CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 15.05.2017

Appeal No. ST/1432/2010-SM

[Arising out of the Order-in-Appeal No. 265(DKV)ST/JPR-I/2010 dated 12.07.2010, passed by the Commissioner of Central Excise (Appeals) Jaipur-I

M/s. Shriram Rayon … Appellant

Vs.

Commissioner of Central Excise, Jaipur … Respondent

Appearance:

Present Shri S.C. Karma, Advocate for the appellant
Present Shri G.R. Singh, AR for the respondent

Coram: Hon'ble Mr.B. Ravichandran, Technical Member

FINAL ORDER No. 53386/2017

Per B. Ravichandran :

1. The appeal is against order dated 15/07/2010 of Commissioner (Appeals), Jaipur. The appellants are engaged in the export of rayon tyre cord fabric. They filed a claim for refund of service tax, paid in respect of services availed for export of the said goods, in terms of Notification No. 41/200 ST dated 06/10/2007. The Original Authority examined the refund claim and sanctioned the same party for to Rs. 2, 27, 326/-. He rejected the claim for Rs.

4,38,823/-. On appeal, the said order was upheld by the impugned order.

2. The Ld. Counsel for the appellant submitted that rejected amount relates to three types of services. The first one is for Rs. 1,25,357/- paid as service tax towards the GTA services availed by the appellant. The same was rejected on two grounds, namely, that they have not fulfilled the condition at serial no. 11 of the said notification to the effect that the details of linkage between transported goods and exported goods was not available and tax paid on movement of empty containers from ICD/port to the appellant's factory is not admissible. It is seen that the transport documents contained the details of export goods along with exporter's invoice numbers and container number. Apparently, these details can be connected with the shipment details available in the shipping bill to find proper linkage. On verification of such linkage, the claimed refund is available to the appellant. On the issue regarding movement of empty containers from the yard/ port to the factory of the appellant, it is seen that it is by now a well settled position that such movement is with reference to export of goods and service tax paid for the same is eligible for

refund. Reference can be made to the decision of Tribunal in following cases;-

I. Balkrishna Industries Ltd. Vs CCE, Aurangabad-2011 (24) STR 433 (Tri-Mum)

II. CCE, Visakhapatnam Vs. R.A.K. Ceramics India Pvt. Ltd.-2013 (30) STR 609 (Tri-Bang.)

III. Vippy Industries Ltd. Vs. CCE, Indore-2013 (30) STR 238 (Tri.-Del.)

IV. Oriental Containers Ltd.Vs. CCE, Thane- 2016 (46) STR 468 (Tri- Mum.)

3. As such, subject to verification of document, the appellant is eligible for refund of service tax on the movement of empty containers.

4. Service tax refund of Rs. 1,72,318/- was rejected on the question of limitation. The appellant submitted that they have paid service tax on services rendered by foreign commission agents relating to export of goods during the quarter October 08 to December 08. The claim was filed on 27/08/2009. The same was rejected as having been filed beyond six month’s time limit. The submission of the appellant is that they could file the claim only on payment

of service tax on reverse charge basis. The service tax having been paid in the first quarter of 2009, the claim has been filed in the third quarter of the said year. The same should be considered as filed within the time limit as no claim can be filed without payment of tax.

5. The refund under notification 41 of 2007 ST can be claimed on fulfillment of various conditions mentioned therein. Proviso (c), para 1 of the said notification stipulates that the exporter claiming the exemption has actually paid service tax on the specified services. It is clear that this is one of the basic condition without which no claim can be filed. In other words, only because the exporter pays service tax on the specified services availed for exporting goods he is coming under the ambit of the said notification, to claim refund. The right to file claim arises upon payment of service tax. Accordingly, the period of computing limitation for preferring claim should accordingly be referred to such payment. The Tribunal in the case of CCE Vs Pacific Leather Finishers, 2016(43) STR 273 (Tribunal- All) held, in a similar set of facts dealing with limitation under the same notification, that the right to claim refund under notification 41 of 2007 ST crystallized

when the service tax was paid by the exporter. Accordingly, the limitation should be referred to that date. The Tribunal relied on the decision of Hon'ble Delhi High Court in Sony India Pvt. Ltd. 2014 (304) E.L.T. 660 (Delhi). In the said case, the Hon'ble High Court examining the limitation with reference to refund of Special Additional Duty (SAD) of customs held that such refund can be filed only upon payment of sales tax and accordingly such payment of tax only gives rise to right to claim the refund of SAD from customs authority. The said decision of the High Court was maintained by the Hon'ble Supreme Court by dismissing Special Leave Petition (SLP) filed by the Revenue 2016(337) E.L.T A 102 (SC). The conditions mentioned in the notification are to be read harmoniously so that they will not result in conflict with each other. As the refund will rise only on payment of service tax, the claims filed within the period of limitation calculated from such payment, should be considered as filed in time.

6. An amount of Rs. 1,40,028/- was rejected on the ground that service tax on Terminal Handling Charges (THC) and documentation charges etc are not admissible as the appellants

failed to produce evidence to the effect that these are attributable to port services. Further, THC was not a listed service prior to 07/07/2009. It is seen that it is a well settled legal position that THC and documentation charges incurred by the appellant within the port area for the services relating to the export of goods, are to be considered as services eligible for refund of service tax. Reference can be made to the decisions of the Tribunal in the following cases:-

I. M/s. Shivam Exports Vs. Commissioner of Central Excise, Jaipur-2016-TIOL-376-CESTAT-DEL

II. M/s Ginni International Ltd. Vs. CCE, Jaipur-I- Final Order No.ST/A/51002/2016-CU(DB) dated 03.03.2016 passed by CESTAT, New Delhi

III. Nahar Fibers Vs. CCE, Chandigarh-2006 (46) STR 542 (Tri.Del.)

IV. CCE Vs AIA Engineering Pvt. Ltd.-2014 (36) STR 1236 (Guj.-HC)

7. In view of the above discussion and analysis, I find that the impugned order of rejection of claim is not sustainable. The matter has to go back to the Original Authority for a fresh decision in line with above observations. For this, the case is remanded

back to the Original Authority to consider the claim afresh. Appellant shall be heard before such decision in taken. The appeal is accordingly disposed of.

[Order dictated and pronounced in the open court]

B.Ravichandran
Member (Technical)

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