

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.2

**Service Tax Appeal No.77131 of 2018**

(Arising out of Order-in-Original No.R/74/D-III/ST/Kol/2011-12 dated 15.07.2011 passed by Commissioner CGST & Excise, Kolkata South)

**M/s S.K.Sarawagi & Company Pvt. Limited**

1, Sarojini Naidu Sarani, 5<sup>th</sup> Floor, Kolkata-700017

**Appellant**

*VERSUS*

**Commissioner of CGST & Excise, Kolkata South**

180, Shatipally, Rajdanga Main Road, Kolkata-700107

**Respondent**

**APPEARANCE :**

Ms. Mitaly Borpuzari, Tax Consultant for the appellant  
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR.R.MURALIDHAR, MEMBER (JUDICIAL)**

**FINAL ORDER NO...75914/2023**

DATE OF HEARING : 26 .06.2023

DATE OF DECISION : 26.06.2023

**Per R.Muralidhar :**

The appellant is an exporter of manganese ore through Channelized Agency, MMTC. They have claimed refund on account of input services used by them towards export. This was initially allowed by the adjudicating authority vide Order-in-Original dated 15.07.2011. The Department preferred an appeal against the same before the Commissioner (Appeals) on the ground that the shipping bills/bill of lading etc. showing the name of MMTC and not the name of exporter, M/s S.K.Sarawagi & Company Pvt. Limited. The Commissioner allowed

the appeal filed by the Department. Being aggrieved , the appellant is before this Tribunal.

2. The Id.Consultant appeared on behalf of the appellant, submits that this issue is no more *res integra*. In their own case, this Bench vide Final Order No.75191/2022 dated 11.04.2022 has considered this issue in detail and after relying on the decision of the Hon'ble Supreme Court in the case of Daruka & Company Vs. Union of India reported in 1999 (110) ELT 419 (S.C.), the Tribunal held that the appellant is eligible for the refund. Therefore, she submits that the present appeal may be allowed.

3. The Id.A.R. for the Revenue submits that in the Order-in-Original, it has been mentioned that the appellant has not submitted the copy of shipping bill issued by the Customs Authorities as noted in the findings of the Commissioner at Para 8.4 (Page 5 of the Order-in-Original). Otherwise, he does not dispute the issue and he fairly concedes that this issue came up earlier before this Bench and was decided in favour of the appellant.

4. Heard both sides.

5. It is seen that the very issue came up before this Bench earlier and vide the Final Order No. 75191/2022 dated 11.04.2022, this Tribunal has observed as under :

*"10. It is apparent that M/s MMTC Ltd. stands indemnified that export to be made through them and M/s S. K. Sarawagi & Co. Pvt. Ltd. (the Appellant herein), is the owner of the goods, is not allowed to export directly under Section 2 (20) of the*

*Customs Act, 1962 as well as under the definition of „exporter“ in the Foreign Trade Policy, 2009-14 under Chapter 9.26.*

*11. The role of M/s MMTC Ltd. in the export of Manganese Ore, is a compulsion to be observed by the Appellant and it is not by choice which has led to the present dispute before me.*

*12. That the Appellant declared that no CENVAT Credit of service tax paid on the specified service used for export of said goods has been taken under CENVAT Credit Rules, 2004. That the appellant have submitted the invoices issued in the name of the exporter duly certified as prescribed in the said notification in terms of Para 3 (j) & (k) of the said Notification.*

*13. In view of the above observations, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential benefit to the Appellant“*

6. Respectfully, following this order, I allow the present appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-  
**(R.Muralidhar)**  
**Member (Judicial)**

mm