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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 70234 of 2013

WITH

Service Tax Appeal No. 70235 of 2013

WITH

Service Tax Appeal No. 70236 of 2013

WITH

Service Tax Appeal No. 70237 of 2013

AND

Service Tax Appeal No. 70238 of 2013

(Arising out of Order-in-Appeal No.90-94/ST/BBSR-II/2012 dated 27.12.2012 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s.Essel Mining and Industries Limited **: Appellant**
A.T./P.O.: Barbil,
District: Keonjhar (Odisha)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-II Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007 (Odisha)

APPEARANCE:

Shri Narendra Kumar Das, Advocate for the Appellant

Shri Debapriya Sue, Authorized Representative for the Respondent

CORAM:

HON’BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON’BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75043-75047 / 2025

DATE OF HEARING: 18.12.2024

DATE OF DECISION: 10.01.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Essel Mining Private Limited, A.T./P.O.: Barbil, District: Keonjhar, Odisha (hereinafter referred to as the "Appellant") is an exporter of iron ore. They received many services such as port service, testing and analysis service, customs house agency service, etc., in connection with the export of goods.

2. Notification No. 41/2007-S.T. dated 06.10.2007 exempts the whole of the Service Tax leviable on taxable services viz. port services, etc., used in connection with export of goods. The said Notification further provides for grant of such exemption claimed, by way of refund. The Appellant thus applied for refund of input services used in connection with the exports for various quarters.

3. The ld. adjudicating authority observed that in respect of some of the shipping bills, the invoices pertaining to the services received have been raised after the exports were completed and so, the services for which the refund has been claimed were not relatable to the export of goods in the said quarter. Hence, the ld. adjudicating authority rejected the said refund claims on the ground of limitation.

3.1. On appeal, the Ld. Commissioner (Appeals), vide the impugned order, has allowed the refund claimed on Education Cess and Secondary and Higher Education Cess and has rejected the remaining refund claims on the ground of limitation. Aggrieved against the impugned orders rejecting the refunds, the appellant has filed these appeals.

4. The details of the appeals filed by the appellant along with the amount of refunds rejected during the respective periods, are furnished in the table given below: -

Period	APRIL-08 TO JUNE-08	JULY-08 TO SEPT-08	APRIL-09 TO JUNE-09	APRIL-09 TO JUNE-09	JAN-09 TO MARCH-09	Total Amount (Rs.)
Ref No.	O-I-O NO.-R-149/RKL-11/2010 DATED 15.12.2010	O-I-O NO.-R-111/RKL-11/2010 DATED 19.04.2011	O-I-O NO.-R-51/RKL-11/2010 DATED 24.02.2011	O-I-O NO.-R-10/RKL-11/2010 DATED 24.01.2011	O-I-O NO.-R-09/RKL-11/2010 DATED 24.01.2011	
1	2	3	4	5	6	7
Particulars	**Amount (Rs,)**	**Amount (Rs,)**	**Amount (Rs,)**	**Amount (Rs,)**	**Amount (Rs,)**	
Refund Claimed initially	12,210,720.00	18,768,181.00	10,762,940.00	2,302,905.00	1,181,982.00	**45,226,728.00**
Refund claimed revised	12,583,946.00			2,407,986.00	1,202,617.00	**16,194,549.00**
Refund claim allowed in the Order-in-Original	11,050,847.00	18,069,770.00	10,416,854.00	2,277,540.00	812,805.00	**42,627,816.00**
Refund Claimed disallowed in the Order-in-Original	1,533,099.00	698,411.00	346,086.00	130,446.00	389,812.00	**3,097,854.00**
Refund claim allowed by the Commissioner (Appeals) in the impugned Order-in-Appeal	366,531.00	622,742.00	298,358.00	72,299.00	35,395.00	**1,395,325.00**
Rejection of refund claim upheld by the Commissioner (Appeals)in the impugned Order in-Appeal	1,166,568.00	75,669.00	47,728.00	58,147.00	354,417.00	**1,702,529.00**

5. It is the submission of the Appellant that receipt of the relevant services and utilisation of the same in connection with the export of goods and payment of Service Tax thereon has not been disputed in these cases. It is stated that their appeals have been rejected by the lower appellate authority only on account of lapses of procedural grounds prescribed under the Notification No. 41/2007-S.T. The Appellant submits that as per Notification No. 41/2007-S.T., Service Tax paid in respect of the services notified therein, are eligible for refund; as a procedural requirement, an exporter is required to file the refund claim on quarterly basis within a period of sixty days from the end of the relevant quarter. However, in the present cases, on many occasions, the service

providers had not provided the relevant invoices to the exporter within sixty days' time. In this regard, the Appellant submits that realising the difficulties faced by exporters, the Government of India vide Notification No. 32/2008-S.T. dated 18.11.2008 extended the period of limitation for filing such refund claims from "sixty days" to "six months". Accordingly, the appellant submits that the delay in getting the invoices within the sixty days' time cannot be a ground for rejection of the refund claims on the ground of limitation.

5.1. The Appellant also points out that this Tribunal has already decided this issue in their own case for an earlier period and allowed the refund to the Appellant under Notification No. 41/2007-S.T. vide *Final Order No. 75380 of 2024 dated 26.02.2024 in Service Tax Appeal No. 174 of 2012 [CESTAT, Kolkata].*

5.2. Accordingly, the Appellant has prayed for allowing the refund as claimed by them.

6. The Ld. Authorised Representative of the Revenue filed a written submission wherein he has made the following submissions:

> (i)(a) Order-in-Original No. R-09/RKL-11/2011 dated 24.01.2011 (Period - January 2009 to March 2009) [*Appeal No. ST/70234/2013*] in respect of Invoice Nos. LMHC/EMIL/UL/37/2008-09 has been provided for the period from 26.03.2009 to 31.03.2009 i.e., after the subject vessel have already been sailed. Thus refund of Service Tax of Rs.20,119/- cannot be allowed on this invoice.

(b) In respect of Bill/Invoice No. RIP-1701/01 and RIP-1716/02 both dated 31.03.2009 whereas the relevant export from the port was completed on 08.02.2009, the service had been provided after the subject vessel have manned; so the claim of refund of Rs.64,143/-rejected as not relatable to export.

(c) In case of Invoices LMHC/EMIL/BARBIL/VSL/829/2008-09/EOU, dt. 05.04.2009, LMHC /EMIL/UL/742/2008-09 dt. 03.03.2009, LMHC/EMIL/UL/652/2008-09 dt. 02.05.2009 the Port service line unloading of Iron Ore is for 112402.42 Mts. Whereas the exports made from Paradip Port in the above Two vessel is 88846 Mts. Thus, refund of Service Tax claimed against 3 invoices will have to be proportionate to the quantity actually exported, the exporter is not entitled for refund of Rs. 84,803/- involving in 23,556.42 (112402.42-88846) MTs of Iron Ore unloaded inside the Port because it is not relatable to exports.

(d) The exporter had paid the amount of the Bills along with Service Tax as evident from the payment advice and receipts issued by M/s MITRA. S.K. Pvt. Ltd., two invoices as mentioned in the pattern WB/09-10/01-17 dt. 07.04.2009 and C/08-09/12-249 dt.31.03.2009 the service received at the Haldia Port in the Month of March 2009 whereas the relevant export from the Port was completed on 08.02. 2009. Thus the Service to the tune of Rs.836/- are not relatable to export.

(ii) (a) Order-in-Original No. R-51/RKL-II/2011 dated 24.02.2011 [*Appeal No. ST/70235/2013*] Service provided against Bill No. RIP-293/12 dated 26.06.2019 by M/s Ripley & Co Limited, the refund claim for Rs.65,065/- whereas the Service Tax paid against the invoice has been mentioned as Rs.30,065/-; Hence excess claimed amount of Rs.35,577/-[period - April 2009-to June 2009]

(b) Service provided against Bill No. TER/2009/178 dated 20.07.2009 by M/s Kolkata Port Trust, Haldia Dock Complex was during July-2009 and therefore the Service cannot be construed to have been used in the export of goods during the period April 2009-to June 2009; Thus the claim to the tune of Rs.11,951/- cannot be allowed.

(iii)(a) Order-in-Original No. R-149/RKL-11/2010 dated 15.12.2010 [*Appeal No. ST/70237/2013*] (period-April 2008 to June 2008) There are repeated claims in respect of some invoices mentioned at Sl. No. 94 and 96-100 of the table as reflected at running page no. 19 of the Order-in-Original. So, Refund claim amounting to Rs.1,67,801/- against the aforesaid 6(six) invoices are to be disallowed.

(b) The Bill/invoices Nos 881142,881114 and PTPL/066/08-09 (mentioned at Sl. No. 11,14 & 24 of the table at Order-in-Original) are not with respect of the related quarter. Hence the claim of Rs.9690/- is not to be allowed.

(iv) (a) Order-in-Original No. R-111/RKL-11/2011 dated 19.04.2011 [*Appeal No. ST/70238/2013*] (period July 2008 to September 2008) The invoices issued by M/s GEO CHEM LABORATORIES PVT LTD as shown at sl. No. 15 to 17 and 33 to 38 of the table of the mentioned Order-in-Original the service has been provided with relation to Vessel M.V. Majestic Star which is not the specified vessel through which the goods were exported during the relevant quarter. Thus, the refund of Service Tax of Rs. 5040/- cannot be allowed.

7. Heard both sides and perused the appeal records.

8. We observe that the Appellant has claimed refund of Service Tax paid on the services used in export of goods as provided under Notification No. 41/2007-ST dated 06.10.2007. The said Notification exempts the whole of Service Tax leviable on taxable services, such as port services, notified under the said Notification, which are used in relation to export of goods. The said exemption is to be claimed by an exporter by way of refund, as provided under the aforesaid Notification. Accordingly, the Appellant had filed the above said refund claims for various quarters during April 2008 to June 2009. The ld. adjudicating authority has partly allowed the refund claims and partly rejected it. While rejecting the refund claims, he has observed that in respect of many of the shipping bills, the exports had been made prior to the date of receipt of the invoices. In respect of those shipping bills, the ld. adjudicating authority considered that the input services were not related to the goods exported and accordingly, he has rejected the refund claims.

8.1. We observe that the receipt of the relevant services, payment of Service Tax thereon by the Appellant and usage of such services in relation to export of goods are not in dispute. The refund has been rejected on the procedural ground that the Appellant has filed the refund claim for a particular quarter wherein some of the bills and invoices were dated subsequent to the quarter ending date which is beyond the time limit of 'sixty days' prescribed under Notification No. 41/2007-S.T. dated 06.10.2007. In some cases, the exports had also been made prior to the date of invoice. Accordingly, the ld. adjudicating authority has rejected the refund claims on the ground that these input services could not be related to the goods exported in that quarter. In this regard, we observe that the Government has realized the difficulties faced by exporters and issued the Notification No. 32/2008-S.T. dated 18.11.2008, extending the time limit of sixty days for filing the refund claim to six months. We observe that this beneficial Notification can be applied retrospectively so as to allow refund applications filed within the period of six months from the quarter ending date. We also observe that the substantial benefit of refund cannot be denied merely on account of non-fulfilment of procedural conditions prescribed under the said 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 it has been 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 whichthe 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.*
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> *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 perthe 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 clarificationissued 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 rejectthe appeal filed by the department."*

8.2. We also observe that a similar view has been taken by this Tribunal in the Appellant's own case vide *Final Order No. 75380 of 2024 dated 26.02.2024 in Service Tax Appeal No. 174 of 2012 [CESTAT, Kolkata].* We find that the ratio of the decisions cited above are squarely applicable to the present case.

9. In view of the above discussion and by following the ratio of the decisions cited *supra*, we hold that the Appellant is eligible for the refund of input services as claimed by them, as provided under Notification No. 41/2007-S.T. dated 06.10.2007.

10. In the result, the appeals filed by the Appellant are allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **10.01.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd