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

COURT-II

Date of hearing/decision: 08.06.2017

Appeal No.ST/50550/2014-SM

[Arising out of the Order-in-Appeal No.153(VC)ST/JPR-I/2013 issued vide C.No. APPL/JPR-I/ST/KT/16/I/2012/1293 dated 14/10/2013, passed by the Commissioner (Appeals-I), Customs & Central Excise, (Appeals-I) Jaipur]

M/s K.S.Oils Ltd., Appellant

Vs.

CCE, Jaipur-I … Respondent

Appearance:

Present Ms. Sukriti Das Advocate for the appellant
Present Shri G.R. Singh AR for the respondent

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

FINAL ORDER No. 54251/2017

Per Ashok K. Arya :

1. *M/s K S Oils Ltd*. is in appeal against Order in Appeal No. 153/2013 dated 04.10.2013 whereunder refund claim amounting to Rs. 2,72,245/- filed under Notification No. 17/209 ST dated 07.07.2009 has been rejected.
2. The brief facts are that
   i. Appellant manufactures edible oils and exports de-oiled cake. Appellant receives various services and has paid service tax on the same. They filed refund claim of Rs. 2,72,245/- under Notification No. 17/2009 in respect of

certain input services like Terminal Handling Charges', Customer House Agent Charges, Communication, Technical Testing and Goods Transport Agencies.

ii. Department has rejected the above refund claim initially vide Order in Original No. 387/2011 dated 31/10/11 and the assessee went in appeal before Commissioner (Appeals), who again sustained the rejection vide Order in Appeal 154/2013 dated 14/10/2013.

iii. Therefore, appellant is in appeal before the Tribunal against the said Order in Appeal.

3. With background of above facts, both sides represented by Ld. Counsels, Ms. Sukrit Das for the appellant and Shri G.R. Singh for the Revenue have been heard.

4. After having carefully considered the facts of the case and submissions of both the sides, it appears that the refund claim of Rs. 2,57,527/- was rejected on the ground that the appellant filed the certificate required in consolidated manner instead of certifying each and every document enclosed with respective refund claim. It is not understandable that if certificate is filed in consolidated manner and if it is a consolidated certificate certifying all the contents, which are required as per proviso h (i) (E) and (F) of the Notification No. 17/2009 (supra), then why the refund claim cannot be sanctioned and why there is requirement of individual certificate? In other words, when the requirement has been fulfilled substantially, I do not think that it is necessary that each and every document is to be certified individually. The Hon'ble Supreme Court in the case of *CC (Preventive) Amritsar*

v. Malwa Industries Ltd 2009, (235) ELT 214 (SC) has observed that an assessee should not be deprived of entitled benefit by interpreting narrowly the conditions provided in law. The Hon'ble Supreme Court in the said decision has observed as under:

> **20.** We, as noticed hereinbefore, have no quarrel with the proposition that exemption notification should be construed strictly which means that benefit thereof should not be granted to one, who is not entitled therefor. But it is also true that those who are entitled to the benefit cannot be deprived therefrom by taking recourse to the doctrine of narrow interpretation simplicitor, although the purpose and object thereof would be defeated thereby.
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> In *Kartar Rolling Mills* v. *Commissioner of Central Excise. New Delhi* [2006 (197) E.L.T. 151 = (2006) 4 SCC 772], this Court held :
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> "...It is trite to say that exemption notification has to be construed strictly. Since the notification came into effect from 11-4-1994, the benefit of the notification cannot be extended to the appellants retrospectively w.e.f. 1-3-1994."
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> In *Eagle Flask Industries Ltd.* v. *Commissioner of Central Excise, Pune* [2004 (171) E.L.T. 296 = (2004) 7 SCC 377], this Court held :
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> "6. We find that Notification No. 11/88 deals with exemption from operation of Rule 174 to exempted goods. The notification has been issued in exercise of powers conferred by Rule 174-A of the Rules. *Inter alia*, it is stated therein that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short "the Tariff Act"). The proviso makes it clear that where goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the form annexed while claiming exemption for the first time under this notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the notification. For availing benefits under an exemption notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on terra firma..."
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> In *Tata Oil Mills Co. Ltd.* v. *Collector of Central Excise* [(1989) 4 SCC 541], Ranganathan, J., despite accepting the proposition that the exemption notification should be construed strictly, opined :

> "These words may be construed literally but should be given their fullest amplitude and interpreted in the context of the process of soap manufacture. There are no words in the notification to restrict it only to cases where rice bran oil is directly used in the factory claiming exemption and to exclude cases where soap is made by using rice bran fatty acid derived from rice bran oil. The whole purpose and object of the notification is to encourage the utilisation of rice bran oil in the process of manufacture of soap in preference to various other kinds of oil (mainly edible oils) used in such manufacture and this should not be defeated by an unduly narrow interpretation of the language of the notification even when it is clear that rice bran oil can be used for manufacture of soap only after its conversion into fatty acid or hydrogenated oil."

4.1 The Ld. DR, however, submits that condition of Notification has to be strictly followed. In this regard, he has cited Hon'ble Andhra Pradesh High Court's decision in case of *Principal Commissioner Service Tax V/s R.R. Global Enterprises Pvt. Ltd. 2016 (45) STR 5 (A.P.).* However, when conditions of the Notification have been substantially followed, just not filing individual certificate cannot adversely affect the entitlement of benefit of refund to the appellant. The Hon'ble Supreme Court's decision in case of *Malwa Industry Limited (supra*) for the present facts supports this view point. Therefore, the Hon'ble Andhra Pradesh High Court's decision (supra) is not applicable.

4.2. It has been pointed out by the Ld. Advocate for the appellant that in case of the refund claim of Rs. 14,718/- [the breakup of which finds a mention in the show cause notice in Para 4 (i) for Rs. 309, Para 4 (vii) for the amounts mentioned in the invoices dated 23/07/2010, 17/07/2010, 17/09/2010, 18/10/2010, 28/10/2010 of Rs. 1602/-, 1886/- then Rs. 1004/-, 2775/-, 1631/-, 3098/-, Rs. 1331/-, and Para 4 (viii) for invoice dated 30/08/2010 of the amount Rs. 1082/- totaling to Rs. 14,718/-], no finding has been given by the lower Authority in the impugned Order. The show cause notice for these amounts refers to certain deficiencies in the claim. However, when no finding is given by the lower Authority the matter for this refund amount of Rs. 14,718/- deserves to be remanded to Original Adjudicating Authority, who shall give the opportunity of personal hearing and submission of necessary documents before the matter is decided afresh.

5. In the light of above discussions, the refund claim of Rs. 2,57,527/- is sanctioned for which further action shall be taken by the Original Adjudicating Authority. However, for the remaining amount of Rs. 14,718/- as discussed above the matter is remanded for fresh adjudication to the Original Adjudicating Authority.

6. In the result the impugned order is modified to above effect and appeal is allowed in above terms.

[Order dictated and pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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