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

Service Tax Appeal No. ST/947/2011-[DB]
[Arising out of Order-In-Appeal No. 115(CB)ST/JPR-II/2011 dated 18.02.2011 passed by Commr. (Jaipur-II)]

M/s. Banswara Syntex Ltd. ...Appellant

Vs.

C.C.E. Jaipur-II …Respondent

Appearance:
Mr. Vijayan Khongal (CS) for the Appellant
Mr. Sanjay Jain (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing.01.05.2017
Date of Decision. 18.07.2017

Final Order No. 55278/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 18.02.2011 passed by the Commissioner, Central Excise (Appeals), Jaipur.

2. Rejection of refund claim filed under Notification No. 41/07-ST dated 06.10.2007 for the quarter ending September 2008 is the subject matter of present dispute. The authorities below have rejected the refund claim on the services namely, port service/ terminal handling charges, transportation charges under GTA service (combined transportation charges of empty containers from port to place of removal and stuffed containers from place of removal to port) and foreign commission agent service.

3. The Ld. Advocate appearing for the appellant submitted that the services availed and utilized by the appellant within the port including the

terminal handling service were in relation to export of goods and thus, the said services should be considered as 'port service' for the purpose of benefit of refund provided under Notification dated 06.10.2007. The Ld. Advocate relied on the decision in the case of SRF Ltd. vs CCE Jaipur-I – 2015 (40) STR 980 (Tri. Del), to state that service tax paid on terminal handling charges and other services within the port should be eligible for refund under Notification dated 06.10.2007. With regard to refund of service tax in respect of transportation charges of GTA services, the Ld. Advocate submitted that the issue is no more res integra and is covered by the decision of the Tribunal in the case of C.C.C. C.&S.T. Vishakhapatnam vs R.A.K. Ceramics India Private Ltd. – 2013 (30) STR 601 (Tri. Bang.). As regards refund of service tax paid in respect of commission agent service, he submitted that since those services were availed in or in relation to export of goods, the benefit under Notification 41/07-ST should be available to the appellant. In this context, he has relied on the judgment of Hon'ble Gujarat High Court in the case of Commissioner of Central Excise and Customs, Surat-I vs ABG Shipyard Ltd. – 2013 (31) STR 11 (Guj.).

4. On the other hand, the Ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both the sides and perused the records.

6. We find that various services including terminal handling service were availed by the appellant within the port, facilitating export of the goods. Since the services were availed within the port, irrespective of the classification of those disputed services by the service providers, the same should be considered as port service for the purpose of availment of the refund benefit provided under Notification dated 06.10.2007. We find that the issue involved in this case is squarely covered by the decision of this Tribunal in the case of SRF Ltd. (supra). Further, with regard to refund of

service tax paid on transportation of empty containers, we find that this Tribunal in the case of R.A.K. Ceramics India Pvt. Ltd. (supra) has extended the refund benefit, holding that the expression used in the Notification dated 06.10.2007 'in relation to transport of exported goods' is wide enough to cover transport of empty containers from yard to factory for stuffing of goods for export. With regard to business auxiliary service provided by the Commission Agent, we find that the said service is in relation to export of goods by the appellant. However, the refund benefit has been denied by the authorities below on the ground that the conditions prescribed in the Notification has not been duly complied with by the appellant. In this connection, we find that the Hon'ble Gujarat High Court in the case of ABG Shipyard (supra) have held that mere non-observance of the procedure, which is technical in nature, the refund cannot be denied.

9. In view of the above discussions and analysis, 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.

(Pronounced in the open court on 18.07.2017)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha