IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –IV

Service Tax Appeal No. ST/51970/2017 [SM]

[Arising out of Order-in-Appeal No.07.Central Tax/Appl-II/Delhi/2017 dated 06.09.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Delhi]

C.C.E., Delhi …Appellant

Vs.

M/s. Key Life Science Pvt. Ltd. … Respondent

Present for the Appellant : Mr.Govind Rai Garg, CA
Present for the Respondent: Mr.Harish Saini, D.R.

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

Date of Hearing/Decision: 27/02/2018

FINAL ORDER NO. 50907 /2018

PER: S.K. MOHANTY

Revenue is in appeal against the impugned order dated 06.09.2017 passed by the Commissioner of Central Excise, (Appeals-II), New Delhi.

2. Brief facts of the case are that the respondent herein, is a merchant exporter engaged in export of "Additive LKS 7647" under Chapter sub-heading 3811 3100 of the HSN. During the period April 2015 to March, 2016, the respondent had filed the refund application in terms of Notification No. 41/2012-ST dated 29.06.2012, claiming refund of Service Tax paid on the taxable services used for exportation of the goods. The refund

application filed by the respondent was sought to be denied on the ground that the requirements/conditions laid down in Notification dated 29.06.2012 have not been properly complied with by the respondent. The show cause notice issued in this regard was adjudicated vide order dated 09.02.2017, wherein the Jurisdictional Assistant Commissioner of Service Tax sanctioned the refund claim of Rs.5,41,680/- and rejected the balance refund claim amounting to Rs.11,04,165/-, on the ground that since the goods exported by the respondent were excisable goods, the services availed/utilized beyond the place of removal i.e. factory gate, the refund claim should not be allowed under Notification dated 29.06.2012. The further ground assigned in the adjudication order is that M/s. Super smelters Pvt. Ltd. had not provided any service to the respondent and thus, the refund claim cannot be considered under the said Notification. Feeling aggrieved with the adjudication order dated 09.02.2017, the respondent has filed appeal before the Commissioner (Appeals), which was disposed of vide the impugned order dated 06.09.2017, by setting aside the adjudication order passed by the Assistant Commissioner of Service Tax. The Appellate Commissioner has restored the refund claim of the disputed amount in favour of the respondent. Against the impugned order, the Revenue has filed the present appeal before the Tribunal.

3. The ld. DR appearing for the Revenue submits that since the respondent had filed the refund application under paragraph 3 of the Notification dated 29.06.2012, the said paragraph should have been examined by the Commissioner

(Appeals) for deciding the issue of refund. Thus, he submits that since the Commissioner (Appeals) has considered paragraph 1 (a)(A) (i) of the said Notification, it has travelled beyond the scope of the refund application and as such, the claim is not maintainable in favour of the respondent.

4. On the other hand, the ld. Consultant appearing for the respondent submits that since the respondent is a merchant exporter and the entire goods procured from Super Smelter were exported by it, the benefit of the exemption Notification dated 29.06.2012 should be available to the respondent for claiming refund of service tax paid on the taxable services for exportation of the goods. To substantiate his stand that the entire goods procured by the respondent were exported, the ld. Consultant has referred to the entries made in the balance sheet and other accounting documents to show that the goods purchased by the respondent from domestic sources, were exported by it as a merchant exporter. Thus, he submits that the respondent should be eligible for the refund of service tax and accordingly, there is no infirmity in the impugned order, in allowing the refund benefit to the respondent.

5. Heard both sides and perused the case records.

6. Notification 41/2012-ST dated 29.06.2012 grants rebate of service tax paid on the taxable services, which are received by an exporter of goods and used for export of the goods. The rebate benefit provided under the said Notification is granted by way of refund of service tax paid on the specified services. Explanation appended to the said Notification provides that in case of excisable goods, specified services should mean the

taxable services, which have been used beyond the place of removal and for the goods, other than the excisable goods, specified services has been defined to mean taxable services used for the export of the goods. In this case, as a merchant exporter, the respondent had purchased, the goods from M/s. Super Smelters Ltd. and the goods so purchased were sold by the respondent to the overseas buyers. For procuring the goods from M/s. Super Smelters Ltd., the appellant paid 2% purchase commission and the entire transaction of purchase and sale were reflected in the balance-sheet for the relevant period. Since the respondents, as a merchant exporter, had exported the entire goods procured by it from domestic sources, the benefit of refund claim provided under the Notification should be available to it. Further, I find that the disputed services involved in this case were used/ utilized by the appellant in or in relation to exportation of goods. Since the Department has not specifically alleged that the entire goods were not exported by the respondent, the refund claim cannot be denied on the procedural conditions. Therefore, on going through the case records and the documents submitted by the respondent, I am convinced and satisfied that the services used/utilized by the appellant for exportation of the goods should merit consideration for refund in terms of the Notification 29.06.2012.

7. Therefore, I do not find any merits in the appeal filed by the Revenue and accordingly, dismiss the same.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita