

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/53465/2015 [SM]

[Arising out of Order-in-Original No. MRT-EXCUS-000-48-2015-16 dated 30/04/2015 passed by the Commissioner of Service Tax, Dehradun]

Service Tax Appeal No. ST/53466/2015 [SM]

[Arising out of Order-in-Original No. DDN-EXCUS-000-47-2015-16 dated 30/04/2015 passed by the Commissioner of Service Tax, Dehradun]

Alps Industries Ltd.

...Appellant

Vs.

C.G.S.T., C.C. & C.E., Dehradun

...Respondent

Present for the Appellant : Ms. Shreya Dahiya, Advocate

Present for the Respondent: Mr. K. Poddar, AR

Coram: HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 28.12.2018

FINAL ORDER No. 53483-53484/2018

PER: ARCHANA WADHWA

Both the Appeals are disposed of by a common Order as the issue involved is identical.

2. After hearing both the sides, I find that the dispute in the present Appeal relates to rebate claim of service tax paid on various input services utilized for export of the cotton yarn. The said claim has been made in terms of Notification No. 41/2012 dated 29.06.2012 which allows the rebate of service tax paid on various input services procured for exporting the final product.

The said refund claims stands rejected by the lower authorities on the ground that the Notification allows the claims only in respect of services procured beyond the place of removal and inasmuch as the in case of export, port is the place of removal and

the services stand procured prior to the said exports, the same would not be admissible. Further a part of the claim stands rejected on the point of limitation.

3. As regards merits of the case, I find that the issue stands decided in favour of the appellant in their own case for the earlier period reported as M/s Alps Industries Ltd. Vs. C.C.E., Meerut Final Order No. A/53090/2018 – SM (BR) dated 27.09.2018. By taking note of the subsequent amendments to the Notifications No. 41/2012, carried out by Notification No. 1/2016 dated 03.02.2016, it stands held that the appellant are entitled to the benefit of rebate. As such by following the said decision, I hold in favour of the appellant on merits.

4. As regards limitation in respect of a part amount of rebate, it is seen that the notification allows the rebate claims to be filed within a period of one year from the date of export. Explanation to the provisions of Clause 3(g) further clarifies the date of export as the date on which 'let export Orders' are made. As per the Ld. Advocate let export order are dated 02.01.2013 whereas the claims were filed on 02.01.2014. As per the general clauses at Section 9, the first date has to be excluded as such it stands submitted that if 02.01.2013 is excluded, the claims filed would fall within the limitation period. However Ld. Advocate fairly agrees that the said plea was not raised before Commissioner(Appeals).

5. Inasmuch as dates are required to be examined and verified I deem it fit to remand the matter to the original adjudicating authority for deciding the issue of limitation in the light of the Section 9 of General Clauses Act, 1897.

6. In view of the above Appeal is allowed on merits and remanded on limitation in respect of part claim.

[Dictated and pronounced in the open Court]

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

D.J.