

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

Appeal No.	Appellant(s)	Respondent(s)	Order-in-Appeal No.
ST/30754/2018	Parry Sugars Refinery India Pvt Ltd	CCT, Visakhapatnam - GST	VIZ-EXCUS-002-APP- 138-17-18 Dt.28.02.2018 passed by CCT & C (Appeals), Guntur

Appearance

Ms. Swetha, Advocate for the Appellant.

Shri Arun Kumar, Dy. Commissioner/AR for the Respondent.

Coram:

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 17.12.2018

Date of Decision: 17.12.2018

FINAL ORDER No. A/31605/2018

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

1. This appeal has been filed against Order-in-Appeal No. VIZ-EXCUS-002-APP-138-17-18 dated 28.02.2018.
2. The facts of the case in brief are that the appellant herein imports of raw sugar from Brazil and after reprocessing exports it to other countries. They operate as an SEZ unit in Kakinada. The appellant filed a refund claim in Notification No. 12/2013-ST before the Asst. Commissioner of Service Tax, Kakinada for refund of the service tax paid on input services. A show cause notice was issued on 09.06.2016 calling upon them to explain as to why refund claim of Rs.3,91,649/- should not be rejected on the ground that the claim was filed beyond the period of one year stipulated in the notification. After following due process of law, the lower authority rejected the claim of Rs.3,91,649/- on the ground that the refund claim was filed beyond the time limit specified in the notification. He also rejected an amount of Rs.20,80,749/- on the ground that these services were not approved by the Development commissioner. The services in question pertain to waste disposal carried out by their service

provider M/s Ramky Enviro Engineers Ltd. Aggrieved, the appellant preferred an appeal before the first appellate authority who upheld the Order-in-Original and rejected the appeal. Hence, this appeal.

3. Learned counsel for the appellant submits that there was small delay in filing the refund claim with respect to the invoices amounting to Rs.3,91,649/- as they had to obtain necessary certificates from the bankers. She draws the attention of the Bench to the Notification No. 12/2013-ST dated 01.07.2013 Para 3 (iii) (e) of which stipulates the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made or such extended period as the Asst. Commissioner of Central Excise or Dy. Commissioner of Central Excise, as the case may be, shall permit. It is her assertion that the small delay in filing the refund claim with respect to these amounts were condonable by the Asst./Dy. Commissioner but the same has been unfairly rejected. She relies on the case law of HBL Power Systems Ltd [2018 (10) TMI 168 (CESTAT-HYD)] in which such delay was condoned. With respect to the rejection of Rs.20,80,749/- on the ground that the services in question were not approved by the Development Commissioner, she submits that rejection of refund on this ground was beyond the scope of the show cause notice which was issued. The show cause notice nowhere sought to reject this amount and therefore such rejection needs to be set aside on this ground alone. She would further submit that in his letter dated 16.12.2012, the Development Commissioner has included the cleaning activity service in the list of approved services and the invoices in question pertain to waste disposal which can be considered as part of the cleaning activity and therefore even on merits the credit on these invoices needs to be given to them. She relies on the cases of Toyo Engineering India Ltd [2006 (201) ELT 513 (SC)], Brindavan Beverages Pvt Ltd [2007 (213) ELT 487 (SC)] and Caprihans India Ltd [2015 (325) ELT 632 (SC)] and asserts that the impugned order as well as the order

of the lower authority have clearly travelled beyond the scope of the show cause notice which is not sustainable.

4. Learned departmental representative concedes that the show cause notice did not cover rejection of refund claim of Rs.20,80,749/- on waste disposal services and to this extent travelled beyond the scope of show cause notice. On the question of rejection of refund of Rs.3,91,649/-, he draws the attention of the bench to the Order-in-Original in which the Asst. Commissioner had recorded that he had not found sufficient reason to not condone the delay.

5. I have considered the arguments on both sides and perused the records. The bulk of the demand pertains to rejection of invoices meant for waste disposal services availed by the appellant on the ground that these were not approved by the Development Commissioner. No show cause notice was issued to the appellant on this ground. The show cause notice which was issued was only covering another part of the refund claim. In view of the above, I find the principles of natural justice have been violated and therefore the matter needs to be remitted to the original authority with direction to issue a show cause notice with respect to all the amounts of refund which he seeks to reject and after following due process of law and following principles of natural justice, issue an order.

6. Without passing any comments on the merits of the case and leaving all issues open the appeal is allowed by way of remand.

(Operative Part of this Order was pronounced in the open court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)