

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/52320/2018 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-767-17-18 dated 26/03/2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Indore]

Dexterous Products Pvt Ltd

...Appellant

Vs.

C.C.E. & S.T., Indore

...Respondent

Present for the Appellant : Mr. Mukesh Soni, Advocate

Present for the Respondent: Mr. P. R. Gupta, DR

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 16.11.2018

Pronounced on : 04.12.2018

FINAL ORDER NO. 53355/2018

PER: RACHNA GUPTA

The appellant herein is engaged in the business of manufacturing and processing of maize, rice, channa and wheat products. From the flour of these products including macca (maize), sooji, atta, etc. are produced and are sold by the appellant. The appellant filed a refund claim of Rs. 27,25,741/- on 01.06.2017 on the ground that they have erroneously paid the said amount of service tax on transportation of said agricultural produce/ food grains under reverse charge mechanism as the same was exempted as per Notification No. 25/2012-ST dated 20.06.2012. The said Notification was amended vide Notification No. 03/2013 dated 01.03.2013 requiring no service tax to be payable on

transportation of agricultural produce/ food grains however the said refund claim was rejected on the following grounds:

- (a) Time barred
- (b) Non bifurcation of tax in proportion to agricultural produce
- (c) Non producing of the evidence qua non availment of credit
- (d) Not producing the transport documents.

Being aggrieved, the Appeal was preferred which was partially allowed by way of remanding the case back to Adjudicating Authority for *denovo* adjudication however on limited issue of admissibility of refund of service tax on GTA Service used in transportation of maize, maize atta and channa dal during the period of dispute i.e. April 2016 to March 2017. However the claim was rejected qua the transportation of maize, sooji holding that the same cannot be considered as flour in common parlance. Being aggrieved the Appeal is before this Tribunal.

2. I have heard Mr. Mukesh Soni, Ld. Advocate for the appellant who has mentioned that Ld. Commissioner has erred to understand the basic intention of the legislature while misinterpreting the word 'agricultural produce', 'food grains' or 'food stuff' mentioned in Notification No. 03/2013 dated 01.03.2013 and also a Notification No. 06/2015 dated 01.03.2015 which amends the said Notification No. 03. It is impressed upon that amendments in the basic Notification No. 25 dated 20.06.2012 were mere clarificatory in nature

otherwise the word 'agricultural produce' includes all the products which are the result of processing of agricultural products and therefore there remains no difference between sooji and atta as is held by the Commission(Appeals). It is impressed upon that the appellant is entitled to the exemption from the payment of service tax on GTA service used for transportation even of maize and sooji. Order is accordingly prayed to be set aside. Appeal is prayed to be allowed.

3. Ld. DR, Mr. P.R. Gupta while justifying the Order has impressed upon that the refund claim is beyond one year and thus has rightly been rejected.

4. After hearing both the parties, the considered opinion of mine is as follows:

First and foremost it has to be adjudicated as to whether the appellant was rightly claiming the exemption of Notification 25/2012-ST dated 20.06.2012. It is observed that the said Notification grants exemption to the services provided by a goods transportation agency by way of transport in goods carriage of agricultural produce. Section 65B(5) of Service Tax Act, 1994 defines agricultural produce to mean any produce of agriculture on which either no further processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. Though the initial adjudicating authority has denied this exemption to macca(maize) sooji as well as macca atta on the ground that the moment macca/ maize is grinded,

agricultural produce i.e. maize loses its essential characteristics. However the appellate authority below has considered maize atta to still be an agricultural produce and thus entitled for the exemption of the said Notification. However maize sooji is denied the exemption as being considered as different from flour.

5. I am of the opinion that the processing done upon maize to extract sooji as well as atta is same and the processing is nothing more than grinding which is possible at the cultivator or the producer end. Though grinding may be a process of manufacture as far as the marketability thereof is concerned. But for the purpose of impugned exemption available towards GTA service for transporting agricultural produce. This process does not make any difference. Resultantly, both the products though acquire a distinct marketability but retains the essential characteristic of the derivatives of the agricultural produce i.e. maize. Maize sooji is a prederivative than maize atta in the process of grinding of maize. Otherwise also, the said Notification got amended vide Notification No. 03/2013 dated 01.03.2013 vide which the exemption was extended to food grains or food stuff and the transportation thereof vide its subsequent Notification No. 06/2015 of 01.03.2015. The exemption existing qua agricultural produce, food grains, food stuffs, fruits, vegetables, eggs, milk, pulses, etc. was got substituted for the food stuffs including flour, tea, coffee, jaggery, sugar, milk products, salt and edible oil excluding alcoholic beverages. The Notification as exist on date is found

to be mere explanatory in nature without extending the scope of initial Notification and perusal makes it clear that the intention of Notification is not at all to distinguish the products as that of sooji or atta of any food grains. As already discussed above there is no difference between the two products. Processing involved for deriving them is same i.e. grinding. The only difference is that one is coarser and the another is finer. However, they both still are essentially connected to the main agricultural produce/ food grain i.e. maize. Hence, I am of the opinion that the exemption available under the impugned Notification is equally applicable to maize sooji as is applicable to maize atta.

6. Now coming to the plea of claim being time barred, Section 11B of Central Excise Act is relevant which reads as follows:

"11B. Claim for refund of duty and interest, if any, paid on such duty – (1) Any person claiming refund of any duty of Excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of Excise and interest, if any, paid on such duty in relation to which such refunds is claimed was collected from or paid by him and the incidence of such duty and interest, if any, paid on such duty and interest, if any, paid on such duty had not been passed on him to any other person."

This Section is applicable only where there is a statutory levy which is either not paid or is short paid. As discussed above, the product of the appellant was exempted under a Notification of the Department. The amount paid by him was

therefore not a statutory levy but was made under mistake of law. Hon'ble Apex Court in the case **Mafatlal Industries Ltd. and others Vs. Union of India 1997 Volume 5 SCC 536** has classified the claim of refund into three groups of categories:

- (i) Unconstitutional levy
- (ii) Illegal levy
- (iii) Mistake of Law

In that case, Section 11B of CEA was made applicable on the ground that the petitioner in that case has committed mistake of fact in understanding the Law as he assumed that the transaction for which he has paid tax is covered under law. In the present case, it is not the mistake of fact but the mistake of law that the Notifications extending exemptions to the appellant were not into his notice. Otherwise also, the distinguishing feature for attracting the provisions under Section 11B is that levy should have the colour of validity when it was paid and only consequent upon interpretation of law or adjudication, the levy is liable to be ordered as a refund which is again not the fact for the present case. The levy herein was not valid, in view of appellant's product being an exempted good towards service tax liability on GTA. I am therefore of the opinion that the Adjudicating Authority below has committed an error while considering the claim as time barred due to non applicability of Section 11 B to the present case.

7. Finally, coming to the rejection on ground of no production of documents, nor of any evidence, it is opined that

in view of the admitted fact of appellant being engaged in manufacture of sooji and atta of food grains, in view of subsequent admission of Notification extending exemption to food grains/ agricultural products, in view of above discussion that sooji or food grain is also an exempted product under the said Notification, there remains no need of any evidence to be produced on record. The absence of document is a mere procedural lapse. Harsh penalty as that of denial of refund that too with the imposition of interest and penalty is not justifiable specially when the appellant/ assessee was not liable to deposit the amount which has already been deposited by him duly in appropriate time.

8. In view of entire above discussion, the Order under challenge is held not sustainable. Same is hereby set aside. Appeal stands allowed.

[Pronounced in the open Court on 04.12.2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.