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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.210 to 215 of 2011
& Service Tax Appeal No.217 of 2011

(Arising out of Order-in-Appeal No.25-32/ST/BBSR-II/2011 dated 28.02.2011 passed by Commissioner (Appeals) of Central Excise,Service Tax & Customs, Bhubaneswar)

M/s Essel Mining & Industries Limited
(PO-Barbil, Dist.-Keonjhar, Odisha)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bhubaneswar
(C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha)

Respondent

WITH

Service Tax Appeal No.362 & 363 of 2010

(Arising out of Order-in-Appeal No.33/ST/B-II/2010 dated 01.09.2010 passed by Commissioner (Appeals) of Central Excise,Service Tax & Customs, Bhubaneswar

&

Arising out of Order-in-Appeal No.35/ST/B-II/2010 dated 02.09.2010 passed by Commissioner (Appeals) of Central Excise,Service Tax & Customs, Bhubaneswar)

M/s Khatau Narbheram & Company
(Opposite Cinema Hall, PO-Barbil, Dist.-Keonjhar, Odisha-758035)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bhubaneswar
(C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha)

Respondent

APPERANCE :
Shri Rahul Tangri & Ms.Taniya Roy, both Advocates for the Appellant
Shri P.Das, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76061-76069/2025

DATE OF HEARING : 28 APRIL 2025
DATE OF DECISION : 28 APRIL 2025

Per Ashok Jindal :

In all the appeals, the issue is common. Therefore, all the appeals are disposed off by a common order.

2. The facts of the case are that the appellants were engaged in export of iron ore fines. During the course of export, the appellant had paid service tax on port services, technical testing and analysis services and GTA services received from service providers, in relation to export of cargo. The iron ore fines, being a commodity which is exported in bulk cargo, therefore, the same is required to be taken to Paradeep port in separate trucks and thereafter aggregated at port before the export invoice is generated.

2.1 The appellants filed a refund claim in terms of Notification No. 41/2007-ST dated 06.10.2007 as amended by Notification No.03/2008-ST dated 19.02.2008 for the tax paid on services used in export of iron ore fines during the relevant period.

2.2 The adjudicating authority issued a show-cause notice to the appellant as to why the refund claim would not be rejected for non-compliance of conditions envisaged in Notification No.41/2007-ST dated 06.10.2007, as amended and the refund claim pertaining to GTA services was rejected on the ground of non-compliance of condition (iii) in column 4 of entry no.11 of the Schedule appended to Notification No. 03/2008-ST dated 19.02.2008 which requires mentioning of exporter's invoice details on the lorry receipts issued by the transporters for transportation of export cargo.

2.3 Being Aggrieved from the said orders, the appellants are before us.

3. The ld.Counsel for the appellants, submits that the present issue has been settled by this Tribunal in the case of S.K.Sarawagi Company Private Limited Vs. Commissioner of CGST & Central Excise, Kolkata

reported in 2023 (2) TMI 481-CESTAT Kolkata. Therefore, the impugned orders are to be set aside and the refund be sanctioned.

4. The ld.A.R. for the Revenue insisted on the issue that the transporter's invoice should show the details of the exports and the said invoices are not mentioned the lorry receipts issued by the exporter. The said condition is the prime condition to claim the benefit of Notification. In that circumstances, the impugned orders are to be upheld.

5. Heard both the parties and considered the submissions.

6. We find that the similar issue has been examined by this Tribunal in the case of S.K.Sarawagi Company Private Limited (supra), wherein this Tribunal has observed as under :

> *"5. It is the case of the Appellant that in case of bulk cargo the goods are to be aggregated at the port premises even before the shipping documents are prepared. The export invoices are prepared only after the iron ore fines are loaded on to the vessel as per the contractual terms and conditions and factors like quality, size, etc which are variable. Reliance was made on the decision of the Tribunal in the case of Jumbo Mining Ltd. vs. CCE [2012 (26) STR 525 (TriBang)] wherein it was held that compliance of condition No. 11 of Notification No. 3/2008 dated 19.02.2008 should be ascertained by broadly correlating the evidence of transport and service tax paid on such transport charges and quantity exported. Further reliance was made on the decision of the Tribunal in East India Minerals Limited vs. CCE & ST [2012 (27) STR 18] wherein it was held that the policy of the government is not to export domestic tax along with export of such goods. It was also contended that the Chartered Accountant's certificate broadly correlated the quantity exported and the quantity transported along with bill and challans is on record.*

6. In the present Appeal, the Appellant is aggrieved by the rejection of refund of Rs.36,00,235/. The undisputed facts of the case are that the conditions for claiming refund on GTA services as prescribed in the Notification No. 41/2007 dated 06.10.2007 as amended by Notification No. 03/2008 dated 03.02.2008 have not been complied with as the details of the exporters invoice relating to export goods are not mentioned in the lorry receipt and the corresponding shipping bill which is the mandatory condition in terms of the notification.

7. The issue involved in these proceedings is whether Appellant is eligible to refund of services availed in relation to export of goods under Notification No. 41/2007-S.T., dated 6-10-2007. As per Notification No. 41/2007-S.T. certain co-relations are required to be made before sanctioning the refund claims. It is observed from C.B.E. & C. Circular No. 120/01/2010-S.T., dated 19-1-2010 that exporters were facing certain difficulties in relation to one to one co-relation between input services and the exports made. The Ld.Counsel for the Appellant brings to the notice of the Bench para 3.2.1 of C.B.E. & C. Circular dated 19-1-2010 to argue that self-certification of the exporter or a Chartered Accountant, if given, is sufficient to sanction refund. In para 6.2 of this Circular, C.B.E. & C. has clarified that only a broad co-relation of input services and Service Tax paid is required to be made with respect to exports. This Circular was relied upon by the Appellant before the Adjudicating Authority, as mentioned in submissions of the assessee. At the same time Ld. Authorized Representative appearing on behalf of the respondent Revenue could not produce the required documents before the Bench to ascertain as to what extent co-relation can be made and whether any liberal view can be taken in these proceedings in view of C.B.E. & C. Circular No. 120/01/2010-S.T., dated 19-1-2010.

8. So far as admissibility of Service tax paid on GTA Services is concerned, it is observed that similar refunds were allowed by

CESTAT in the case of Jumbo Mining Ltd. v. CCE Hyderabad (supra) by making following observations in Para 6.2 as follows :-

"6.2 It is not disputed that the exported goods are transported from the appellant's factory to kakkinada Port directly. In view of the peculiar nature of the goods. The entire consignments convered by one Shipping Bill cannot be transported by a single lorry, as an export consignment is in the order of 6000 to 8000 tonnes. Therefore, it requires to be aggregated at the Port premises before the shipping documents are prepared. The fact of exports is not being disputed. It cannot be the case that the goods are exported from Kakkinada Port without being transported from the factory of the appellants as claimed by them. Therefore, in the peculiar facts and circumstances of the case, the compliance of condition No. (iii) should be ascertained by broadly correlating the evidence relating to transport and service tax paid on such transport charges and the quantity exported. As regards the decisions, of the Tribunal relied upon by the appellant ignoring procedural violation while granting refund in respect of exports can be applied to the facts of present case as well.

7. In view of the above, the orders of the authorities below are set aside insofar as the same relating to denial of refunds to the extent mentioned above and the matter remanded to the original authority for fresh consideration after granting reasonable opportunity of hearing the appellants."

9. C.B.E. & C. in Para 3.2.1 of Circular No. 120/01/2010-S.T., dated 19-1-2010 also clarified as follows on the issue :-

"3.2.1. Similar problem of co-relation and scrutiny of large number of documents was being faced in another scheme (Notification No. 41/2007-S.T., dated 6-10-2007) which grants refund of service tax paid on services used by an exporter after the goods have been removed from the factory. In Budget 2009, the scheme was simplified by making a provision of self-certification [Notification No. 17/2009- S.T.] whereunder an

exporter or his Chartered Accountant is required to certify the invoices about the co-relation and the nexus between the inputs/input services and the exports. The exporters are also advised to provide a duly certified list of invoices. The departmental officers are only required to make a basic scrutiny of the documents and, if found in order, sanction the refund within one month. The reports from the field show that this has improved the process of grant of refund considerably. It has, therefore, been decided that similar scheme should be followed for refund of CENVAT credit under Notification No. 5/2006-C.E. (N.T.). The procedure prescribed herein should be followed in all cases including the pending claims with immediate effect."

10. Though the above clarification was with respect to Notification No. 5/2006-C.E. (N.T.) but it clearly conveys that in budget 2009 the scheme under Notification No. 41/2007-S.T. was simplified in Notification No. 17/2009-S.T. by providing self certification or Chartered Accountant's certification about co-relation and nexus between input Services & the exports. That above logic can be followed for Notification No. 5/2006-C.E. (N.T.) where such simplification of Notification No. 17/2009-S.T. may not be available.

In view of the above discussions, the impugned order cannot be sustained and is accordingly set aside. The Order-in-Original dated 10.03.2016 is restored. The Appeal filed by the Appellant is allowed with consequential benefits."

7. Following the decision of the case of S.K.Sarawagi Company Private Limited (supra), we hold that in case of bulk cargo, the goods are to be aggregated at the port premises even before the shipping documents are prepared. The export invoices are prepared only after the iron ore fines are loaded in the vessel as per the contractual terms and conditions and factors, like quality, size, etc., which are variable.

Therefore, the compliance of condition No.11 of Notification No.3/2008 dated 19.02.2008 should be ascertained by broadly correlating the evidence of transport and service tax paid on such transport charges and quantity exported. In view of this, we hold that the appellant has complied with the condition of Notification No.3/2008 dated 19.02.2008. Hence, the appellants are entitled to refund.

8. In these terms, the impugned orders are set aside and the appeals are allowed with consequential relief.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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