

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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No. 75819 of 2018

(Arising out of Order-in-Appeal No.353/S.Tax-I/KOL/2017 dated 30.11.2017 passed by Commissioner of CGST & CX (Appeal-I), Kolkata.)

M/s. Sunny Trexim Pvt. Ltd.

(A. J. C. Bose Towers, 204, A.J.C. Bose Road, 5th Floor,-700017)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Kolkata North
Commissionerate**

(GST Bhawan, 2nd Floor, 180, Shantipally, Rajdanga Main Road, Kolkata-700013)

Respondent

APPEARANCE :

None for the Appellant

Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75940/2023

Date of Hearing : 03 July 2023

Date of Decision : 03 July 2023

PER R. MURALIDHAR

No one has appeared on behalf of the Appellant. During the last hearing, it was made clear that if the Appellant fails to appear during the next hearing, the matter will be decided on merits. I have taken up the Appeal for disposal and perused the documents with the help of Learned AR.

2. The Merchant-Exporter after exporting has filed an application for refund of the Service Tax incurred by him for engaging various services in relation to the export of the goods. The Appellant filed refund claim for Rs.7,13,565/- which was sanctioned by the Adjudicating Authority. Aggrieved by this OIA, the Department had filed an Appeal before the Commissioner (Appeals). The Commissioner (Appeals) has held that the Services which were engaged by the Appellant were beyond place of removal i.e. factory premises of the principle manufacturer. Therefore,

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he denied the refund of Rs.12,765/-. Aggrieved by the same, the Appellant is before the Tribunal.

3. Perused the documents and heard the Learned AR.

4. Admittedly there is no dispute that the Appellant has utilized the services in relation to the export of goods. Notification No. 41/2012-ST dated 29.06.2012 which gives the details of procedure to be followed and condition to be applied for such refund has been amended by Notification No.1/2016-S.T. dated 03/02/2016. After the amendment, the refund is applicable for services used as under:-

“(a) in the notification.-

(i) In clause (A), for sub-clause (i), the following sub clause shall be substituted, namely;-

(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production of manufacturer of the said goods, for their export,”
[Emphasis supplied]

5. A careful reading of the amended provision, clarified that the refund is allowable whether the service is utilized within the factory or at any other premises after the clearances of the goods from the factory premises. Therefore, the Commissioner (Appeals) was in error in rejecting the refund claim to the extent of Rs.12,765/-. On similar issue, this Bench has passed Final Order No. 75711-75712/2023 dated 14 June 2023 in the case of Kay Bee Industrial Alloys Pvt. Ltd. Vs. Commr. of CGST & CX, Kolkata North Commissionerate which is held as under:-

7. Admittedly, the Notification No. 41/2012-ST dated 29/02/2012 has been amended retrospectively with effect from 01/07/2012 by way of Notification No. 01/2016-ST dated 03/02/2016. As per the amended provision irrespective of whether the service has been rendered in the factory premises or in any other place, the exporter is eligible to file the refund claim of the Service Tax paid for such services. The case law of S. M. Niryat Pvt. Ltd., cited by the appellant is squarely applicable. In

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view of the foregoing, I allow the Appeal in respect of refund amount rejected on account of Service Tax on testing and inspection conducted by them in the factory premises, holding that they are eligible for refund.

6. Considering these aspect, I allow the appeal of the Appellant with consequential relief, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja