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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 174 of 2012

(Arising out of Order-in-Appeal No. 43/ST/BBSR-II/2011 dated 20.12.2011 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007)

M/s. Essel Mining & Industries Limited **: Appellant**
AT/PO. Barbil,
District: Keonjhar (Orissa)

VERSUS

Commissioner, Central Excise, Customs & Service Tax, **: Respondent**
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Orissa)

APPEARANCE:

Shri Kishor K. Acharya, Advocate for the Appellant
Shri N.K. Dash, Advocate for the Appellant

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75380 / 2024

DATE OF HEARING / DECISION: 26.02.2024

Order : [Per Shri K. Anpazhakan]

This appeal has been filed by the Appellant against the impugned Order-in-Appeal No. 43/ST/BBSR-II/2011 dated 20.12.2011 passed by the Ld. Commissioner (Appeals), Bhubaneswar, wherein the Ld. Commissioner (Appeals) upheld the rejection of refund by the adjudicating authority to the extent of Rs.12,14,012/- while sanctioning the refund of Rs.2,81,468/- to the appellant.

2. The facts of the case are that the Appellant is an exporter of Iron Ore and recipient of Port services. Notification No. 41/2007-ST dated 06.10.2007 exempts the service tax leviable on taxable services namely, port services provided for export of goods. The said exemption is to be claimed by an exporter by way of refund as covered under the aforesaid Notification No. 41/2007. Accordingly, on 30.05.2008 the appellant applied for refund of Rs.94,56,051/-, which was later on revised to Rs.96,63,788/-, being the service tax paid by them, pertaining to the exports made on different dates during the quarter January 2008 to March 2008. Out of the said Rs.96,63,788/-, the jurisdictional Deputy Commissioner vide Order-in-Original No.R-125/RKL-II/2010 dated 19.11.2010 allowed refund of Rs.81,00,855/- and rejected the remaining amount of Rs.15,62,933/-. While rejecting part of the refund claim, the ld. adjudicating authority observed that in respect of many shipping bills, the exports had been made prior to December 2007 but the invoices had been received during the quarter January 2008 to March 2008. Accordingly, the ld. adjudicating authority considered that in respect of those shipping bills where the exports had been made prior to December 2007, the refund claim filed during the quarter January 2008 to March 2008 was barred by limitation. Out of the rejected refund, an amount of Rs.12,14,012/- was rejected on the ground of limitation and Rs.2,81,468/- was rejected on account of the fact that the same pertains to service tax paid in respect of Education Cess and Secondary & Higher Education Cess. It is observed by the ld. adjudicating authority that as per the Notification No.41/2007, the refund applications for any quarter have to be

filed within 60 days from the end of the relevant quarter in which the corresponding exports have been made.

2.1 In the present case, the Appellant has filed the refund application for the quarter January 2008 to March 2008 on 30.05.2008. However, upon examination, the ld. adjudicating authority has noticed that some of the shipping bills/invoices were actually pertaining to the quarter ending December 2007 and accordingly he has held that such part of the claim filed was beyond the period of sixty days prescribed in the Notification No. 41/2007.

2.2 The appellant preferred an appeal before the ld. Commissioner (Appeals), who vide order impugned herein has rejected the refund amount of Rs.12,14,012/- while sanctioning the refund of Rs.2,81,468/- to the appellant. Aggrieved against the rejection of the refund to the extent of Rs.12,14,012/- on the ground of limitation, the Appellant filed this appeal.

2.3 For the sake of convenience, the details of the refund claim pertaining to the present proceedings are tabularized below: -

Refund claimed initially	Rs.94,56,051/-
Refund claim later revised	Rs.96,63,788/-
Refund claim allowed in the Order-in-Original	Rs.81,00,855/-
Refund claim disallowed in the Order-in-Original	Rs.15,62,933/-
Refund claim allowed by the Commissioner (Appeals) in the impugned Order-in-Appeal	Rs.2,81,468/-
Rejection of refund claim upheld by the Commissioner (Appeals) in the impugned Order-in-Appeal	Rs.12,14,012/-

The appellant has submitted that they are only contesting the rejection of refund claim of Rs.12,14,012/- and the rejection of the balance amount is not in dispute in the present appeal. Thus, the refund claim impugned in the present appeal works out to Rs.12,14,012/-.

3. The Appellant submits that in this case, the receipt of the relevant services, payment of service tax thereon by the appellant and usage of said services in relation to export goods are not in dispute. Hence, rejection of the refund claim on non-fulfilment of procedural conditions in the said Notification No.41/2007 is contrary to the letters and spirit of the said Notification. The Appellant submits that the condition in clause (c) prescribed in the Notification No.41/2007 mandates refund of service tax actually paid on the specified services. The condition in clause (e) thereof requiring the exporter to file the refund claim on quarterly basis within 60 days from the end of the relevant quarter is only a mechanism to claim the refund. They submit that the service providers do not provide the relevant invoices to the exporter for payment of service tax within 60 days from the end of the relevant quarter and hence they could not file the refund claims within the stipulated time period. Having realized the above difficulty of the exporters, the Government of India vide Notification No.32/2008-ST dated 18.11.2008 extended the period of the limitation for filing a refund claim from “60 days” to “six months”. Therefore, it is evident that both the conditions in the above Notification are self-contradictory and the procedural condition in clause (e) thereof has to subserve the substantive condition mentioned in

clause (c) thereof, in the light of the law laid down by the Hon'ble Supreme Court in the case of *Dillip Kumar & Co. [2018 (361) E.L.T. 577].* In the said decision, the Hon'ble Apex Court has observed that while an exemption Notification has to be construed strictly and in case of any ambiguity, the doubt has to be resolved by interpreting the applicability of the exemption clause liberally.

3.1 The Appellant cited the decision of this Tribunal vide the Final Order No.76710/2023 dated 20.09.2023 in the case of *Commissioner of C.G.S.T. & Central Excise, Jamshedpur v. M/s. Rungta Mines Ltd. [2023 (9) TMI 1093 – CESTAT, Kolkata]* wherein this Tribunal has held that the extension of the limitation period for filing a refund claim from "60 days" to "six months" being a piece of beneficial legislation, has to be considered as a retrospective amendment. Thus, they contended that the refund claim amounting to Rs.12,14,012/-, rejected by the original Authority on the ground of limitation, has to be treated as being covered under the Notification No.41/2007. Accordingly, they prayed for allowing their appeal.

4. The Ld. Authorized Representative appearing on behalf of the respondent submits that the refund claim has been filed beyond the six months' time prescribed in the Notification No. 41/2007. Hence, both the authorities rejected part of the refund claims filed beyond the period of 60 days. Accordingly, he supported the impugned order rejecting the refund claim.

5. Heard both sides and perused the appeal records.

6. We observe that Notification No.41/2007-ST dated 06.10.2007 exempts the service tax leviable on taxable services namely, port services provided for export of goods. The said exemption is to be claimed by an exporter by way of refund. The Appellant has filed the refund application for the quarter ending January 2008 to March 2008 on 30.05.2008. However, it was found that some of the shipping bills/invoices were pertaining to the quarter ending December 2007. Hence, both the lower authorities observed that such part of the refund claim filed was beyond the period of 60 days prescribed in the Notification No. 41/2007. Accordingly, the impugned order has rejected the refund amounting to Rs. 12,14,012/-.

6.1 We observe that out of the rejected refund claim, Rs.12,14,012/-was rejected on the ground of limitation, which is impugned in the present appeal, and the balance amount was not contested by the appellant.

6.2 Regarding the rejection of refund of Rs.12,14,012/-, we observe that the receipt of the relevant services, payment of service tax thereon by the appellant and usage of said services in relation to export goods are not in dispute. The refund was rejected on the procedural ground that the appellant had filed the refund claim for the quarter January 2008 to March 2008, but some bills/invoices were pertaining to the quarter ending December 2007, which were beyond the time limit of 60 days prescribed in the Notification No. 41/2007. On verification, it was found that in respect of many shipping bills, the exports had been made prior to December 2007 but the invoices had been received during the quarter January 2008 to March 2008. Accordingly, the ld. adjudicating authority considered that in respect of those shipping bills where the exports had been made prior to December 2007, the refund claim filed by the Appellant on 30.05.2008 was barred by limitation.

