Port services.

7. A part of refund claim also stands rejected for the reason that the claim made is beyond the period of limitation. For such claim, ld. Counsel fairly submits that they are not pressing for refund of those cases which are fully beyond the time specified.

8. The appeal is disposed in the above terms.

[Dictated and pronounced in the open Court]

(V.Padmanabhan)
Member (Technical)

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