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

Service Tax Appeal No. ST/1377-1378/2011-[DB]
[Arising out of Order-In-Original No. IND/CEX/000/APP/219 & 220/2011 dated 7/8.6.2011 passed by Commissioner – Indore]

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

M/s. Ruchi Soya Industries ...Appellant

Vs.

C.C.E. Indore …Respondent

Appearance:
Mr. Rajesh Rawal (Advocate) for the Appellant
Mr. Sanjay Jain, DR for the Respondent

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

Date of Hearing:11.07.2017
Date of Decision:26.07.2017

Final Order No. 55511-55512 /2017

Per Ashok K. Arya:

These two appeals have been filed by M/s Ruchi Soya Industries Ltd. against common order-in-original No. 219 and 220/2011, dated 07.06.2011 wherein, inter alia refund claims of the appellant amounting to Rs. 1,46,869/- for the period of October 2009 to December 2009 and of Rs. 79,703/- for the period of January 2010 to March 2010 have been rejected on the ground that the same are barred by limitation.

2. Both the sides represented by Ld. Advocate Sh. Rajesh Rawal for the Appellant and Ld. DR Sh. Sanjay Jain for the Revenue have been heard.

3. The Ld. Advocate for the appellant inter alia pleads that they have filed their claim within one year of payment of service tax; however, the department is computing the time limit of one year from the date of the export of the goods. The Ld. Advocate pleads that the refund claim can be filed only after tax is paid. The appellant elaborates that in certain cases the tax payable cannot be paid unless invoices are received from the service provider, and if invoices are received late the service tax of the said input services will be paid after receipt of those invoices, and therefore, the time limit of one year in those cases should be taken from the date of payment of service tax.

4. The Ld. DR for the Revenue inter alia submits that the condition of the *Notification 17/2009-ST dated 07.07.2009* is very clear when under clause 2(f) it says that claim for refund shall be filed within one year from the date of export of the said goods. Further, in the Explanation given for clause 2(f), it clarifies that the date of export shall be the date on which the proper officer of the customs makes the order permitting clearances and loading of the subject goods for exportation under Section 51 of the Customs Act, 1962. The Ld. DR in support cited the Tribunal's decisions in the cases of *Spark Engineering (P) Ltd. vs CCE, Ghaziabad – 2013 (31) STR 71 (Tri. Del) and Salora International Ltd. vs CST Delhi– 2017 (47) STR 177 (Tri. Del)*.

5. After having considered facts of the case and submissions of both the sides it appears that the subject refund claims of the appellant have been filed beyond the period of one year from the date of export of the relevant goods. In the face of clear provisions

of clause 2(f) of the Notification No. 17/09-ST (supra) that the refund claim is to be filed within one year from the date of export of the goods, and in the face of the Explanation that for this purpose date of export shall be the date on which the proper officer of the Customs make an order permitting clearance and loading of the said goods for exportation under Section 51 of the Customs Act, 1962, the subject claim of refund appears to be not admissible.

5.1 Though, the appellant pleads that clause (c) of the First Proviso of the Notification 17/09-ST (supra) states that the refund claim would be admissible only after actual payment of service tax, we find that said clause does not extend the time limit to the one year period from the day of actual payment of service tax. Thus, considering the specific provisions of time limit of one year for filing refund claim given in clause 2(f) of Notification 17/09-ST (supra), an following the Tribunal's decisions (supra) both the appeals do not have enough substance to make the appellant eligible for any relief.

6. In the result the impugned order is sustained and both the appeals are rejected as without merits.

(Pronounced in the open court on _26.07.2017)

(Ashok K. Arya)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Neha