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

COURT NO. III

DATE OF HEARING/DECISION : 06/03/2017.

Service Tax Appeal No. 1075 of 2011

[Arising out of the Order-in-Appeal No. 103/ST/DLH/2011 dated 08/04/2011 passed by The Commissioner of Central Excise (Appeals), Delhi – I, New Delhi.]

M/s Nav Bharat International Ltd. Appellant

Versus

CST, Delhi Respondent

Appearance

Shri A.K. Batra, C.A. and Ms. Vibha Narang, Advocate – for the appellant.

Ms. Neha Garg, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52222/2017 Dated : 06/03/2017

Per. B. Ravichandran :-

The appeal is against order dated 08/04/2011 of Commissioner (Appeals), Delhi – I. The appellant is engaged in the export of rice and filed refund claims in terms of Notification 41/2007-ST dated 06/10/2007 covering the period from 01/10/2007 to 30/06/2009, with reference to service tax paid on various services availed by the appellant in connection with export of rice. The Original Authority rejected the claims on various grounds. On appeal, the learned Commissioner (Appeals) directed the Adjudicating Authority to reconsider the refund claims on examining necessary documents and evidence produced by the appellants.

2. The learned Consultant appearing on behalf of the appellant submitted that the appellants are exclusively engaged in export of rice and they have no other business activity. The claims are filed within time and required supporting documents were also submitted. The lower Authorities gave summary findings regarding lack of co-relation of various documents, non-availability of evidence of payment of service tax by the appellant and also non-availability of written agreements with reference to availing certain services like technical testing etc. It is the submission of the learned Consultant that they have made a complete chart of all the shipments linking up with the supporting documents in a tabular form. It is also emphasized that the invoices issued by the service provider contained all data like export contract number, BL number, shipping bill number, details of export product and these are to be linked up with the service tax suffered by the appellant and for refund now claimed. The learned Consultant relied on various circulars issued by the Ministry as well as decision of the Tribunal in similar set of facts.

3. The learned AR reiterated the findings of the lower authorities. It is further submitted that the condition of Notification No. 41/2007-ST are mandatory and cannot be diluted by the sanctioning authority. She relied on the decision of the

Hon'ble High Court of Hyderabad in the case of **Principal Commissioner of S.T. vs. R.R. Global Enterprises Pvt. Ltd.** reported in **2016 (45) S.T.R. 5 (A.P.)**

4. We have heard both the sides and perused the appeal records. On careful consideration of the impugned order, we note that rejections of refund claims were upheld mainly on the ground of lack of supporting evidence and co-relation of document submitted by the appellant. There is no rejection based on any legal issue and it is found that the appellants have submitted a chart containing details like invoice number, date, shipping bill number, load port details, description of goods, service providers details, tax paid etc. We have also perused a few sample invoices raised by the service providers. We find that they do contain the relevant particulars, more specifically in terms of requirement under Notification 41/2007-ST. In such factual scenario, we find the rejection of refund claims appears to be made on a summary basis. Admittedly, invoices do contain basic particulars and co-relation as per the chart furnished by the appellant should be sufficient to consider their claim. We also refer to various circulars issued by the Ministry which emphasized the methodology to be adopted by the sanctioning authority in examining the claim on refund. In fact, the impugned order (para 6) elaborately dealt with the clarification issued by the Board in this regard. It was noted that procedural infractions cannot take away the substantive benefit in cases where export of goods is established. The Commissioner (Appeals), concluded thereafter,

stating that the rejection of refund claims by the Adjudicating Authority on the ground of small procedural errors, if any, is not sustainable. However, in the later part of the impugned examining the claim under specific service headings, he upheld rejection of refund. We also note the reliance placed by appellant on decision of Tribunal while disposing of the appeals on claims relating to Notification No. 41/2007-ST in the following cases :-

(i) **CCE, Indore vs. Suraj Impex (India) Pvt. Ltd.** reported in **2016 (41) S.T.R. 783 (Tri. – Del.)** ;

(ii) **Greenspan Agritech Pvt. Ltd. vs. CCE, Pune – I** reported in **2013 (31) S.T.R. 229 (Tri. – Mumbai)** ;

(iii) **Laxmi Enterprises vs. CST, Mumbai** reported in **2015 (39) S.T.R. 519 (Tri. – Mumbai)** ;

(iv) **K. Prashant Enterprises vs. CST, Mumbai** reported in **2016 (42) S.T.R. 149 (Tri. – Mumbai)** ;

(v) **Lifelong Meditech Ltd. vs. CCE, Delhi – III** reported in **2016 (6) TMI 1013 – CESTAT Chandigarh** ;

(vi) **Madura Garments Exports Ltd. vs. CCE & ST, LTU, Mumbai** reported in **2015 (39) S.T.R. 661 (Tri. – Mumbai)** ;

(vii) **Mahindra Reva Electric Vehicles Pvt. Ltd. vs. CCE, Bangalore – I** reported in **2016 (6) TMI 410 – CESTAT Bangalore** ;

(viii) **Coromandel Stampings & Stones Ltd. vs. CCE & ST, Hyderabad – II** reported in **2016 (43) S.T.R. 221 (Tri. – Hyd.)** and

(ix) **Sopariwala Exports vs. CST, Mumbai – I** reported in **2015 (39) S.T.R. 884 (Tri. – Mumbai)**.

5. Regarding the reliance placed by learned AR on the decision of the High Court of Hyderabad in **R.R. Global Enterprises Pvt. Ltd.** (supra), we note that the Hon'ble High Court held that the conditions of notification are to be strictly interpreted for compliance. The Hon'ble High Court was examining the fulfillment of condition for transport of export goods while claiming refund under the Notification 41/2007-ST. The High Court, after examining various judicial pronouncements, held "that what can be condoned, is that which is not the essence of the thing to be done, but that which is prescribed merely for the orderly conduct of the business. In the case on hand all the four conditions stipulated in the amended notification, are intended to ensure that there are checks and balances for the authority conferred with the power of processing the application for exemption to arrive at a subjective satisfaction that the requirement are fulfilled". We note that in the impugned proceedings before the lower authorities the supporting documents submitted by the appellants have not been examined for a specific finding. It is necessary to record as to which of the specific statutory condition, vital to the claim, has not been fulfilled in any specific document. No such findings are recorded by Adjudicating Authority.

6. The impugned order also rejected the refund claim filed in respect of technical testing services on the ground that written

agreements were not submitted. The learned Consultant submitted that they have all the supported evidence and lower authority did not pass order on examining the said documents. We have perused sample documents submitted before us. The testing has been done as per the request of the importer and has been carried out by SGS India Pvt. Ltd. We find that the appellant shall be eligible for refund claim on this service on fulfillment the condition mentioned in the notification. They have supporting documents to this effect which requires examination.

7. Considering the above discussion and finding, we note that the lower authorities did not examine all the supporting documents submitted by the appellant. It is to be noted here that the decided cases dealing similar set of facts and Board's clarifications were also to be considered before deciding on the eligibility of the appellant for the claims. Accordingly, we find it proper to set aside the impugned order and remand the matter to the Original Authority for reconsideration of the appellant claims. The documents submitted by the appellant shall be examined in detail for a final finding. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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