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

Service Tax Appeal No. ST/1608/2010-[DB]
[Arising out of Order-In-Appeal No. 195(CB)ST/JPR-II/2010 dated 24.06.2010 passed by Commissioner(Appeals) Jaipur]

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

M/s. Nitin Spinners ...Appellant

Vs.

C.C.E. Jaipur-I …Respondent

Appearance:
Mr. Kumar Vikram, (Advocate) for the Appellant
Mr. Sanjay Jain (DR) for the Respondent

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

Date of Hearing/ Decision.24.05.2017

Final Order No. 53579 /2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 24.06.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur-II. 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 of service tax paid on CHA service and Terminal Handling Charges on the ground that the said services are not confirming to the definition of port service as defined under the Finance Act, 1994.

2. The Ld. Advocate appearing for the appellant submits that the service provider had provided the disputed services to the appellant within the port, facilitating exportation of goods. Thus, he submits that since the services were provided within the port, irrespective of the classification of service, the benefit of Notification dated 6.10.2007 should be available to

the appellant. To support such stand, the Ld. Advocate has relied on the decisions of this Tribunal in the case of SRF Ltd. vs Commissioner of Central Excise Jaipur-I 2015 (40) STR 980 (Tri. Del.), Shivam Exports vs CCE Jaipur 2016 –TIOL-376-CESTAT-DELHI and Final Order No. ST-A/54775/2016-CU-DB dated 02.11.2016 passed in the case of Banswara Syntex Ltd.

3. On the other hand, the Ld. DR appearing for the Respondent reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. The fact is not under dispute that the appellant had paid for the CHA services and Terminal Handling Charges in context with exportation of goods from the port of export. Since the disputed services were utilized within the port, facilitating export of goods, the said services should be eligible for consideration as port service for the purpose of availment of refund benefit contained in Notification dated 06.10.2007. This Tribunal in the aforementioned orders has extended the refund benefit on the disputed services, holding that the said service covered under the Notification dated 06.10.2007 for claiming the refund benefit.

6. In view of above, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Dictated and pronounced in the open court)

(V. Padmanabhan)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Neha