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

COURT-I

Date of hearing/Decision: 08.08.2017

Appeal No. ST/637/2011- [DB]
[Arising out of the Order in Original No.IND-51/APPL/INDORE/2011 dated 31/01/2011 Passed by The Commissioner (Appeals), Central Excise & Customs, Indore]

M/s Vippy Industries … Appellant

Vs.

CCE Indore … Respondent

Appearance:
Present Shri Ashutosh Upadhyay, Advocate for the appellant
Present Shri S.K. Bansal, DR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble V. Padmanabhan,Member (Technical)

FINAL ORDER No. 55816/2017

Per: V. Padmanabhan

1. The present appeal has been filed against Order in Appeal No. 51/2011 dated 31/01/2011. The dispute pertains to refund claim made by the appellant in terms of notification number 41/2007 ST dated 06/10/2007 for refund of service tax paid on services of transport of goods by road from the factory to the port of export. The lower Authorities have denied the refund of such service tax amounting to Rs. 6,55,944/- for alleged failure of some of conditions attached to the notification. In particular, it has been held that the following two conditions have not been satisfied by the appellant.
   i. Export goods are transported directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported.

ii. Details of exporter's invoice relating to export goods are specifically mentioned in the lorry receipt and the corresponding shipping bill.

2. With the above background, we heard both the sides. It is the submission of the Ld. Counsel for the appellant that the conditions said to have been not satisfied by the appellant are only procedural and the factual of export is not in dispute. He also submitted a statement giving the details of invoices and the corresponding ARE No. under which goods have been exported. He also relied upon the following case laws: *Durga Marble & Minerals Vs CCE-Jaipur* 2016 (45) STR 563 (Tri.-Del) and *Jain Grani Marmo (P) Ltd. Vs CCE, Jaipur* 2016 (45) STR 430 (Tri.-Del). It is the submission of the Counsel that in the above cases it has been held by the Tribunal that once the ultimate exportation of goods is not in dispute procedural deficiencies should not be cited to deny the benefit of goods. He further submitted that they are now in a position to satisfy the correlation between the documents and the corresponding export documents. For such purpose he prays of grant of an opportunity before the Original Adjudicating Authority.

3. The Ld. DR submits that before the granting of refund under the notification, the appellant is required to establish correlation between the documents and export document by which it can be concluded that the service tax has been paid in relation to the export of the consignments.

4. After hearing both the sides and on perusal of record, it appears that the refund stands rejected for non fulfillment of some of the conditions mentioned in the notification. It is the submission of the Ld Counsel that they are now in a position to satisfy the correlation

between the documents and the corresponding export documents. For such purpose he prays of grant of an opportunity before the Original Adjudicating Authority.

In view of the above submissions we are of the view that substantial benefit of refund of service tax cannot be denied for want of satisfaction of correlation of documents. We, hence, set aside the order and remand the matter to Original Adjudicating Authority who will decide the issue afresh after providing an opportunity of hearing. Additional evidence, if need be, may be admitted as per law.

5. In the result, appeal filed by the appellant is allowed by way of remand.

[Order Dictated and Pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(V.Padmanabhan)
Member (Technical)

Rekha