6.3 We observe that the Government has realized the difficulty of the exporters and issued Notification No.32/2008-ST dated 18.11.2008 extending the time period for filing the refund claim from "60 days" to "six months". We observe that this beneficial notification can be applied retrospectively so as to allow the refund applications filed within the period of six months from the quarter ending. We also observe that the substantial benefit of refund cannot be denied on account of non-fulfilment of the procedural conditions prescribed in the notification. This view has been taken by this Tribunal vide the Final Order No.76710/2023 dated 20.09.2023 in the case of *Commissioner of C.G.S.T. & Central Excise, Jamshedpur v. M/s. Rungta Mines Ltd. [2023 (9) TMI 1093 – CESTAT, Kolkata]* wherein this Tribunal has held that the extension of the time limit for filing the refund claim from "60 days" to "six months" being a piece of beneficial legislation, has to be considered as a retrospective amendment. The relevant part of the said decision is reproduced below: -

> *"12. From the Notification No.32/2008-ST dated 18-11-2008 cited above, we observe that the notification has extended the time limit for filing of refund claims under Notification 41/2007 dated 06.10.2007, from 60 days to 6 months. Board Circular No.112/6/2009-ST dated 12-03-2009 has clarified the doubts with specific examples. The Circular categorically states that in view of the extended time limit, the refund claim for the*

quarter March-June 2008 can be filed till 31st December 2008. In the present case, the Appellant has filed the refund for the quarter January 2008 to March 2008, within the stipulated period of 60 days. However, on verification of the documents, the adjudicatingauthority observed that a portion of the claim was relatable to goods exported during the quarter ending December 2007 and only for that portion, the claim was filed beyond 60 days from the end of the relevant quarter during which the said goods were exported. Accordingly, the adjudicating authority has rejected part of the refund claim amounting to Rs.56,71,926/- as time barred. Thus, we observe that the refund claim filed within the time limit prescribed in the Notification 41/2007 was not a dead claim. Only a part of that claim was rejected as time barred. When Notification 32/2008 dated 18/11/2008 was issued extending the time limit from 60 days to 6 months, with retrospective effect, this Notification has validated the entire claim, as if it was filed within the revised time limit. Accordingly, the Commissioner (Appeals) has rightly allowed the refund of Rs.56,71,926/- which was rejected by the adjudicating authority on the ground of tame bar.

13. In his submission, the Ld. A.R. cited the decision of the Hon'ble Apex Court in the case of UOI Vs Uttam Steel Ltd, and contended that a dead claim cannot be revived by a subsequent amendment in the Notification. It is his submission that the refund claim was filed beyond the 60 days as stipulated in the notification 41/2007-ST, well before the amendment on 18-11-2008. Hence, according to him it was a dead claim which cannot be revived as per the decision of the Hon'ble Supreme Court cited above. We do not agree with the interpretation of the decision of the Hon'ble Apex Court by the Ld. A.R. As per the decision of the Hon'ble Apex Court in Uttam Steel Ltd, only a dead claim cannot be revived by a subsequent amendment in the Notification. In the present case, the refund claim filed by the respondent was not a dead claim. The claim was filed well within the time limit permitted in the Notification 41/2007-ST. Only a part of the claim was held as time barred by the adjudicating authority based on his findings that a portion of the claim was relatable to goods exported during the quarter ending December 2007 . We observe that

> *Notification No.32/2008-ST dated 18-11-2008 extended the time limit for filing the refund claim from 60 days to 6 months and validated that portion the refund claim which was filed beyond 60 days. Thus, we observe that there is no merit in the contention of the Ld.A.R that it was a dead claim that cannot be revived. Accordingly, we hold that there is no infirmity in the impugned order, which has rightly allowed the refund of Rs.56.71.926/-, as per the Notification No.32/2008-ST dated 18-11-2008 and the clarification issued by Board vide Circular No.112/6/2009-ST dated 12-03-2009.*
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> *14. In view of the above discussion, we uphold the impugned order and reject the appeal filed by the department."*

6.4 By relying on the decisions cited above and based on the discussions above, we hold that the Appellant is eligible for the refund of Rs.12,14,012/- which was rejected on the ground of limitation.

7. In view of the above discussions, we pass the following order:

i. The Appellant is eligible for the refund of Rs.12,14,012/- which was rejected on the ground of limitation in the impugned order.

ii. The appeal filed by the Appellant is disposed of on the above terms.

(Operative part of the order was pronounced in open court)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd