

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75701 of 2018

(Arising out of Order-in-Appeal No.59/S.Tax-II/KOL/2017 dated 29.11.2017 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Nupur Viniyog Private Limited

(19-17A, Chatterjee International Centre, 33A, J.L.Nehru Road, Kolkata-700071.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri N.K.Agarwal, Chartered Accountant for the Appellant (s)

Shri K.Chowdhury, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75378 / 2021

DATE OF HEARING : 16 March 2021

DATE OF DECISION : 9 July 2021

P.K.CHOUDHARY :

Briefly stated the facts of the case are that vide Order-in-Original dated 22.12.2015, the learned Deputy Commissioner, Service Tax Park Street Division, Service Tax-II allowed the exemption by way of sanctioning an amount of Rs.1,34,782/- as refund of Service Tax paid on the taxable specified services for export of goods made under Bills of Export claimed by the appellant assessee. Subsequently, the Department filed appeal before the learned Commissioner(Appeals) on the ground that certain shipping bills involving amount of Rs.80,853/- do not fulfill the conditions as prescribed in Clause (i) of Paragraph 3 of the Notification No.41/2012-ST dated 29.06.2012. The department has also raised the issue that the certificate of the Chartered Accountant as prescribed in sub-clauses (A) & (B) has not been submitted by the

claimant. The learned Commissioner(Appeals) allowed the appeal filed by the Department and modified the Order-in-Original on the ground that no Cross Objection was filed by the respondent assessee against the Department's appeal and further on the ground that the Chartered Accountant's Certificate was not filed before him. Hence the present appeal before the Tribunal.

2. Shri N.K.Agarwal, learned Chartered Accountant, appearing on behalf of the appellant assessee submitted that a claim for refund of Service Tax paid on specified taxable services used for export of goods under Bill of Exports amounting to Rs.1,43,138/- under Notification No. 41/2012-ST dated 29.06.2012 in Form-A-1 was filed on 22.05.2015. Subsequently, claim amounting to Rs.6,129/- was withdrawn with a request to process the remaining claim of Rs.1,37,009/-. It is his submission that the learned Adjudicating authority, after detailed verification of the documents as submitted by the appellant assessee, found that barring the credit involved in few input service invoices amounting to Rs.2,227/-, the refund claim of Rs.1,34,782/- fulfilled the conditions/requirements as prescribed in the Notification No.41/2012-ST (supra) and the said amount was found to be admissible for refund. Accordingly, the appellant assessee was granted the refund. The learned Chartered Accountant further submitted that they had also filed Cross Objection before the learned Commissioner of Central Excise(Appeals) on 27.05.2016 against the appeal filed by the Department. The learned Chartered Accountant submitted that in the course of hearing on 22.11.2017 before the learned Commissioner(Appeals), the grounds taken in the Cross Objection were reiterated and the fact of filing the original copy of the Chartered Accountant's Certificate dated 20.05.2015 filed along with the refund claim was asserted. He vehemently argued that the Memorandum of Cross Objection having been filed on 22.05.2016 is a fact on record, but the learned Commissioner(Appeals) chose to deny even the existence of any such Cross Objection filed by the appellant assessee, which is totally unjustified and uncalled for.

3. Shri K.Chowdhury, learned Authorized Representative, appearing on behalf of the respondent Revenue justified the impugned order and reiterated the department's grounds of appeal before the lower appellate authority.

4. Heard both sides through video conferencing and perused the appeal records.

5. On perusal of records I find that the learned Deputy Commissioner of Service Tax has passed a detailed order incorporating the shipping Bill number, date, name of the service provider, invoice number, date etc.etc.. In short he has gone through all the documents and has discussed the conditions of the Notification or eligibility of the refund claim and after making a point-wise observation, has finally sanctioned the refund. Learned Commissioner(Appeals) has allowed the appeal before him mainly on the ground that the respondent assessee did not file any Cross Objection and further Chartered Accountant's Certificate was not available in the records before him. The learned Commissioner(Appeals) could have called for the copy of the Cross Objection filed by the assessee as well as copy of the Chartered Accountant's Certificate. This cannot be the ground to reject the assessee's claim of refund.

6. It can be seen that there is no dispute as to the fact that the goods were exported by the appellant assessee. Once it is not in dispute that the services are specified for refund purpose, and since Service Tax was actually paid on specified services pertaining to export activity, in terms of the broad scheme of refund under Notification No. 41/2012-ST (supra) as amended with clarifications, refund must be granted to the exporter. It is my considered view that the order passed by the learned Commissioner(Appeals) cannot be sustained as substantive benefit should not be denied to an assessee if conditions are fulfilled. It would not be out of place to mention that the sole intention of the Government to bring out these rebate schemes is to promote the Indian exporters to enjoy a level playing field and to compete with the exporters of other countries in the global market.

Further, it is not the intention of the Government to export taxes, hence after much research these schemes have been notified and if the refund claims are rejected on such flimsy grounds, it defeats the very purpose of rebate schemes and traps the exporters under unnecessary litigations.

In view of the above discussions, the impugned order is set aside and the order passed by the learned Adjudicating authority is upheld. The appeal is thus allowed with consequential relief, if any.

(Order pronounced in the open court on 9 July 2021.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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