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

COURT-II

Date of hearing/Decision: 16.05.2018

ST/ROA/50366/2018
Appeal No. ST/1870/2010-SM

[Arising out of Order-in-Appeal No. 348(DKV-ST/JPR-I/2010 dated 23/09/2010 passed by Commissioner of Central Excise-JAIPUR-I]

MAYUR UNIQUOTERS LTD.,. … Appellant

Vs.

C.C.E. JAIPUR I … Respondent

Appearance:
Present Ms. Surabhi Sinha, Advocate for the appellant
Present Shri H.C. Saini, AR for the respondent

Coram: Hon'ble, Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 51852/2018

Per: V. Padmanabhan

1. The present appeal is filed against Order-in-Appeal No. 348/2010 dated 22/09/2010. The said appeal was dismissed vide Final Order No. 53396/2017 dated 22/05/2017 for non-prosecution. For the reasons mentioned in the ROA Application, I restore the appeal to its original number. With the concurrence of both parties the appeal itself is taken up for decision.

2. In this connection heard Ms. Surabhi Sinha, Ld. Advocate for the appellant and Shri H.C. Saini, Ld. DR for the Revenue.

3. After hearing both sides and perusal of record, I note that the appellant had undertaken export of certain goods and for the said activity, made use of services on which Service Tax was paid. They filed claim of refund in terms of Notification No. 41/2007-ST dated 06/10/2007 in respect of various services used for export. The lower Authorities denied a part of the refund in respect of the some of the

services. In the impugned order the Commissioner (Appeals) has observed as under:-

> *"I further I find that at Sl.No. 15 in the Schedule to the Notification No. 41/2007-ST dated 06.10.2007 the conditions stipulate that (i) exporter shall provide agreement or contract or any other document, requiring the commission agent located outside India to provide services to the exporter in relation to sale of export goods, outside India, (ii) exporter shall declare the amount of commission paid or payable to the commission agent in the shipping bill, (iii) commission sought to be remitted is not on export of a canalized item, project exports, or exports financed under lines of credit extended by Government of India or EXIM Bank, or exports made by Indian partners towards equity participation in an overseas joint venture or wholly owned subsidiary, (iv) documents evidencing actual export of goods, (v) documents evidencing actual payment of commission to the commission agent, (vi) refund of service tax shall be restricted to actual amount of whichever is less. I find that the appellant has not furnished the document containing these information in support of their claim. I thus hold that in absence of fulfillment of the condition No. (i) to (vi) of Sl. No. 15 of the Schedule to the Notification No. 41/2007-ST dated 06.10.2007 as amended particularly the mentioning of amount of commission in shipping bill, proper agreement for the payment of commission and linkage of commission paid with the export consignment, the adjudicating authority has rightly rejected the refund claim on this account".*

4. The Ld. Advocate submitted before me that all the necessary documents are now readily available and copy of the same has been submitted along with the appeal.

5. The Ld. DR submits that for verification of the said documents and redetermination of the refund under 41/2007 Notification, the matter may be remanded to the Original Authority.

6. In view of above, I set aside the impugned order and remand the matter to the Adjudicating Authority to decide the matter de novo after consideration of the documents the appellant will submit in support of their claim. He is directed to redecide the matter after extending an opportunity to the appellant to submit the documents and argue the case. He is also advised to keep in mind the various decisions of the

Tribunal issued in the context of the Notification No. 41/2007. One such decision is ***M/s SRF Ltd. V/s Commissioner of Central Excise, Jaipur 2015-TIOL-2241-CESTAT-DEL.***

7. In the result, appeal is allowed by way of remand.

[Order Dictated and Pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

Rekha