CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Date of Hearing/Decision:15.05.2017

Service Tax Appeals Nos. 1458/2011-ST (SM) and ST/304 of 2011

[Arising out of Order-in-Appeal No.251(CB)ST/JPR-II/2011 dated 19.05.2011 in Appeal No.ST/1458/2011 and Order-in-Appeal No.443(CB) ST/JPR-II/2010 dated 29.10.2010 in Appeal No.ST/304/2011 passed by the Commissioner of Central Excise Commissionerate, Jaipur]

M/s.Shree Rajasthan Syntex Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance

Rep. by Shri Dhruv Tiwari, Advocate for the appellant.
Rep. by Shri G.R. Singh, AR for the respondent.

Coram: Hon’ble Shri B. Ravichandran, Member (Technical)

Final Orders Nos.53425-53426/2017

Per B. Ravichandran:

These two appeals are on identical issue relating to eligibility of the appellant for refund of service tax in respect of services availed during the course of export of goods, in terms of Notification no.41/2007-ST dated 6.10.2017 and 17/2009-ST dated 07.07.2009. The appellants are engaged in the manufacture and export of yarn. They preferred refund claims in terms of the above said notifications, during the relevant period. The claims were examined and decided by the Original Authority. An amount of Rs.1,80,773/- and Rs.1,59,643/- were rejected by the Original Authority. On appeal, the rejections were upheld except for a modification in amount in the second appeal wherein the amount rejected was reduced to Rs.56,092/-.

2. Ld. Counsel for the appellant submitted that on the first appeal, covering the period October, 2008 to December, 2008, their claim was substantially hit by the condition that both draw back and refund cannot be claimed in respect of the said specified services. However, with the amendment of notification no.41/2007-ST on 7.12.2008 by notification no.33/2008-ST, the bar of refund, when the drawback was claimed, was deleted. As such, it is submitted that they should be eligible for the refund claim for the services received for the period from 7.12.2008 onwards. The amount will be Rs.64,363/-.

3. The rejection of refund by the lower authorities in both the cases is mainly on the ground that port services/THC are not admissible for refund as the services received under these headings are not covered by the list of specified services in the said notification. The service tax paid on CHA services was rejected on the ground that there is no evidence that the provider of service has infact paid the service tax under that category. Service tax paid on banking and other financial services are not allowed refund as no supporting evidences were placed by the appellants. The service tax paid on purchase/sale of foreign exchange was not given as refund, due to lack of supporting documents. The service tax paid on "Business Auxiliary Service" of commission agent located abroad is not paid as refund on the ground that the appellants have paid the tax using the cevnat credit and as such, not eligible for refund. The service tax paid on GTA services were denied for refund on the ground that there is no linkage between transport documents and the export documents.

4. Heard both the sides and perused the appeal records.

5. Admittedly, the appellants are not eligible for refund of service tax under Notification No. 41/2007-ST for the period prior to 7.12.2008 in view of the bar that no refund in case they have claimed drawback on export items. For the period post 7.12.2008, the claim was rejected on various grounds. It is seen that the activities within the port area with reference to export of goods are called in various names as terminal handling charges, etc. It is well settled by now that the services, received by the exporter on which service tax has been paid, are relatable to the activities within the port, are to be considered for sanction of refund. It is noticed that the appellant's own case vide Final order No. 53160 of 2017 dated 5.5.2017, the Tribunal held that they are eligible for refund of service tax in respect of terminal handling charges, CHA services, banking charges and also for tax paid using cenvat credit. The observations of the Tribunal is as below:-

> "*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.*
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> *8. With regard 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.*
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> *9. With regard to payment of service tax by utilising 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 utilising the cenvat credit. The relevant paragraph in the said decision is extracted below:*
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>> "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."*
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> 10. *Thus, we are of the view that the appellant is eligible for payment of service tax from cenvat account."*

6. In respect of rejection of claim due to lack of supporting evidences with reference to GTA services, sales or purchase of foreign exchange, banking charges, it is seen that the appellants are pleading that they have complete supporting evidences, which can categorically link-up with availment of service, payment of service tax with the shipment of cargo by them. This requires verification by the sanctioning authority.

7. In view of the above observations and analysis, the impugned orders are set aside to the extent of rejection of claims of the appellant and the cases are remanded back to the Original Authority for a fresh decision after taking into consideration all the supporting evidences submitted by the appellants in line with the above observations and various other decisions of the Tribunal on this issue submitted by the appellant. The appellant shall be given an opportunity to submit

all the evidences in support of their case. The appeals are allowed by way of remand.

[Order dictated & pronounced in open court]

(B. Ravichandran)
Member (Technical)

Ckp.