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

Date of hearing/decision: 21.08. 2017

S.T. Appeal No. 302 / 2011

(Arising out of order-in-appeal No. IND/389/2010 dt. 18.11.2010/ 22.11.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore).

M/s Sonic Biochem Extraction Limited appellant

Vs.

CCE, Indore Respondent

Appearance:

Sh. Manish Saharan, Advocate for the appellant
Sh. R. K. Poddar, AR for the respondent

Coram:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order No. 56257/2017

Per: **Ashok Jindal**:

The appellant is in appeal against the impugned order wherein the refund claim under Rule 5 of the Cenvat Credit Rules and Notification No. 17/2009-ST dated 07.07.2009 for refund of service tax paid on the services namely Business Auxiliary Services and transport of goods by road which were availed by them for export of goods is denied.

2. Ld. Counsel for the appellant submits that the refund claim was rejected on the ground that the appellant has not given the details of transportation charges and their refund claim is part of limitation. He submits that the time limit prescribed is one year as per Notification No. 17/2009-ST dated 07.07.2009. He also relied on the decision of the Tribunal in the case of M/s Garware Polyester

Ltd. vs. CCE, Aurangabad – 2011-TIOL-988-CESTAT-MUM to say that as the containers were called from the yard, therefore, appellant is entitled for refund of service tax paid on GTA service from the port to their factory and vice versa.

3. Ld. AR for the Revenue submits that the appellant has not fulfilled the condition of the Notification set out in para 2(j). Therefore, refund claim is not admissible.

4. Heard the parties considered the submissions.

5. With regard to the issue of time bar, I find that the issue has been dealt by the Tribunal in the case of Raymond Ltd. vs. CCE, Mumbai-III -2014-TIOL this Tribunal observed as under:-

> "5. *I have carefully considered the submissions made by both the sides. In the present case the refund claim pertains to the quarter October – December, 2008. The appellant have filed the refund claims on 30.07.2009 for the refund under Notification 41/2007-ST. The said Notification was amended vide Notification No. 17/2009 dated 07.07.2009 so as to allow filing of the refund claim within a period of one year from the date of export of the goods. Inasmuch as the appellant filed the refund claims in July, 2009 for the quarter ending October – December, 2008, the refund claims are within a period of one year from the date of export of the goods. Therefore, the appellant would be eligible for the benefit of refund under the aforesaid Notification subject to satisfaction of other conditions stipulated in the Notification.*
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> *5. The Hon'ble High Court of Bombay, which is the jurisdictional High Court, in the case of Uttam Steel Ltd. (supra) has held that when procedure and practice are amended they have to be amended retrospectively and the benefit allowed if the procedures are satisfied. This Tribunal in the case of Sandoz Polymers Pvt. Ltd. (supra) has also held the same view. Further, the CBEC in Circular dated 12.03.2009 cited supra, have also held that so long as the refund claims is filed within the extended period of time provided for in the Notification, the assessee would be eligible for the benefit of refund, subject to satisfaction of other conditions stipulated in the Notification".*

6. Following the precedent decision, I find that the claim filed by the appellant is within time.

7. With regard to entertainment of refund claim on account of transportation of the road, I find that this issue was dealt in the case of Garware Polyester Ltd. (supra) wherein empty containers from the yard to the factory for stuffing of export goods, refund of service tax paid on transport of empty containers from the yard to the factory is admissible. Therefore, the appellant is entitled to avail refund of transport of service tax. Therefore, I hold that refund claim cannot be rejected.

8. With regard to the fulfilment of the condition 2(j) mentioned in the Notification No. 17/2009, I find that none of the authorities below has been given any specific finding and appellant has not given to reply to their query. Therefore, that purpose the matter is remanded to the adjudicating authority to examine the claim under the condition 2(j) of the said notification.

9. In these terms, appeal is disposed of by way of remand.

(Dictated and pronounced in the open Court).

(Ashok Jindal)
Member (Judicial)

Pant