CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 29.05.2017

Appeal No. ST/1864/2010-SM
[Arising out of the Order-in-Appeal No. IND/300/2010 dated 22/09/2010, passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Indore

Tata International Ltd ... Appellant

Vs.

CCE, Indore ... Respondent

Appearance:

Present Shri Manish Saharan, Advocate for the appellant
Present Shri G.R.Singh, AR Advocate for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 53553/2017

Per Ashok K. Arya :

1. *M/s Tata International* is in appeal against O/A No, 300/2010 dated 22/09/2010 whereunder appellant's refund claim was denied on the ground that claim was filed beyond period of six months as the Notification No. 17/09-ST was not applicable during the period of exports made by the appellant.

2. Both sides represented by Ld. Counsels, Shri. Manish Saran for the appellant and Shri G.R. Singh for the Revenue have been heard.

3. The subject matter is mainly concerned with the time limit of filing the refund claim with the Department. Earlier Notification No. 41/2007 prescribed the period of six months from the date of exports for filing the refund claim. However, the new Notification No. 17/2009-ST dated 07/07/2009 which superseded earlier Notification No. 41/2007 (supra) prescribed the time limit of one year from the date of exports for filing the refund claim. In this case the exports took place during the period of August, 2008 to March, 2009. The Revenue claims that the Appellant filed refund claim after the expiry of period of 6 months, which was the time limit under notification no. 41/2007-(Supra), and therefore, the refund is not admissible to the appellant. The refund claim is said to have been received by the Revenue on 29/10/2009.

3.1. The Ld. DR for the revenue also makes a mention that some of the period for which refund has been claimed by the appellant even exceeds one year time limit, which is prescribed by the Notification No 17/2009 (supra). However, the Ld. Advocate for the appellant claims that they have filed the claim within one year time limit.

4. After having gone through the facts of the case and the submissions of both sides it appears that circular F. No. 354/256/2009-TR dated 01/01/2010 issued by *Technical officer (TRU) of the Department of Revenue, Ministry of Finance* is very clear that Notification No. 17/2009 ST (supra) does not bar its applicability to past exports i.e. the exports made prior to issuance of this notification. In other words , the time limit of one year (instead of 6 months) would be applicable even for the exports made prior to issuing of Notification No 7/2009-ST 7/7/2010.

4.1. But as the revenue contest the facts of filing the refund claim within one year time limit by the appellant for certain exports, the matter needs fresh examination and decision by the original adjudicating authority. It is made clear that wherever the refund claim has been filed by the appellant within one year time limit which is the stipulated period by Notification no 17/2009 (supra) the appellant would be entitled to the refund, and wherever this time limit of one year exceeds, they would not be entitled to the refund.

4.2. Consequently, the impugned order is set aside and matter is remanded to the original adjudicating authority for fresh decision in the light of above findings and after giving opportunity of personal hearing and submission of documents to the appellant.

5. In the result the appeal is allowed by way of remand in above terms.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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