CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No. ST/990/2011-ST [DB]

[Arising out of Order-in-Appeal No. 106 (CB) ST/JPR-II/2011 dated 14.02.2011 passed by the Commissioner Central Excise Commissionerate, Jaipur.]

M/s. Shree Rajasthan Syntex Ltd. ...Appellant

Vs.

C.C.E. Jaipur …Respondent

Appearance:
Sh. Rachit Jain, (Advocate) for the Appellant
Mr. Sanjay Jain, AR for the Respondent

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

Date of Hearing.12.01.2017
Date of Decision.05.05.2017

Final Order No. 53160 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 27.03.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur.

2. Brief facts of the case are that the appellant is engaged in the manufacture and export of man-made yarn, falling under

Chapter 55 of the schedule to the Central Excise Tariff Act, 1985. The appellant had filed refund claim of service tax paid on various input services used for export of goods during the period April 2009 to June 2009 under Notification No. 41/2007-ST dated 06. 10.2007. The authorities below have denied refund claim of service tax paid on the services namely port service (consist of Terminal Handling Charges), Custom House Agents service, bank charges and foreign based commission agent service.

3. The Ld. Advocate appearing for the appellant submitted that the Terminal Handling Service and CHA service were utilized by the appellant within the port for exportation of the goods. Thus, he submitted that since those services were utilized within the port, such services merit consideration as port service for the purpose of exemption/ refund provided under notification dated 06.10.2007. To support such stand, the ld. Advocate has relied on the decision of this Tribunal in the case of *SRF Ltd. Vs. CCE, Jaipur I reported in 2015 (40) S.T.R. 844 (Tri. Del), Commissioner of Central Excise Indore Vs. M/s. CIL Textiles Pvt. Ltd. reported in 2016-TIOL-2500-CESTAT-DEL, Commissioner Vs. AIA Engineering Limited reported in 2014 (36) S.T.R. 1236 (Guj.), Angiplast Private Limited Vs. Commissioner, reported in 2013 (30) S.T.R. 186 (Tri-Ahmd), CCE, Belapur Vs. Pratap Re-Rolling Pvt. Ltd. 2014 (34) S.T.R. 868 (Tri-Mum) and Soapriwala Exports Vs. CST, Mumbai I reported in 2015 (39) S.T.R. 884.*

4. With regard to refund claim of service tax paid on banking services, the Ld. Advocate submitted that the appellant had

produced the documents before the authorities below to show that the services provided by the banker had suffered service tax and as such, the condition of notification dated 06.10.2007 has been duly complied with for getting the refund of service tax. As regards refund of service tax paid on services received from foreign commission agents for sale of goods outside India, the submissions of the ld. Advocate are that the appellant in the capacity of recipient of service, had utilized the cenvat credit for payment of service tax on such services. He submitted that discharge of service tax liability under reverse charge mechanism through cenvat credit is not prohibited under the statue. In this context, he relied on the decision of this Tribunal in the case of *Kansara Modler Ltd. Vs. CCE, Jaipur II, reported in 2013 (32) S.T.R. 209 (Tri.-Del.), Aquapharma Chemicias Ltd Vs. CCE vide Order dated 05.08.2015 in Appeal No. ST/283/11, CCE, Chandigarh Vs. Nahar Industrial Enterprises Ltd., 2012 (25) S.T.R. 129 (P &H), CCE, Salem Vs. Cheran Spinners Ltd., reported in 2014 (33) S.T.R. 148 (Mad.) and Panchmahal Steel Ltd. Vs. CCE & Cus 2014 (34) S.T.R. 351 (Tri- LB.).*

5. On the other hand, the ld. DR appearing for the respondent reiterated the findings recorded in the impugned order.

6. Heard both sides and perused the records.

7. It is an admitted fact on record that the Terminal Handling and CHA services were received and utilized by the appellant at the port of export for exportation of the goods. Further, the fact is also not under dispute that the appellant had paid the service tax

on such services to the service provider. Since the services were availed and utilized within the port for export of goods, irrespective of the classification of the services done by the service provider, the same should merit consideration has "Port Service". In the decisions cited by the Ld. Advocate, the Tribunal has extended the refund benefit of service tax paid on taxable services used within the port of export by considering the said services as port service. Hence, following the coordinate bench decision of this Tribunal, we hold that the appellant herein is eligible for refund of service tax paid on Terminal Handling Charges and CHA Services.

8. With reared to banking charges, we find that the ld. Commissioner (Appeals) has rejected the refund claim on the ground that no documentary evidences were produced by the appellant, showing payment of service tax on the charges claimed by the banks. Since the appellant submits that it has adequate documents to demonstrate payment of service tax on the bank charges, we are of the view that the matter should be verified by the original authority. Thus, to this extent, the impugned order is set aside and the matter is remanded to the original authority for verification of the documents regarding payment of service tax on the bank charges. If documents produced by the appellant show that due payment of service tax has been made into the Government account, the refund benefit shall be extended by the original authority.

9. With regard to payment of service tax by utilizing the cenvat credit under reverse charge mechanism, we find that the Tribunal in the case of Kansara Modler Ltd. (supra) had held that as a recipient of service, the service tax payment can be made under reverse charge mechanism by utilizing the cenvat credit. The relevant Paragraph in the said decision is extracted below:-

> ***"6.*** *If we read Rule 2(q) of Cenvat Credit Rules with Rule 2(1)(d)(iv), we find that appellant is a person liable to Service Tax. Once appellant is person liable to service tax, he becomes provider of taxable service under Rule 2(r) and consequently becomes output service provider under Rule 2(p) of the Cenvat Credit Rules. Revenue is also relying on Rule 5 of Taxation of Services (Provided from Outside India and Received in India) Rules. We find that Rule 5 refers to availing of Cenvat credit and not to utilization of credit. We are therefore of the view that the finding of the Commissioner not treating the appellant as output service provider, is not correct and accordingly we set aside the impugned order and allow the appeal."*

10. Thus, we are of the view that the appellant is eligible for payment of service tax from cenvat account.

11. The appeal is disposed of in above terms.

(Pronounced in the open court on 05.05.2017)

Ravichandran)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi