

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Bench – SM

Court – I

Appeal No. ST/30500/2018

(Arising out of Order-in-Appeal No. VIZ-EXCUS-001-APP-115-17-18 dated 28.09.2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s Naga Hanuman Fish Packers

.....Appellant(s)

Vs.

**Commissioner of Central Excise & Service
Tax, Visakhapatnam**

.....Respondent(s)

Appearance

Shri N.V. Ramana Rao, Advocate for the Appellant.

Shri P.S. Reddy, Assistant Commissioner (AR) for the Respondent.

Coram:

Hon'ble Mr. M. V. RAVINDRAN., MEMBER (JUDICIAL)

Date of hearing: 03/12/2018

Date of decision: 03/12/2018

FINAL ORDER No. A/31493/2018

[Order per: M. V. Ravindran.]

This appeal is filed by the Revenue against Order-in-Appeal No. VIZ-EXCUS-001-APP-115-17-18 dated 28.09.2017.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding refund of the amount of service tax paid on various services

which were received by the respondent while exporting the goods. Undisputedly, the respondent is merchant exporter of goods, received various input services like Custom House Agent Services, Port Services, Storage & Warehousing Services, Technical Inspection and Certification agency services enabling export, on which service tax was discharged by the service provider. The Adjudicating Authority has allowed the refund claims after perusing the entire records. The Adjudicating Authority has also considered the doctrine of unjust enrichment of admissibility of refund claim under Notification No. 41/2012-ST dated 29.06.2012. After verifying the documents refund was sanctioned to the respondent. Aggrieved by such an order of the First Appellate Authority, Revenue preferred an appeal before the First Appellate Authority who vide impugned order set aside the Order-in-Original and allowed the Department's appeal. Without going to the merit of the case, I find that the issue is whether refund which has been sanctioned recovered without issuance of show cause notice is decided by Tribunal in an identical issue that came up before the bench of the Tribunal in the case of Nestle India Ltd., Vs. CCE, Goa [2009 (240) ELT 426] wherein the facts as under:

"2. The necessary facts that arise for consideration are that the appellants herein filed various refund claims with the adjudicating authority, who sanctioned the refunds. After considering the representation made by the appellant, the adjudicating authority sanctioned the refund to the appellant by five different adjudication orders. The Revenue aggrieved by such refund order, filed an appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) after considering the representation made before him by both the parties, came to the conclusion that all the Orders-in-Original are incorrect and liable to be set aside and did so. The appellant aggrieved by such Order-in-Appeal, is in appeal before the Tribunal."

4. After reproducing the above mentioned facts and the various submissions made, the Bench relying upon the judgment of

the Tribunal in the case of *Morarjee Goculdas Spinning and Weaving* [2008 (222) ELT 114] and after reproducing relevant paragraphs, held that the order of the First Appellate Authority in setting aside the Order-in-Original was incorrect. In my view, the said ratio is squarely applicable in this case and is in favour of the appellant, accordingly, following the ratio of the judgment in the case of Nestle India Ltd., I set aside the impugned order. The appeal stands allowed.

(Order pronounced & dictated in open court)

**M. V. RAVINDRAN
MEMBER(JUDICIAL)**

Lakshmi...