CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court – II

Appeal No. ST/30775/2018
(Arising out of Order-in-Appeal No. GUN-EXCUS-OOO-APP-240-17-18, dated 20.03.2018 passed by CCT (Audit) Guntur, stationed at Visakhapatnam)

SUNRISE EXPORTS .. Appellant
Vs
CCT, Guntur GST .. Respondent

Appearance
Shri P. Venkat Prasad, Advocate for the Appellant.
Shri A.V.L.N. Chary, Superintendent /AR for the Respondent.

Coram:
Hon’ble Mr. P.K. Choudhary, MEMBER (JUDICIAL)

Date of Hearing: 01.10.2018
Date of Decision: 01.10.2018

FINAL ORDER No. A/31252/2018

[Order per: Mr. P.K. Choudhary]

1. The facts of the case in brief are that the appellant is engaged in business of export of granites. They applied for refund of service tax amounting to Rs. 51,440/- paid on Custom House Agency (CHA) services. The services were used for export of goods to foreign countries. The refund sanctioning authority sanctioned the refund. Thereafter, the order was reviewed and an appeal was filed by Revenue before the lower appellate authority. It is the case of Revenue that CHA expenses incurred were not in accordance with notification No. 41/2012-ST, dated 29.06.2012 as the CHA expenses were

incurred before the place of removal and not after the place of removal and hence the appellant is not eligible for refund. The Commissioner (Appeals) vide the impugned order, set aside the order passed by the adjudicating authority and allowed the Revenue's appeal. Hence, the present appeal before the Tribunal.

2. Ld. Advocate appearing on behalf of the appellant submits that the lower appellate authority has not considered the latest notification No. 1/2016-ST, dated 03.02.2016, wherein, a new clause has been substituted. It is his submission that the amended notification is very much clear that the input services can be availed within the factory premises or it can be used beyond the place of factory etc. He further submits that notification No. 01/2016-ST (supra) is applicable retrospectively i.e. w.e.f. 01.07.2012 and therefore the appellant is eligible for rebate.

3. Ld. DR reiterates the findings of the lower appellate authority.

4. Heard both sides and perused the appeal records.

5. On perusal of records, I find that the period of dispute is from January 2014 to October 2014. The appellant has claimed refund of service tax paid in respect of the services availed from their Custom House Agents. These services have been utilised for export of their goods viz; Black Galaxy Cutter Slabs, Black Galaxy Polished Granite Slabs. The Asst. Commissioner/Refund Sanctioning Authority had sanctioned the amount. The whole dispute is in

respect of the expenses incurred by the appellant beyond the place of removal, which in the present case is Krishnapttanam/Chennai Port. It is the case of Revenue that the services provided by CHA were beyond the place of removal. I further find that the issue is no more *res-integra* as has been decided in various decisions of the Tribunal. Furthermore, the amendment to the statutory provisions, vide Finance Act, 2016, has finally put the dispute to rest. The relevant amendment is reproduced.

"Statutory Provisions

FINANCE ACT, 2016

Amendment of notification issued under section 93A of Finance Act, 1994

160 . (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 519(*E*), dated the 29th June, 2012 issued under section 93A of the Finance Act, 1994 (32 of 1994) granting rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Tenth Schedule, on and from and up to the corresponding dates specified in column (*3*) of the Schedule, and accordingly, any action taken or anything done or purported to have taken or done under the said notification as so amended, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the said notification as amended by this sub-section had been in force at all material times.

(2) Rebate of all such service tax shall be granted which has been denied, but which would not have been so denied had the amendment made by sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994 (32 of 1994), an application for 2 the claim of rebate of service tax under sub-section (*2*) shall be made within the period of one month from the date of commencement of the Finance Act, 2016.

Statutory Provisions

FINANCE ACT, 2016

THE TENTH SCHEDULE
(See Section 160)

Notification No.	Amendment	Period of effect of amendment
(1)	(2)	(3)
G.S.R. 519(E), dated the 29th June, 2012 [No.41/2012-Service Tax, dated the 29th June, 2012]	In the said notification, in the Explanation,– (a) in clause (A), for sub-clause (i), the following sub-clause shall be substituted and shall be deemed to have been substituted, namely:— "(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;"; (b) clause (B) shall be omitted.	1 st day of July, 2012 to 2nd February, 2016 (both days inclusive).

6. In view of the above discussions and also the statutory provisions, the impugned order is set aside and the Order-in-Original dated 24.04.2015 is upheld. Appeal filed by the appellant is allowed.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

vrg