IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 7.2.2018
Date of Pronouncement: 9.2.2018

Appeal No. ST/1454/2011-SM

(Arising out of Order-in-Appeal No. IND/CEX/000/APP/277/11 dated 29.6.2011 passed by Commissioner (Appeals), Central Excise, Customs & Service Tax, Indore)

M/s Vippy Industries Ltd. Appellant

Vs.

CCE. Indore Respondent

Appearance

Shri A. Upadhyay, Advocate - for the appellant

Shri G.R. Singh, D.R. - for the respondent

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

Final Order No. 50586/2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein refund claim filed by them under Notification No. 17/2009-ST dated 7.7.2009 and 41/2007-ST dated 6.10.2007 has been denied.

2. Heard the parties.

3. Refund claim has been denied on the following services viz. Custom House Agent service and terminal handling charges services and it is also held that the refund claim is barred by limitation.

4. On the issue of limitation, I find that for the quarter ending July 2009 to September 2009, refund claim was filed on 9.12.2009 whereas the commission paid to the foreign commission agent for the period November 2008 to May 2009, when the Notification No. 41/2007 dated 6.10.2007 was in force, it was held that the refund claim was not filed in time. In that circumstances, refund claim was rejected by the authorities below as time barred. I find that the Notification No. 17/2009-ST dated 7.7.2009, the time limit for filing the refund claim was extended to one year and the said issue has been decided in the case of ***K.N. Resources Pvt. Ltd. Vs. CCE -*** 2017 (47) STR 303 (Tri.-Del.). The said issue came up and this Tribunal observed as under :

> "**6.** We have gone through the said Notification as well as clarification issued by the Board. We are of the view that the clarification issued by the Board is in the nature of a benefit extended to the assessees. It is to be viewed as relaxation of the conditions prescribed under Notification No. 17/2009-S.T., even though a one time measure. We find that in the present case the exports have taken place prior to the issue of the Notification No. 17/2009. It is also seen that the refund claim was filed citing the earlier Notification No. 41/2007-S.T. Given the benefit of relaxation in the Board Circular, it emerges that refund claim filed within a period of one year from the date of export should be allowed the benefit of refund of service tax paid in export. The appellant has cited the CESTAT decision in the case of *Knitex Textiles Pvt. Ltd.* v. *CCE, Mumbai* reported in 2015 (40) S.T.R. 562 in which an identical issue has been considered and the benefit extended. However, since the refund has been claimed for the exports done between October, 2007 and June, 2008, and the refund has been claimed on 27-10-2008, time-bar will arise for exports which have taken place during the period 1-10-2007 to 26-10-2007. This

> aspect will need to be re-considered by the original authority at the time of considering the refund claim."

5. Admittedly, the refund claim is filed by the appellant within time limit prescribed as per Notification No. 17/2009 dated 7.7.2009. In that circumstances, I hold that the refund claim filed by the appellant is within time. In that circumstances, on the ground of limitation, the refund claim cannot be rejected.

6. For refund claim of terminal handling charges, the case of the Revenue is that the terminal handling charges are not covered under port service, therefore, they are not to avail the Cenvat credit. I find that this terminal handling charges has been paid by the appellant at port and the said service has been availed by the appellant for export of the goods. These facts are not in dispute and the same issue has been examined by this Tribunal in the case of ***Dolphins Knit Pvt. Ltd. Vs. CCE*** – 2017 (49) STR 431 (Tri.-Del.), wherein this Tribunal relying on the CBEC Circular dated 26.2.2010, clarifies that irrespective of the classification of service provided by the service provider, if the services are related to port service, the same shall be considered for benefit of refund in terms of Notification dated 6.10.2007. Therefore, relying on the decision in the case of ***Dolphins Knit Pvt. Ltd.*** (supra), I hold that on terminal handling charges, the appellant is entitled to claim refund as the said services has been availed by the appellant at port and do qualify for port services.

7. With regard to refund claim on CHA service, the main contention of the Revenue is that the invoices is not in the name of the appellant issued by the CHA. But I find that on the shipping bill, name of the CHA mentioned and export through the authorised CHA has been made by the appellant. It is not disputed that the said service has not been received by the appellant for export of goods. In that circumstances, on charges paid to CHA and the service tax thereon, the appellant is entitled to avail Cenvat credit. Consequently is entitled for claim refund in terms of Notification No. 41/2007 ibid & 17/2009 ibid.

8. In view of the above analysis, I hold that the impugned order qua rejecting the refund claim is set aside.

9. In the result, the appeal is allowed with consequential relief..

(Pronounced in Court on 9.2.2018)

(Ashok Jindal)
Member (Judicial)

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