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

EASTERN ZONAL BENCH: KOLKATA

S. Tax. Appeal No. 75099, 75101-75102, 75105-75111, 75113-75115, 75117-75118, 75120-75122, 75124, 75126-75127, 75132-75134, 75136-75137/2019

Arising out of Order-in-Appeal Nos.10-20/HAL/2017 dt. 09/03/2017, 17-26/ST/HAL/2016 dt. 15/03/2016 & 27-31/ST/HAL/2016 dt. 15/03/2016 all passed by the Commissioner of Central Excise (Appeal-I), Kolkata.

M/s. Royalline Resources Ltd.

Room No. 4/15, 4th Floor, Akash Ganga
Commercial Complx, P.O. Khanjanchak,
P.S. Durgachak, Purba Medinipur, Haldia,
West Bengal-72102

Appellant (s)

VERSUS

Commissioner of Central Excise

Central Revenue Building,
169, A.J.C. Bose Road, 4th Floor,
Bamboo Villa, Kolkata-700014

Respondent (s)

APPERANCE :

Shri Partha Shah, CA for the Appellant

Shri S. Mukhopadhyay, Suptd. AR for the Respondent

CORAM:

HON'BLE Shri P. K. CHOUDHARY, MEMBER (JUDICIAL)

ORDER NO. FO/75516-75541/2019

Date of Hearing : 24.04.2019

Date of Decision : 24.04.2019

PER P. K. CHOUDHARY :

Briefly stated the facts of the case are that the Appellants, Royalline Resources Limited have filed these set of 26 appeals before this Tribunal having identical issue and hence, are taken up for disposal together.

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2. The Ld. Chartered Accountant appearing on behalf of the Appellants submits that the Appellant is an exporter of goods and had filed 26 refund claims under notifications 17/2009 dated 07.07.2009 and 52/2011 dated 30.12.2011 for exports made during the period December 2010 to May 2012. Each of the refund claims were adjudicated by the Jurisdictional Assistant / Deputy Commissioner wherein either the refund claim was sanctioned wholly or partly. There were in total 26 Orders in Original. The Appellants had accepted the same.

3. Subsequently, the Orders in Original were reviewed by the Jurisdictional Commissioner u/s 83 who found the above being not in order in view of the following reasons:

a) The Refund sanctioning authority had not verified whether the service provider had claimed exemption or not, as required under para 2 (a) of the notification
b) The invoices submitted by the claimant while claiming refund did not indicate anything from which it may be established that the impugned service providers are person authorized by the port of shipment / any other port
c) The Chartered Accountant certificate submitted by the claimant did not contain any date, hence the same was invalid. Further, the certificate was issued without any reference to particular bills/ invoices / challans and therefore the same was invalid
d) As per para 2 (i) (D) and (F), the claimant should have submitted a certificate to the effect that specified service to which the document pertains has been received by them, the service tax payable thereon has been paid and the specified service has been used for export of goods under the shipping bill number. However no such certificate has been furnished.
e) Nothing has been discussed in the OIO regarding the source / origin of movement and manner of procurement of goods being exported.
f) The invoice submitted did not contain the relevant particulars required to be furnished for claiming the refund

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Accordingly, the Revenue filed appeals before the Commissioner (Appeals) seeking to set-aside the Orders in Original to the extent the refund was granted to the claimants.

4. The Ld. Commissioner (Appeals) allowed the Department appeals by holding as under:

Grounds of Appeal raised before Comm (A) by Revenue	**Comm (A) conclusion**
The Refund sanctioning authority has failed to ascertain whether the service provider has claimed any exemption from the payment of tax in respect of services rendered to the exporter	When a substantive benefit is granted to one party in a tax transaction, it is to be ensured that the other party does not get the same benefit or advantage resulting in double benefit of tax and causing drainage of revenue. In fact such prerequisites were asked for in the services as well from time to time. For example, in the case of abatement of gross value on GTA Services, service receiver had to obtain certificate of non-availment of credit on inputs / capital goods from the service provider. Therefore, the Appellants should have also presented along with their claim some proof to substantiate that service providers had not availed exemption/ tax benefit. It was also prerogative of the Sanctioning Authority to check the same prior to sanctioning the

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Grounds of Appeal raised before Comm (A) by Revenue	**Comm (A) conclusion**
	refunds
The invoice of service provider submitted by the exporter while claiming refund does not indicate that the impugned service providers are person authorised by port or other port	The sanctioning authority has considered the service eligible to be port service in all cases, but the OIO lacks in elaborating as to whether the sanctioning authority has satisfied that the services were rendered by a port/ persons authorized by the port. The respondents have merely stated in their cross objections that they had submitted all such certificates / licenses granted by specific ports, however, the same were not submitted during the Appellate proceedings. Therefore, the Department objection succeeds.
Certificate of Chartered Accountant has been made without referring to any particulars bills/ invoices/ challans	The certificates given by the auditor firm seriously lack in complying with the requirement of the condition laid down in para 2 (i) (F) of notification. The basic requirement of the said para was that each such certificate should have been issued with respect to specific bundle of eligible services connected to a particular

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Grounds of Appeal raised before Comm (A) by Revenue	**Comm (A) conclusion**
	consignment covered by a particular shipping bill the individual number of which should have been mentioned in such certificate. The general open-ended certificate are not acceptable as compliance with the condition at para 2 (i) (F).

Further, the Ld. Commissioner (Appeals) also held that in order to claim benefit under law, substantial compliance is not enough and the procedures prescribed in the statute should be mandatorily followed in view of the SC decision in the case of Harichand Sri Gopal [2010 (260) ELT 3 (SC)] and Indian Oil Corporation Limited [2012 (276) ELT 145 (SC)]

Being aggrieved, the Appellants are in Appeal before me seeking to set-aside the Orders in Appeal and restoring of the Orders in Original sanctioning the refund claim. The Ld. Chartered Accountant appearing for the Appellants reiterated the grounds of appeal and submitted the copy of case laws relied upon. He prayed that the Orders in Appeal are not maintainable and hence liable to be set-aside.

5. He made the following submissions before me:

a) The Ld. Comm (A) has erred in not appreciating the fact that there was no procedural compliance on the Appellants side and therefore the reliance on the decision of Harichand Sri Gopal [2010 (260) ELT 3 (SC)] and Indian Oil Corporation Limited [2012 (276) ELT 145 (SC)] was uncalled for. The decisions relied upon can be referred to only in cases where there is a procedural lapse. In the current case, there is no procedural lapse.

b) W.r.t the point regarding non-verification of whether the service provider had claimed exemption or not as required under para 2(a), the Appellants stated as under:
   - The Comm (A) has erred in shifting the onus to prove that the service provider has claimed any exemption, especially when notification 17/2009 does not require submission of any documentary evidence.
   - The reference to GTA, where in the service receiver was required to obtain a declaration from service provider of non-claiming of credit of inputs / capital goods is not relevant. This is because in case of GTA, the condition was non-claim of credit while in the current case, the condition is non-claim of exemption.
   - Had the service providers claimed exemption, they would have not charged service tax and that being the case, the question of Appellants claiming refund also would not have arisen. At the time of filing refund claim, the Appellants had submitted copies of invoices issued by the service provider containing details of service tax on the service provider, thus evidencing that they had not claimed any exemption.
   - Also, it is a settled position of law that conditions which are not stated in the notification cannot be imposed otherwise than by an amendment [Radhu Industries vs. CCE, Ghaziabad – 2016 (41) STR 574 (Delhi Tribunal)]

c) W.r.t the point regarding non-verification of whether the service providers were registered with the port authorities or not, the Appellants stated as under:
   - There is no such condition prescribed under the notification
   - Circular 112/ 6/ 2009 – ST Dated 12.03.2009
   - Decision in the following cases:

   1. Gujarat Tea Processors & Packers Limited vs. CCE [2012 (27) STR 158 (Ahmedabad Tribunal)]

2. Indoworth (I) Limited vs. CCE, Nagpur [2012 (25) STR 78 (Mumbai Tribunal)]
3. Stone Shippers [2016 (45) STR 445 (Mumbai Tribunal)]
4. Adani Enterprises Limited [2014 (35) STR 741 (Guj)]
5. Cadila Pharmaceuticals Limited vs. CCE [2012 (27) STR 160 (Ahmedabad Tribunal)]
6. CCE vs. Ramdev Foods Private Limited [2010 (19) STR 833 (Ahmedabad Tribunal)]

d) W.r.t the point regarding CA Certificate not being valid, the Appellants stated that there is no law which states that a certificate without date affixed to it is invalid. Further, the Appellants also stated that the certificate was in reference to the refund claim, which was filed vis-à-vis the export consignment with reference to the shipping bill for which the certificate was issued. That being the case, the conclusion of the LD. Commissioner (Appeals) was not maintainable.

e) W.r.t the point regarding the self – certification not furnished by the Appellants at the time of filing the refund claim, the Appellants stated that in case where the refund amount was more than 0.25% of the FOB value, self – certification was not required as CA Certificate was to be furnished, which has been submitted by the Appellants.

f) W.r.t point regarding invoice of service providers not containing specified details, the Appellants stated that in view of the decision of Gujarat HC in the case of Adani Exports referred above, all services provided within port area are classified as port services. For such services, no specific disclosures were required to be made by the service providers in their invoice.

The Appellants also placed reliance on the following decisions wherein it has been held that substantive benefit cannot be denied for procedural lapses.

a. CC vs. Jindal Drugs Limited [2018 (360) ELT 988 (Bom)]

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b. Sage Publications India Private Limited vs. CST, Delhi [2017 (52) STR 295 (Tri - Del)]
c. Coromandel Stampings & Stones Limited vs. CCE & ST, Hyderabad [2016 (43) STR 221 (Tri – Hyd)]
d. Rans Pharma Corporation [2014 (314) ELT 953 (GOI)]

6. The Ld. DR justified the Order of Commissioner (Appeals) and further relied on the decision of Tribunal in the case of Principal CST vs. R R Global Enterprises Private Limited [2016 (45) STR 5 (AP)] and Laxmi Solvex vs. CCE, Indore [2017 (3) GSTL 436 (Tri – Del)].

7. Heard both sides and perused the appeal records.

8. I find that there is no need for a claimant to file evidence to substantiate that service providers have not availed exemption/ tax benefit, especially when there was no such condition in the notification itself. Thus by holding so, the Ld. Commissioner (Appeals) has added his own condition to the notification, which is not permissible under the law in view of decision in the case of Radhu Industries vs. CCE, Ghaziabad – 2016 (41) STR 574 (Delhi Tribunal) relied upon by the Appellants.

In view of the amendment to definition of port services, all services provided within the port area are classified as port services Further, there is no such condition prescribed in the notification which requires the service provider to be authorized by the port. However, it is observed by me that in the case of R R Global Enterprises itself, the Hon'ble High Court has held that insignificant requirements like endorsement of applications prescribed merely for orderly conduct of business can be waived off. As is evident from the above discussion, the current set of appeals are arising out of non-compliance of such insignificant requirements only. Therefore, the reliance on this decision by the Respondents is incorrect.

Since the Appellants refund claim was for more than 0.25% of the FOB value of exports, there was no need for self-certification.

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The Chartered Accountant certificate submitted by the Appellants was enclosed along with the refund application stating the shipping bill against which the certificate was issued. Further, the invoice submitted at the time of filing refund claim was certified by the Chartered Accountant. Therefore, the conclusion of the Ld. Commissioner (Appeals) that the certificate is a general open – ended certificate is erroneous and not tenable, especially when the notification is silent w.r.t the format in which the certificate has to be submitted.

9. In view of the above discussions, the Orders in Appeal are set-aside and the Appeals are allowed with consequential benefits.

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

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Pooja