IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/102/2012-CU [DB]

[Arising out of Order-in-Appeal No.442 (DKV)/ST/JPR-I/2011 dated 24.10.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s.Rajasthan Electronics & Instruments Ltd. …Appellant

Vs.

C.C.E.,Jaipur-I … Respondent

Present for the Appellant : Ms.Surabhi Sinha, Advocate
Present for the Respondent: Mr.Sanjay Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 09/11/2017

FINAL ORDER NO. __58390/2017___

PER: S.K. MOHANTY

Brief facts of the case are that the appellant is engaged in the manufacture of excisable goods namely, electronic milk tester falling under Chapter heading No.9027 8090 of the Central Excise Tariff Act, 1985. The appellant also provides business auxiliary service and for that purpose, is registered with the Service Tax Department. The appellant is also acts as sole selling distributors and engaged in promotion and marketing of goods manufactured by M/s Foss Analytical, A/S.Denmark in India. Considering such service to be categorised under the business auxiliary service, the appellant discharged the Service Tax liability initially under reverse charge mechanism. Subsequently, the applicant filed the refund application on 22.07.2010, claiming refund of Service Tax of Rs.7,47,827/-, on the ground that the business auxiliary service exported by it falls under Rule 3(1) (iii) of the Export of Service Rules, 2005 and accordingly, no service tax was payable on export of such service. However, the authorities below have denied the refund benefit, holding that the services provided to the overseas client were used/ consumed within India and as such, services should not be considered as export of service, under the provisions of Rule 3 (1) (iii) of the Rules, 2005. Further, the refund claim was also denied on the ground of unjust enrichment. Feeling aggrieved with the impugned order dated 24.10.2011, the appellant has filed this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. We find that in support of denial of refund benefit, the ld. Commissioner (Appeals) vide the impugned order at page 9 has discussed the following:-

> *"Further, I observe that it to qualify for refund of service tax under Export of Services Rules, 2005 the appellant had to fulfil the above mentioned two conditions. In the instant case, on perusal of Annexure "F" of the agreement made between the appellant and M/s. Foss Denmark it was revealed that the appellant had not undertaken any marketing on behalf of the foreign company nor had arranged any sales order in favour of the foreign company. The appellant had received this amount in advance as distributor for providing after sale service support on their products in India like installation, repair and maintenance, education training to the buyers. These activities have been undertaken in India through these were provided for a person located outside India. Even assuming that the service was provided from India, it had not been used outside India, as the products of M/s. Foss Denmark were purchased by Indian buyers in Idnia, it means that the ultimate outcome of service had been exhausted in India, export of service did not arise. Thus, both the clauses "provided from India" and "used outside India" had not been satisfied by the appellant. Hence, they had not fulfilled the relevant conditions of the Rule 3 (1) (iii) of the Export of Services Rules, 2005. Thus, refund claim amounting to Rs.7,04,827/- is liable to be rejected."*

4. On perusal of the above observations of the ld. Commissioner (Appeals), we find that the refund claim has been denied to the appellant solely on the ground that the services were not exported outside the country, rather the

same were used/utilized within the country and thus, the benefit of Rule 3 (1) (iii) ibid should not be available to the appellant. The issue, whether the services used within India for the benefit of the overseas client, should be eligible for consideration as export of service under Rule 3(1)(ii) *ibid,* is no more *res-integra,* in view of the co-ordinate bench decision of this Tribunal in the case of Blue Star Ltd. - 2016 (46) STR 59 (Tri.-Mum.). The Tribunal by relying on the decision in the case of Paul Merchants Ltd – 2013 (29) STR 257, has held that since the services were provided for the benefit of the overseas service receiver, irrespective of the place of performance of service, the same should be considered as export for the benefit of non-payment of Service Tax under business auxiliary service. In view of the settled position of law, we do not find any merits in the impugned order for denying the refund benefit to the appellant. With regard to the unjust enrichment aspect, we find that the appellant under reverse charge mechanism had deposited the service tax into the Government Exchequer and there was no scope on its part to collect such tax from the overseas clients. Thus, the doctrine of unjust enrichment is not applicable in this case, for denial of the refund benefit.

5. In view of above discussion and analysis, we hold that the appellant is entitled for refund of service tax paid under business auxiliary service. Accordingly, after setting aside the

impugned order, we allow the appeal in favour of the appellant, with consequently benefit of refund.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita