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

Service Tax Appeal No.ST/344 /2010-Cu [DB]
[Arising out of Order-In-Appeal No. 358/KKG/ST/JPR-II/09 dated 22.12.2009 passed by Commissioner (Appeals-II) Central Exice, Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/s. Jainsons (India) Industries ...Appellant

Vs.

C.C.E, Jaipur-II …Respondent

Appearance:
Mr.O.P. Agarwal, CA for the Appellant
Mr. Ranjan Khanna, DRfor the Respondent

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

Date ofHearing.24.01.2017
Date of Decision. 19.05.2017

Final Order No. 53372 /2017

Per S.K. Mohanty:

Rejection of refund claim filed under Notification No. 41/2007-ST dated 06.10.2007 in respect of service tax paid on various taxable services is the subject matter of present dispute.

2. Refund application filed by the appellant was rejected by the authorities below on the following grounds:

a. THC charges, bills of lading charges, origin haulage charges, repo charges are not covered under Port Service as the service providers are registered under different category of services.

b. Proper invoice not submitted (debit notes have not been prescribed as the valid document for the purpose of claiming refund of service tax.

c. Non-submission of proof of payment of service tax on GTA Services.

d. Description of goods not mentioned in the invoices issued by CHA. Further, details of other expenses have not been furnished.

e. Cleaning activity is not prescribed as the service for claim of refund under Notification dated 06.10.2007.

f. Refund on technical inspection and certification services cannot be considered under the Notification dated 06.10.2007.

3. The ld. Consultant appearing for the appellant submitted that with regard to rejection of refund claim on the ground mentioned in Sl. No. (a) to (c) above, the issues are no more *res-Integra* in view of the decisions of the Tribunal in the case of Shivam Export & Ors. Vs. CCE, Jaipur, Final Order No. ST/A/53916-53918/16-CU dated 26.11.2015, SRF Ltd. Vs. CCE, Jaipur reported in 2015*-TIOL-2241-DEL (CESTAT), final order no. ST/A/ 54038-54068/14-CU dated 16.10.2014 passed in the case of Suncity Art Exports & Ors. With regard to CHA services, the submissions of the ld. Consultant are that the invoices of CHA contained cross reference of SB/ invoice, containing the description of goods. He further submitted that during the period

01.10.2008 to 31.12.2008, CHA Service was covered under the notification dated 06.10.2007. He also relied on the decision in the case of Shivam Exports and Suncity Art Exports (supra), to state that refund application cannot be rejected on the CHA service. As regards the rejection of refund of cleaning activity and technical inspection and certification service, the ld. Consultant submitted that the appellant is not pressing for refund on those services.

4. On the other hand, the ld. DR appearing for the respondent reiterated the findings recorded in the impugned order and further submitted that since the appellant had not complied with the requirement of the notification dated 06.10.2007, rejection of refund claim by the authorities below are proper and justified.

5. Heard both sides and perused the records.

6. With regard to the services listed at sl. No.(a) above, the same were provided by the service provider within the port of export, facilitating exportation of goods by the appellant. Thus, irrespective of the classification of service provided by the service providers, the same should merit consideration as port service for the purpose of refund benefit, since such services were provided within the port of export. We find that the issue is no more *resintegra* and is settled in the above decisions cited by the ld. Consultant. Thus, the appellant is entitled for refund of service tax in respect of the services mentioned as sl. No.(a) above.

7. Rule 4A ibid mandates that taxable service has to be provided on invoice, bill or challan, containing certain

informations. If the debit notes issued by the service provider contained the desired information, the same should be considered as the valid document for the purpose of extending the benefit contained in Notification dated 06.10.2007. Since, the debit notes have to be verified by the original authority for ascertaining their contents, we are of the view that matter should go back to the original authority for necessary verification. If the debit notes contain the desired information as per Rule 4 A ibid, the refund of service tax shall be extended to the appellant. Accordingly, the appeal is allowed by way of remand in respect of Sl. No.(b) above.

8. With regard to CHA service, since the appellant claims that the invoice contained the reference of shipping bills and the description of goods, we are of the view that the matter should be verified to the original authority for verification of such aspect. Thus, with regard to CHA service indicated at Sl. No. (d) above, the matter is remanded to the original authority. On verification of the documents, if he is satisfied that th description of goods are available, refund benefit should be extended to the appellant.

9. Regarding rejection of refund claim on cleaning activity and technical inspection and certification services as indicated at Sl. No. (e) and (f) above, since the appellant is not contesting the same, we are not interfering with the order of the lower authority. Thus, we hold that rejection of refund claim in the impugned order is proper and justified.

10. In view of the foregoing, we partly allow the appeal in the extent that only refund in relation to cleaning activity and technical inspection and certification services is held to be inadmissible and rest is held to be admissible.

11. The appeal is disposed of in above terms.

(Pronounced in the open court on __19.05.2017_)

(**B. Ravichandran**) (**S. K. Mohanty**)
Member(Technical) Member (Judicial)

Sakshi