CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 04.12. 2017
Date of decision: 07.12.2017

S. T. Appeal Nos. 535 of 2012 and **S. T. Appeal Nos. 50893 - 50916 of 2017**
(Arising out of order-in-appeal No. 12-35/BPL/2012 dated 16.02.2012 passed by the Commissioner, Central Excise, Bhopal).

CCE&ST, Bhopal — Appellant - Revenue

Vs.

M/s Nirnidhi Marketing Pvt. Ld. — Respondent - Assessee

Appearance:

Sh. Sanjay Jain, A R for the appellant -Revenue
Sh. Puneet Agarwal & Sh. Abhishek Boob, Advocats for the respondent - Assessee

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order Nos. 58329 – 58353/2017

Per: **B. Ravichandran**:

These 25 appeals by the Revenue are against the common impugned order dated 16.02.2012 of Commissioner (Appeals), Central Excise, Bhopal. The respondent-assessee is a merchant exporter engaged in export of iron ore. They are registered with the Service Tax Department in Katni jurisdiction, Madhya Pradesh. They have filed various refund claims in terms of Notification No. 17/2009-ST dated 07.07.2009. The said notification exempted certain services which are used by the exporter of goods. The exemption is to be claimed by way of filing refund claims. The respondent-assessee filed such claims mainly for service tax paid on technical testing and analyses service, port services, test inspection and certification service and transport of goods by road services. These claims were examined and sanctioned by the jurisdictional Deputy Commissioner. Against this sanction orders the Revenue preferred appeals before the Commissioner (Appeals). These appeals were dismissed by the first appellate authority who upheld the orders of the original authority sanctioning refunds. Aggrieved by this order, the Revenue preferred the present appeals.

2. We have heard both the sides and perused the appeal records.

3. We note that the main grounds of appeal by the Revenue are :-

(a) The Deputy Commissioner, Jabalpur is not competent to decide the refund claims. The reliance placed by the lower authorities on the circular dated 12.05.2008 of the Board is not appropriate. The said circular was with reference to Notification No. 41/2007-ST, whereas the present claims were filed under Notification No. 17/2009-ST.

(b) Service Tax paid on transport of goods from mines to Railway siding is not admissible under Notification No. 17/2009-ST. Transportation of goods by road for export is only eligible services for refund.

(c) The transporters invoice should contain all the details of exported goods. There is a mis-match of details with reference to place of removal, quantity etc. in these documents.

(d) One to one co-relation of document should have been insisted upon to satisfy the due discharge of service tax. The lower authorities relied on certification by Chartered Accountant. While the said certificate can be a corroborative evidence, the same cannot be the main basis.

(e) Service tax on port services is not admissible. Notification No. 17/2009-ST stipulates that the services should have been provided by the port or any person authorised by the port.

(f) Payment of service tax on port service will not make the exporter automatically eligible for refund.

4. We note none of the above grounds are having any merit either factually or legally. It would appear that the present appeals have been filed mechanically without appreciating the legal scope and the spirit of the clarifications issued by the Board including the question of jurisdiction to decide the claims. In fact, a perusal of the impugned order will reveal that all these grounds have been examined in detail for a clear finding by the lower authorities.

5. Both the original authority as well as the first appellate authority have arrived at a similar conclusion after detailed examination of the merits of the case.

6. On the first issue regarding jurisdiction, we note that the objection raised by the Revenue is frivolous and without merit. Admittedly, Notification No. 17/2009 is a successor Notification to 41/2007. In fact, the 2009 notification was issued superseding the 2007 notification. The object and the scheme envisaged in these notifications are same. We find no justification in the point raised by the Revenue stating circular issued under Notification No. 41/2007 is not applicable to Notification No. 17/2009.

7. Strangely, when the Revenue raises objection regarding jurisdiction, it is not mentioned what will be the correct jurisdiction. The respondent-assessee were registered in Katni Range under the jurisdiction of Assistant Commissioner, Jabalpur who decided the refund claims. There is no error in jurisdiction.

8. Regarding transport service, it is noted that the iron ore was first transported from mine to railway siding near the mine and then the ore was transported by railway to the ports for export. The respondent-assessee has submitted copies of railway receipt showing transportation to the port alongwith the details of arrangement of transportation from mines to Railway siding. We note that this aspect has been examined in detail and the impugned order records that the respondent-assessee transported the goods directly to the port through different modes of transport as per their convenience and as such the claim for refund was found to be admissible.

9. Regarding submission of documents and certain mis-match, we find that the respondent-assessee filed claims, shipping bill, invoice and had submitted copies of shipping bills, bills of lading proving export of quantity of iron ore mentioned in the shipping documents leaving no room for doubt regarding export of iron ore. It is also recorded that regarding co-relation of documents, the Board vide Circular dated 189.01.2010 stated that the departmental officer are only required to make basic scrutiny of documents. There is a provision of self certification or certification by Chartered Accountant about co-relation and nexus of input services with the exports. It is clear that in present appeals the Revenue had not brought out a specific case of any mis-match in the documents supporting the claims.

10. Regarding services provided by port or person authorised by the port it is clear that the respondent –assessee submitted bills/ invoices issued by the providers of such service. There is no dispute that services received by the respondent are falling under category of port services. The tax paid on such services has not been disputed. Hence, it is not open to the Revenue to contest that such tax paid on port services will not be eligible for exemption/ refund in terms of Notification No. 17/2009-ST.

11. We note all the grounds raised in the present appeals were examined in detail by the first appellate authority himself. We have carefully considered the findings recorded in the impugned order and the grounds of present appeals, as analysed above. We find no merit in the present appeals. We also note that the findings recorded in the impugned order are in consonance with decisions taken by the Tribunal in various cases while deciding similar set of dispute. A reference can be made to a few of the decisions:

i) Jumbo Mining Ltd. -2012 (26) STR 525 (Tri.)
ii) Ramdev Food Products Pvt. Ltd. – 2011 (23) STR 475 (Tri.)
iii) M/s AIA Engg. Pvt. Ltd. (Tax Appeal No. 2391/2010-Guj. High Court.
iv) Parmeswari Textiles – 2011 (22) STR 625 (Tri.)
v) Tata Coffee – 2011 (21) STR 546 (Tri.)

12. In view of the above analyses, we find no merit in the present appeals and accordingly dismiss the same.

(Pronounced on 07.12.2017).

(Justice (Dr.) Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Pant