IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Date of Hearing /decision: 21.05.2018

ST/CROSS/50610/2015
Appeal No. ST/53384/2014-DB

[Arising out of Order-in-Appeal No. 55(ST)/RPR-I/2014 dated 10.04.2014 passed by Commissioner (Appeal-I), Central Excise, Raipur.]

Commissioner of Central Excise & Service Tax, Raipur Appellants

Vs.

Sri Sainath Industries Pvt Ltd. Respondent

Appearance:
Shri Bipin Garg, Advocate for the Appellants
Shri G.R. Singh, DR for the Respondent

CORAM:
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C.L. Mahar, Member (Technical)

FINAL ORDER NO. 51961/2018

Per Anil Choudhary:

This appeal is filed by the Revenue against the order of remand by the Ld. Commissioner (Appeal).

2. Heard both the parties.

3. The issue relates to rejection of part refund for services availed and service tax paid for effecting exports under Notification No. 17/2009-ST. There is no dispute as regards the fact of export and receipt of service and payment of service tax. The grievance of appellant is, without granting proper opportunity of hearing the Order-in-Original was passed.

4. We find that the Ld. Commissioner has observed that the facts as regards lorry receipts/ bilties on the basis of which appellant had utilised the GTA service, pertains to relevant shipping bills. Further have observed under Notification No. 17/2009-ST the provisions and conditions specified for the invoice of export of goods, are specifically

mentioned in the lorry receipt and the corresponding shipping bill and hence the meets condition as stipulated for the said service, broadly interpreting not narrowly or restricting the taxable service specified in the said notification, as pleaded by the appellant. It may be considered view that the issue have to be examined afresh. The Adjudicating Authority to determine whether the refund could be granted when the relevant document are submitted by the appellant.

5. Accordingly, we find that for looking into the facts, the Ld. Commissioner has remanded the matter in the interest of justice. Accordingly we dismiss the appeal of the Revenue by upholding the order of the Ld. Commissioner (Appeals).

6. The appellant is directed to appear before the Original Adjudicating Authority within the period of 30 days from the date of receipt of the order along with the reply and supporting documents and seek an opportunity of hearing.

(Dictated and pronounced in the open court)

(C.L.Mahar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Rekha