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/30746/2018	Veerabhadra Minerals Pvt Ltd	CCT, Guntur – GST	GUN-EXCUS-000-APP-241-17-18 dt.20.03.2018 passed by CCT (Audit), Guntur

Appearance
Shri K. Nagaraja Rao, Advocate for the Appellant.
Shri N. Bhanu Kiran, Asst. 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/31606/2018

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

1. This appeal has been filed against Order-in-Appeal No. GUN-EXCUS-000-APP-241-17-18 dated 20.03.2018.

2. The appellant herein have filed a refund claim or Rs.8,29,269/- on 19.01.2015 under Notification No. 41/2012-ST dated 29.06.2012 for the granite blocks which they manufactured and exported during the quarter April, 2014 to June, 2015. The refund was claimed on service tax paid on service charges to C & F agents for export of excisable goods and was sanctioned by the lower authority. On an appeal by the Department, the first appellate authority vide the impugned order, set aside the order of lower authority sanctioning the refund. The point of dispute was the department felt that as per the Notification No. 41/2012-ST, the refund was allowable only if the taxable services were utilized beyond the place of removal and that 'place of removal' under this notification has the same meaning as assigned in Central Excise Act, 1944. In the present case, the goods were transferred to the buyer at the place of export at Krishnapatnam and

Chennai and that the services utilized were not beyond the place of removal because the transfer of goods has not taken place before the port of export. Learned first appellate authority held that the place of removal in this case is the port and all services that have been used beyond the place of removal only are eligible for refund.

3. Learned counsel for the appellant submits that there was a retrospective amendment to the Notification No. 41/2012 in the Budget of 2016 vide Notification No. 52/2011 by which the explanation that the "place of removal" shall have the meaning as per Sec.4 of Central Excise Act, 1944 has been deleted. Based on this amendment, in the case of 20Microns Ltd [2017 (47) STR 257], CESTAT held that the appellant is eligible for refund of service tax paid on services such as CHA services, Terminal handling services used with regard to export of their goods. He draws the attention of the Bench to Para 8 of the impugned order to assert that the first appellate authority has erroneously relied on the notification as was un-amended. He further draws the attention of the Bench to Order-in-Appeal No. VIZ-EXCUS-003-APP-027-17-18 dated 31.07.2017 passed by the Commissioner (Appeals) in the case of M/s Madhucon Granites Ltd in which, after considering the amendment, the appeal was decided in favour of the appellant allowing refund.

4. Learned departmental representative reiterates the order of the lower authority. He relies on the judgment of Life Long India Ltd [2016 (43) STR 314 (Tri-Delhi)] in which the refund of service tax on services availed beyond the place of removal viz., the warehouse service was rejected.

5. I have considered the arguments on both sides and perused the records. It is not in dispute that there was a notification amending

Notification No. 41/2012 retrospectively removing the explanation of the term "place of removal". Consequently, the ground on which the refund claim was rejected does not sustain. The case law submitted by the learned departmental representative in the case of Life Long India Ltd (Supra) pertains to the period prior to this amendment and therefore the ratio does not apply. It is also evident from the impugned order that first appellate authority has not taken into consideration the amendment to Notification No. 41/2012 while denying the refund. In view of the above, I find that the impugned order is liable to be set aside and I do so.

6. Appeal is allowed and the impugned order is set aside with consequential relief.

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

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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