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

COURT-III

Date of hearing: 30.08.2017

Appeal No. ST/649-651/2011-SM

[Arising out of the Order in Appeal No. 32(S.T.) & 28-29 (CE) (DKV)/JPR-I/2011 dated 20.01.2011, passed by the Commissioner (Appeals), Central Excise, Jaipur]

KEI Industries Ltd. … Appellant

Vs.

CCE, Jaipur …Respondent

Appearance:
Present Shri P.K. Mittal, Advocate for the appellant
Present Shri R.K. Mishra, DR for the respondent

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

FINAL ORDER No. 57079-57081/2017

Per S.K. Mohanty

The issue involved in all these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Denial of refund claim filed under Notification No. 41/2007 dated 06/10/2007 in respect of the taxable services used for exportation of goods is the subject matter of present dispute. The authorities below have denied the refund benefit on the ground that the services availed/utilized by the appellant for exportation of goods are not confirming to the definition of port service and thus, such services were outside the scope of the notification dated 06/10/2007 for claim of refund of service tax paid thereon.

3. The Ld. Advocate appearing for the appellant submits that the services used / utilized within the port are in relation to export of the goods. Thus, he submits that irrespective of the classification of service, since those services were used within the port of export, the same should merit consideration as port service for the purpose of availment of the benefit of Notification dated 06/10/2007. To support such stand, the Ld. Advocate has relied on various decisions of the Tribunal including the decision of this Tribunal in the case of the appellant itself, rendered by Final Order No. A/55716/2016 – SM (BR) dated 01/11/2006. With regard to denial of refund claim on the fumigation charges, the Ld. Advocate submits that the purchase order issued by the overseas buyers shows that anti-termite and anti-vermin impregnated and flame retardant is to be done to the power cable and control cables to be supplied by the appellant. Since, there are agreements between the overseas purchasers and the appellant for undertaking the fumigation activities, he submits that service tax paid on such service merits consideration for the benefit of Notification dated 7/10/2007.

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

5. Heard both sides and perused the records.

6. The fact is not under dispute that the services namely, Inland Haulage Charges, Freight Outward Charges, B.L. Charges, Terminal Handling Charges etc. were used/utilized by the appellant within the port of export, facilitating exportation of the goods. Since admittedly, the said services were used within the

port of export, irrespective of the classification of those services, the same should merit consideration as port service for the purpose of benefit of refund contained in the Notification dated 07/10/2007. I find that in identical situation, this Tribunal in the case of the appellant itself, vide Final Order No. 55716/2016 dated 01/11/2016 has extended the refund benefit in respect of the service tax paid on the above disputed services. Thus, in my considerate view, the appellant should also be eligible for refund benefit in respect of the above disputed services. With regard to refund claim of the fumigation service, I find that there is agreement between the overseas purchaser and the appellant for undertaking fumigation services in respect of goods exported by the appellant. Since there is agreement between the appellant and the overseas purchaser of goods, the requirement of the Notification dated 07/10/2007 has been duly complied with and refund of service tax on such fumigation service should be available to the appellant.

7. In view of above, I do not find any merits in the impugned orders. Accordingly, after setting aside the same, I allow the appeals in favour of the appellant.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

Rekha