CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

Appeal No.	Appellant(s)	Respondent(s)	Order-in-Appeal No.
ST/1682/2010 ST/1683/2010 ST/1684/2010	ITC Ltd	CCCE & ST, Guntur	11 to 13/2010 (G) ST, dated 07.05.2010 passed by CCCE & ST (Appeals), Guntur

Appearance:
Shri K.S. Ravi Shankar & Shri K.S. Naveen Kumar, Advocates for the appellant
Shri B. Guna Ranjan, Superintendent/AR for the Respondent.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 20.08.2018
Date of Decision: 24.09.2018

FINAL ORDER No. A/31181-31183/2018

[Order per: P.V. Subba Rao.]

1. These three appeals pertain to the same issue with respect to the same appellant and hence are being disposed of together. The periods and the amounts involved in the three appeals are as follows:

S.No.	Period	Appeal No.	Refund involved
1.	01.04.2008 to 30.06.2008	ST/1682/2010	Rs.5,05,390/-
2.	01.07.2008 to 30.09.2008	ST/1683/2010	Rs.5,23,920/-
3.	01.10.2008 to 31.12.2008	ST/1684/2010	Rs.2,54,645/-

2. The facts in brief, after filtering out unnecessary details are that the appellant is engaged in the manufacture of tobacco products and also in export of unmanufactured tobacco. For this purpose they hired containers which were brought to their factory and after stuffing, the containers were transported to the port and exported. The appellant paid service tax under reverse charge mechanism for the services availed from Goods Transport Agents (GTA) and thereafter claimed refund of the amount as per

Notification No.41/2007-ST, dated 06.10.2007 as amended and subsequent Notification No.17/2009-ST, dated 07.07.2009. Both these notifications exempt service tax payable under reverse charge mechanism in the form of refund of service tax paid on such services which were used for export of goods. Therefore, the appellant claimed refund of the service tax paid which was sanctioned to the extent of 50% by the department and disallowed to the extent of 50% on the ground that the exemption is available only for transportation of containers from the factory or place of removal to the port and not for transport of empty containers to the factory or place of removal. Aggrieved by this rejection of refund, the appellant filed these refund claims.

3. It is the submission of the learned counsel for the appellant that the export of goods in the containers is impossible unless the empty containers are first brought into the factory for stuffing. Therefore, the only purpose of bringing empty containers into the factory is for export of goods, for the export of goods is impossible without brining empty containers into the factory. Therefore the transportation of empty containers from the yard to the factory for the purpose of export should be treated as admissible for refund under Notification Nos.41/2007 and 03/2008. He relied on the following cases:

(1) Oriental Containers Ltd Vs CCE [2016 (46) STR 468 (T)] in which it was held that refund is admissible to the service tax paid for transportation of empty containers from container yard to the factory and from the factory to the place of export under Notification No.41/2007-ST.

(2) CCE Vs RAK Ceramics India Pvt Ltd [2013 (30) STR 609 (T)]

(3) Vippy Industries Vs CCE [2013 (30) STR 238 (T)].

(4) CCE Vs Tata Coffee Ltd [2011 (21) STR 546 (T)]

(5) Balakrishna Industries Ltd Vs CCE [2011 (24) STR 433 (T)]

(6) Garware Polyester Ltd Vs CCE [2012 (27) STR 288 (T)]

(7) Inox India Ltd Vs CCE [2012 (26) STR 120 (T)].

4. In all the above cases it has been held that the Notification No.41/2007-ST covers exemption to the services rendered in relation to the transport of empty containers from the yard to the factory or place of removal. It is his submission that the issue is no longer *res integra* and therefore, the appeals may be allowed and refunds may be sanctioned as consequential relief.

5. The learned departmental representative, on the other hand, reiterates the Order-in-Original and Order-in-Appeal and argues that the refund is not admissible for transport of empty containers as the exemption notification does not specifically cover the same. It is his further submission that in the recent judgment of the Hon'ble Apex Court by Five Member Constitutional Bench in the case of CC, Mumbai Vs M/s Dilip Kumar & Co and others [Civil Appeal No.3327/2007], it has been held that any exemption notification should be strictly viewed against the person who is claiming the exemption. If at all there is any doubt or ambiguity regarding availability of benefit of exemption notification the same should be interpreted in favour of the revenue and against the assessee. Since the exemption notification does not specifically cover the services rendered in relation to transport of empty containers from the yard to the factory of manufacturer, the same cannot be said to be covered by the exemption notification.

6. We have considered the arguments on both sides. Sl.No.5 of Notification No.41/2007 exempts the services rendered for Goods Transport

Agents and the words used are "services provided for transport of said goods from the inland container depot to the port of export". This was amended vide Notification No.3/2008 and the words therein at Sl.No.11 are "services provided to an exporter in relation to transport of export goods directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported". This notification also contains some conditions, fulfilment of which is not in dispute. Thereafter Notification No.17/2009-ST was issued superseding Notification No.41/2007 and Sl.No.6 of this notification covers, "services provided to exporter in relation to transport of export goods directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported".

7. The issue to be decided now is whether during the relevant periods i.e., 01.04.2008 to 31.12.2008, the Goods Transport Agency services availed by the appellant were covered by the aforesaid exemption notifications or not. As may be seen, all periods are prior to 19.02.2008 i.e., the date on which the Notification No.3/2008-ST was issued amending Notification No.41/2007. This exemption notification exempted goods transport agency services provided by the exporter "in relation to transport of export goods". It does not say Goods Transport Agency services for transport of export goods. Therefore, the question is whether the word "in relation to transport of export goods" covers also the transport of the empty containers to the factory of manufacturer before sending the stuffed containers to the port or inland container depot. We find that this issue is no longer *res integra* as the issue has been decided in the case cited supra. It has been uniformly held that the words "in relation to transport of export

goods" cover even bringing the empty containers to the factory for the purpose of stuffing the export goods. We find no reason to deviate from this consistent position taken in the aforesaid decisions. We respectfully follow the above decisions and find that the appellant is entitled to refund of the service tax paid on goods transport agency services availed for transport of empty containers from the container yard to the factory for the purpose of export of goods. Regarding the assertion of the learned departmental representative that notification must be strictly construed against the person claiming the exemption and in case of any doubt it should be viewed in favour of the revenue, we find that this is the legal principle pronounced by the Hon'ble Apex Court. However, in this case the words "in relation to transport of export goods" leave us no doubt that the empty containers have been brought to the factory for the purpose of and therefore in relation to the transport of the export goods. Since we have no doubt about the eligibility of the exemption notification, there is no room to give the benefit of doubt to the revenue in this case. We, accordingly, find that the appeals are liable to be allowed and we do so.

8. The appeals are allowed with consequential relief.

(Pronounced in the Open Court on 24.09.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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