

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

Division Bench
Court – I

Appeal No. ST/1279/2011

(Arising out of Order-in-Appeal No.03/2011 (T) ST dt.31.01.2011 passed by CCCE & ST
(Appeals), Guntur)

Oren Hydrocarbons Pvt Ltd

(46/47, 2, 3, 4), Gangarajupodu,
Raghavarajapuram (V), Railway Kodur,
Kadapa District, Andhra Pradesh – 516 101

.....Appellant

VERSUS

**Commissioner of Customs, Central Excise
& Service Tax, Tirupati**

9/86-A, Behind West Church Compound,
Amaravathi Nagar, M.R. Palli, AP – 517 502

.....Respondent

Appearance

None for the appellant.

Shri L.V. Rao, Authorized Representative for the respondent.

Coram:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. A/31083/2019

Date of Hearing: 19.11.2019

Date of Decision: 19.11.2019

[Order per: P.VENKATA SUBBA RAO.]

1. This appeal is filed against Order-in-Appeal No. 03/2011 (T) ST dt.31.01.2011. None appeared on behalf of the appellant despite the matter being listed today.
2. Heard learned departmental representative and perused the records.
3. The facts of the case in brief are that the appellant is a manufacturer of Barite powder. They receive the raw material, crush it into powder and transport it to their Chennai unit from where it is exported. The officers of Anti Evasion Wing visited the factory and after investigation found that the appellants were NOT discharging service tax under reverse charge mechanism on the Goods Transport Agency (GTA) services which they have availed for transporting the goods. As per section 65(105)(zzp) of Finance Act, 1994 "Goods Transport Agency means any person who provides service

in relation of transport of goods by road and issues consignment note by whatever name called". Generally service tax is payable by the service provider under section 66 of the Finance Act, 1994. In some cases, it is payable by the service recipient under section 66A. GTA service is one of the services where service tax has to be paid by the service recipient. During investigation, the appellant paid the entire amount of service tax of Rs.19,19,874/-. Thereafter, a show cause notice was issued and the demands were confirmed by the original authority and amount already paid by the appellant was appropriated towards the confirmed demand. Further, interest on their amount has been confirmed under section 75 of the Finance Act, 1994 and the amount already paid by the appellant was appropriated towards the interest. Penalties under section 76, 77 & 78 of the Finance Act proposed in the show cause notice were waived by the original authority invoking section 80 of the Finance Act 1994. The appellant appealed to the first appellate authority praying for benefit of exemption notification No. 34/2004 which was not allowed to them. They further contended that the benefit of exemption notification No. 41/2007-ST dt.06.10.2007 which was available to services used for export of goods was also not given to them. Thirdly, they contested the invocation of extended period of limitation. The first appellate authority upheld the order of the lower authority and dismissed their appeal. Hence, this appeal.

4. After hearing the learned departmental representative and perusing the records, we find that the following issues need to be decided in this case.

- i. Whether the appellant is entitled to the benefit of exemption notification No. 34/2004-ST dt.03.12.2004 which exempts service tax on GTA services where the gross amount charged on consignment transported in goods carriage does not exceed Rs.1,500/- or the gross amount charged on individual consignment transported in goods carriage does not exceed Rs.750/-.
- ii. Whether the appellant is entitled to the benefit of notification No. 41/2007-ST dt.06.10.2007 which exempts services used for export of goods from the whole of service tax leviable thereon subject to some conditions.
- iii. Whether the extended period of limitation has been invoked correctly in the case.

5. As far as the first issue is concerned, we find that this exemption is available only in cases where the gross amount charged for consignments transported in goods carriage does not exceed Rs.1,500/- or gross amount on individual consignment transported in goods carriage does not exceed Rs.750/-. The relevant notification reads as follows:

"

Notification No. 34/2004 – Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act, where, -

(i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or

(ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.

Explanation. - For the purposes of this notification, "an individual consignment" means all goods transported by a goods transport agency by road in a goods carriage for a consignee.

2. This notification shall come into force on the first day of January, 2005."

6. We find that this notification was interpreted in the case of Bellary Iron & Ores Pvt Ltd [2018 (18) STR 406 (Tri-Bang)] Para 12.1 of which reads as follows:

"12.1 In view of the clear language of the explanation to 'individual consignment' used in the notification, the exemption is obviously admissible to goods transported as a single consignment for which the freight charged is not above Rs. 750/-. Where the goods carriage transports several consignments, the exemption will be available if the aggregate freight charged for the trip does not exceed Rs. 1500/-. Therefore, where an assessee incurred freight upto Rs. 1500/- per consignment the assessee is not eligible for exemption. We uphold this reading of the notification by the Commissioner."

