IN THE 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/349/2010-CU [DB]

[Arising out of Order-in-Appeal No.371/KKG/ST/JPR-II/09 dated 23.12.2009 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

M/s. Shree Ram Gum & Chemicals …Appellant

Vs.

C.C.E., Jaipur-II … Respondent

Present for the Appellant : Mr.O.P.Agarwal, C.A.
Present for the Respondent: Mr.Sanjay Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing : 24/01/2017
Date of Pronouncement:19/05/2017

FINAL ORDER NO. 53374/2017

PER: S.K. MOHANTY

Denial of refund claim filed under Notification No. 41/2007 –ST dated 6.10.2007 is the subject matter of present dispute. The authorities below have denied the refund benefit to the appellant on the following grounds:-

(a) THC Charges, Bill of lading charges, Origin haulage charges & repo charges are not covered under port service, as the service providers are registered for providing different category of services.

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

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

(d) Refund claim in relation to goods exported during quarter ending 30.09.2007 is barred by limitation of time.

2. With regard to Sl.No. (a) above, the ld. Consultant submitted that the issue has been decided by this Tribunal in the case of Shivam Exports & Ors. Vs. CCE, Jaipur [Final Order No.ST./A/53916-53918/16-CU dated 26.11.2015, SRF Ld. Vs. CCE, Jaipur – 2015 – TIOL -2241-DEL (CESTAT), Sancity Art Exports & Ors.,[Final Order No.ST/A/54038-54068/14-CU dated 16.10.2014 & Mec Ahot Blasting Equipment (P) Ltd,. & Ors [Final Order No.ST/A/51126-51129- CU (DB) dated 31.03.2016. As regards Sl.(b) above, the submissions of ld. Consultant are that the debit notes issued by the service providers contained the particulars as prescribed under Rule 4 A of the Service Tax Rules, 1994 and thus, such debit notes are prescribed documents for claim of refund under Notification dated 06.10.2007. As regards the issues in sl. No.(c) & (d) above, the appellant is not contesting the same.

3. On the other hand, the ld. D.R. for Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. 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.

6. 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.

7. With regard to rejection of refund claim as indicated at Sl. No. (c) and (d), we are dismissing the appeal, as the appellant is not pressing for the same.

8. The appeal is disposed of in above terms.

[Pronounced in the open Court on 19/05/2017]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita