

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

ST Appeal No. ST/53502-53503/2015- [SM]

[Arising out of Order-In-Appeal No. DDN/Excus/000/60/Appeals-I/2015-
2016 dated 30.04.2015 passed by CCE Meerut]

For approval and signature:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s Sharda Exports

...Appellant(s)

Vs.

C.C. & S.T. Dehradun

...Respondent(s)

Appearance:

Mr. Ashok Kumar Sethi (Advocate) for the Appellant

Mr. R. K. Manjhi (DR) for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 13.07.2016

Final Order No. 56524-56525/2016

Per S. K. Mohanty:

Brief facts of the case are that the appellant is engaged in the manufacture of excisable goods namely, Carpets, Mats and Leather Articles. During the disputed period, the appellant had filed the refund application, claiming refund of Rs. 1,82,863/- under Notification No. 41/2012-ST dated 29.06.2012 in respect of service tax paid on the taxable services namely, CHA, clearing and forwarding, bank collection and transport of goods services, utilized in connection with the export of goods. The refund application was rejected by the original authority on the ground that the disputed taxable services are not covered under the definition of 'specified services' as per Clause (i) of Explanation (A) appended to the

Notification dated 29.06.2012. In appeal, the Ld. Commissioner (Appeals) vide the impugned order dated 14.05.2015 has upheld the original order. Hence, the appellant has filed the present appeal before the Tribunal.

2. The Ld. Advocate appearing for the appellant submitted that Notification No. 41/2012 was amended vide Notification No. 1/2016-ST dated 03.02.2016, wherein sub-clause (i) in Clause (A) was substituted, providing that taxable services used beyond factory should be eligible for consideration of the refund benefit. He further submitted that the amendment in the Notification dated 03.02.2016 would be retrospectively applicable as per Section 160 of the Finance Act, 2016.

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

4. Heard both sides and perused the records.

5. Notification No. 41/2012-ST dated 29.06.2012 grants rebate of service tax paid on the taxable services, which are received by an exporter for use in the exportation of goods. Explanation (A)(i) contained in the said Notification clarified that in the case of excisable goods, taxable services which have been used beyond the place of removal for the export of said goods, should qualify as 'specified services'.

6. In the present case, since the taxable services were utilized by the appellant for movement of goods between the factory and the port of export, and not used beyond the place of removal, I am of the view that denial of refund benefit by the authorities below are in

conformity with the Notification dated 29.06.2012. However, in view of the retrospective amendment of the Notification dated 29.06.2012, vide No. 1/2016 dated 03.02.2016 and the clarification contained in Section 160 of Finance Act, 2016, refund benefit in my opinion, should be available to the appellant.

7. Since, the amended Notification dated 03.02.2016 and the Finance Act, 2016 was not enacted at the time of passing of the impugned order, I am of the considered view that the matter should go back to the original authority for consideration of the contents of the Notification dated 03.02.2016 and its application to the facts of the present case for sanction of the refund claim.

8. Therefore, after setting aside the impugned order, the matter is remanded to the original authority for re-consideration of the issue in line with above observations. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the matter afresh. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha