IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:18.05.2017

Date of decision:16.06.2017

Service Tax Appeals Nos.1588, 1590, 1591, 1592, 1614, 1615, 1616, 1617 & 1618/2010-ST (SM)

[Arising out of common Order-in-Appeal No.263-277(CB)ST/JPR-II/2010 dt.13.08.2010 passed by Commissioner (Appeals), Central Excise Commissionerate-II, Jaipur]

MCB Exports Appellants
Sarda Gum & Chemicals (Unit-I)
Sarda Gum & Chemicals (Unit-II)
Lucid Colloids Ltd.
Evergreen International (Unit-II)

Vs.

CCE, Jaipur-II Respondent

Appearance:

Rep. by none for the appellants (written submissions) .
Rep. by Shri G.R. Singh, AR for the respondent.

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

Final Order Nos. 54257-54265/2017

Per B. Ravichandran:

These are 9 appeals dealing with similar matters of refund claimed by the appellant in terms of notification no.41/2007-ST dated 6.10.2007, in respect of service tax paid on specified services availed for the export of goods. Notification no.41/2007-ST provided for exemption of service tax for taxable services specified in the said notification, which were received by an exporter for export of goods.

The exemption is given by way of refund of tax paid. The services, which are specified in the said notification for exemption, include:-

(a) Port services provided by a major port or other port – Section 65(105)(zm) and 65 (105)(wzl) or the person authorized by such port.

(b) Technical Testing and Analysis Agency Services - Section 65(105)(zzh), where it is required as per the written agreement between export and the foreign buyers.

(c) GTA service for transportation of goods by road from ICD to port – Section 65(105)(zzp)

(d) Customs House Agent Service in relation to export of goods- Section 65(105)(h) and specified cleaning services like disinfecting, fumigation of containers used for goods – Section 65(105)(zzzd).

2. These 9 appeals were filed by four appellants and the issue involved is common. The general reasons for rejection and the submission of the appellants can be summarized as below:-

Sl.No.	Appellant (Appeal No)	Refund Amount	Reasons for rejection	Appellants submission
1.	MCB Exports ST/1588/2010	Rs.29,126/-	B/L, documentation charges, THC etc. are not covered under Port Services.	Classification of service by service provider is not relevant for refund under noti.41/2007-ST. Services rendered inside port area with reference to export of goods.
1.	Sarda Gum & Chemicals (Unit-II) ST/1590/2010 ST/1591/2010	Rs.17,663/- Rs.24,311/-	a)B/L,documentation, C&F charges, THC etc. are not covered under port services. b)details of ST payment to Govt. for GTA services not furnished. c)Condition for Courier services, Technical Testing services not satisfied (no written agreement)	Apart from above submission, omission of certain details in the invoices for courier services cannot be reason for rejection. ST paid on testing services to be granted refund as the export is of food product requiring mandatory testing.
3.	Lucid Colloids Ltd. ST/1592/2010	Rs.2,77,804/-	a)B/L, documentation, THC not covered under Port Services. b)Debit notes not valid documents.	The debit note contains all details of invoice . Board vide Circular dated 11.12.2008 clarified submission of invoice of service provider is sufficient evidence. No need to prove payment to Govt.
4.	Evergreen International, Unit-II ST/1614-1618/2010	Rs.24,544/- Rs.20,718/- Rs.20,450/- Rs.15,433/- Rs.33,468/-	a)B/L, documentation, THC not covered under Port Services. b)Payment details service tax to Govt. are not provided. c) debit note not valid documents. d) Documents not clear for insurance service. e) No written agreement for testing/analysis service. f) documents for CHA service, courier service and GTA service not proper.	Board's clarification dt.11.12.08 stated that refund can be allowed if such testing and analysis is statutorily stipulated by domestic rules/regulations.

3. When the matter was called, none appeared on behalf of the appellants. However, the appellants filed additional written submissions and requested for deciding the appeals based on the same.