7. We concur with the views expressed by the Tribunal Bangalore that this exemption is available only when the aforesaid two conditions are met. On perusal of records, we find that there is nothing on record to show that either of these two conditions has been met in the present case. On the contrary, Para 4.8 of the Order-in-Original says that "It is seen that in the instant case the freight charges exceed Rs.750/- per consignment as is evident from the transportation charges statement." The appellant has not put forth any evidence before us to show that transportation charges have fallen below the threshold limits which would have entitled them to the benefit of exemption notification. We therefore, find no force in the

argument of the appellant that they are entitled to the benefit of this exemption notification.

8. Coming to the second issue of exemption notification No. 41/2007-ST, we find that this notification exempts services which are **used for export of goods**. The words used are NOT "**used in relation to export of goods**". In this case, GTA services were availed for transporting goods from their Kodur unit to Chennai. Thereafter, the Chennai unit in turn exported the goods. While this transportation may be in relation to export of goods, there is no sufficient evidence to show that this transportation is actually for export of goods. Secondly, we find that the exemption notification does not provide the exemption straightaway but is subject to certain conditions and available by way of refund of service tax paid on the specified services used for export of goods. It further requires the manufacturer/exporter to file an application before the Asst. Commissioner. Paras 1 & 2 of this exemption notification reads as follows:

" In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 40/2007-Service Tax, dated the 17th September, 2007 which was published in the Gazette of India, Extraordinary, vide number G.S.R. 601(E) dated the 17th September, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in column (3) of the Schedule (hereinafter referred to as specified services) received by an exporter and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under section 66 and section 66A of the said Finance Act, subject to the conditions specified in the corresponding entry in column (4) of the Schedule :

Provided that -

- (a) *the exemption shall be claimed by the exporter of the goods for the specified services received and used by the exporter for export of the said goods;*
- (b) *the exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;*
- (c) *the exporter claiming the exemption has actually paid the service tax on the specified services;*
- (d) *no Cenvat credit of service tax paid on the specified services used for export of said goods has been taken under the Cenvat Credit Rules, 2004;*
- (e) *the said goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;*

(f) exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.

2. The exemption contained in this notification shall be given effect to in the following manner, namely :-

(a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the exporter and used for export of the said goods, and such person shall not be eligible to claim exemption for the specified services :

Provided that where the exporter of the said goods and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

(b) the exporter shall claim the exemption by filing a claim for refund of service tax paid on specified services :

Provided that-

(i) the manufacturer-exporter of the said goods shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture or warehouse, and

(ii) the exporter, other than a manufacturer-exporter, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(c) the exporter who is not registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the Form annexed hereto with the respective jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;

(d) the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the exporter within seven days from the date of receipt of the said Form;

(e) the claim for refund shall be filed on a quarterly basis, within sixty days from the end of the relevant quarter during which the said goods have been exported :

Provided that the said goods shall be deemed to have been exported on the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);

(f) the refund claim shall be accompanied by documents evidencing, -

(i) export of the said goods;

(ii) payment of service tax on the specified services for which claim for refund of service tax paid is filed;

(iii) wherever applicable, a copy of the written agreement entered into by the exporter with the buyer of the said goods, as the case may be;

(g) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying

himself that the said services have been actually used for export of said goods, refund the service tax paid on the specified services used for export of said goods;

(h) where any refund of service tax paid on specified services used for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded."

9. From the above, we find that this exemption is available by way of refund and not at the source. This does not automatically allow the appellant to NOT pay service tax which they were liable to pay. For this reason, we do not find any force in the argument of the appellant that they are entitled to the benefit of this exemption notification.

10. The third issue contested in this case is invocation of extended period of limitation. We find from Para 4.9 of Order-in-Original that the appellant was fully aware of their liability to pay service tax on GTA services and had indeed obtained registration for the same services received in their Chennai unit but had not done so, in respect of the Kodur unit. Therefore, the appellant cannot plead ignorance about their liability to pay service tax and take registration and follow the appropriate procedures. For this reason, we find that the extended period of limitation has been correctly invoked. In view of the above, we find that the impugned order is correct and calls for no interference and the appeal is liable to be rejected and we do so.

11. The appeal is rejected and the impugned order is upheld.

(Dictated and pronounced in open court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)