4. I have heard ld. AR and perused the appeal records.

5. I note that one of the main grounds of rejection of claims filed by the appellants is that the service tax paid in respect of services like documentation charges, terminal handling charges, bill of lading charges, etc. cannot be considered for refund under the category of "Port Service", which is a specified service. I find that as long as the said services were availed by the exporter/appellant in the course of export of goods, within the port premises and they have suffered the service tax, the claim has to be entertained for sanction. It is repeatedly decided by this Tribunal that the classification of service or the category under which the provider of service paid the tax to the Government, should not be the basis for rejection of refund claim filed by the appellant as long as the services have been received by them in connection with the export of goods in the port. This was also clarified by the Board more than once. In this connection, I may refer to the decision of the Tribunal in the following cases:-

(i) M/s.Shree Ram Gum and Chemicals Vs. CCE-Jaipur-II 2016-TIOL-1717-CESTAT-DEL

(ii) M/s.Shivam Exorts Vs.CCE,Jaipur 2016-TIOL-376-CESTAT-DEL

(iii) M/s.Suncity Art Exporters Vs.CCE & ST, Jaipur-II 2014-TIOL-2319-CESTAT-DEL

6. I also note in **Western Agencies Pvt. Ltd. – 2011 (22) STR 305 (Tribunal-LB),** the Tribunal observed that the services provided, in any manner, directly or indirectly by a port or other port, bring such services to the fold of port services for taxation under the category of port services. By whatever name such services are called is not material to the charging provisions of the Act, 1994. Accordingly, any service provided by a port or other port, fall under one class of service called 'port services'. I also note that the reliance placed by the appellant on the following decisions of the Tribunal is also relevant. These decisions support the claim of the appellants for refund:-

(i) Chowgule & Co.(Salt) pvt. Ltd.-2013(31)STR 334(T-Ahmd.)

(ii) CCE,Ahmedabad Vs.Amee Castors & Derivatives Ltd. 2013(30)STR 467 (T-Ahmd.)

(iii) Max India Ltd. Vs.CCE, Chandigarh-2012(28)STR 248 (T-Delhi)

(iv) Gujarat Tea Processors & Packers ltd. Vs.CCE, Ahmedabad 2012(27) STR 158(T-Ahmd.)

7. In many cases, the lower authorities denied the claim for refund on the ground that the appellants did not submit proof of payment of service tax to the Government. I note that when the appellant availed services provided by others, in the port or other specified services and produced the evidence of payment of service tax to such provider, the claim cannot be rejected on the ground of non-submission of proof of payment of service tax by the service provider to the Government. I note that this matter stands clarified by the Board also vide Circular dated 11.11.2008.

8. I find that the lower authorities are not correct in denying refund on the basis of debit notes, on the ground that these are not admissible. When the debit notes contain all the required, essential particulars including the nature of service, service tax paid, etc. then the claim cannot be denied.

9. The claim for refund in respect of GTA service was denied for non-submission of proper invoice or proof of deposit of service tax. When the provider of service charged service tax from the appellant on transport of goods by road and evidence by way of invoice has been issued, the same should be considered by the sanctioning authority.

10. The claim for rejection of service tax on technical testing services was disallowed on the ground that the written agreement was not submitted by the appellant to justify such testing. The appellants exported edible product and it is mandatorily required to export the product in a container in a hygienic condition. The Board vide circular dated 11.02.2008 clarified that refund on testing services may be allowed without any copy of agreement with a buyer of goods, if such testing and analysis is statutorily stipulated by domestic rules and regulations. This aspect requires re-examination by the Original Authority.

11. Apart from the above, it is seen that in many cases the claim was denied on the general ground that the documents are not proper or conditions of notification were not fulfilled. On perusal of the detailed submissions made by the appellant, it is clear that all the supporting evidences and the clarifications submitted by the appellant have not been duly taken into consideration before rejecting their claims.

12. In view of the above discussion and analysis, I find that the impugned orders rejecting the refund claims filed by the appellants are not sustainable. The same are set aside and the matter is remanded back to the Original Authority for a fresh decision in line with the above observations. The appellants shall be given adequate opportunities to submit the required clarifications and supporting evidences in their defence. The appeals are allowed by way of remand.

[Order pronounced on…16.06.2017….]

(B. Ravichandran)
Member (Technical)

Ckp.