

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76607 of 2016

(Arising out of Order-in-Appeal No.136-139/ST-I/KOL/2016 dated 23.06.2016
passed by Commissioner of Central Excise, (Appeal-I), Kolkata.)

M/s. Sunny Trexim Pvt.Ltd.

(33/1, N.S. Road, 8th Floor, Room No.813/814, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Service Tax-I, Kolkata

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

WITH

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...Appellant

VERSUS

Commissioner of Service Tax-II, Kolkata

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Mr.Sujit Pore, Accountant, for the appellant

Mr.Prasenjit Das, Authorized Representative, for the respondent

CORAM: HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77942-77943/2025

DATE OF HEARING : 10.12.2025

DATE OF DECISION : 10.12.2025

Per : Rajeev Tandon:

Heard the two sides.

2. The issue raised in both the appeals rests on a narrow
compass and is concerned with the rejection of the refund claims.

The Commissioner(Appeals) disallowed the refund claims filed by

the appellant. The appellant is a merchant exporter of agricultural produce like cotton rice bran, maize etc. and claims refund of Service Tax paid on taxable services used for export, in terms of notification No.41/2012-ST dated 29.06.2012. These claims of the appellant were rejected for reasons of inadequacies contained in the supporting invoices.

3. Briefly speaking the deficiencies noticed against the individual claim are as under: -

(i) In respect of **Appeal No.76607/2016**

Sl. No.	O-in-O No and date passed by the adjudicating officer.	Refund claim (Rs.)	Reasons for deficiency	Amount disallowed (Rs.)
1	R/67/ST/Div.-I/Kol/13-14 dt.23/09/2013 passed by AC of Service Tax, Divn-I, Service Tax Commissionerate	5,04,065/-	a) Refund claim of Rs.7144/- sanctioned where there was no exporter name, Xeroxed bill and twice claimed. b) of Rs.5399/- + 3593/- sanctioned against sealing charges but place of service not mentioned. c) of Rs.148/- sanctioned where invoice not submitted.	16,284/-
2.	R/92/ST/DIV-I/Kol/2013-14 dt.20/11/2013	5,33,073	a) Refund claim of Rs.94,500/- against invoices where there is no mentioning of S.T. Regs. No. and some invoices were without sig. Therefore these were not proper document in terms of Rule 4A of S.Tax Rules, 1994.	94,510/-
3.	R/40/ST/DIV-I/Kol/2014-15 dt.03/06/2014 passed by AC of Service Tax, Divn.-I, Service Tax Commissionerate	7,77,226/-	a) Refund claim of Rs.2,49,427/- against invoices where there is no mentioning of recipient's address, credit note were issued. Therefore these were not proper document in terms of Rule 4A of S.Tax Rules, 1994.	2,49,427/-
4	R/51/ST/DIV-I/Kol/2014-15 dt.20/06/2014 passed by the AC of Service Tax, DIVN-I, Service Tax Commissionerate	5,08,205	Refund claim of Rs.14,655/- against pre-inspection of goods not proper as that service has not been provided beyond the 'place of removal'.	14,665/-

(i) In respect of **Appeal No.76608/2016**

Sl. No.	O-in-O No and date passed by the adjudicating officer.	Refund claim (Rs.)	Reasons for deficiency	Amount disallowed (Rs.)
1	R/84/Refund/Exp/ST/Div.-I/Sunny/Kol/14-15 dt.08/08/2014 passed by the A.C. of Service Tax, Divn.-I, Service Tax Commissionerate	8,46,754/-	a) Refund claim of I 29,868/- sanctioned against invoice n in original. b) Refund claim of Rs.13,790/-, sanctioned against unstamped & unsigned copy invoice. c) Refund claim of Rs.77,953/- sanctioned where Vess name and Voyage Name are different in shipping Bill & Bill of Lading.	1,21,611/-
2.	R/09/ST-1/BBD Bag-II/Kol/2014-15 dt.10/12/2014 passed by the A.C. of Service Tax, BBD Bag-II, Service Tax-I Commissionerate.	8,66,486/-	a) Refund claim of 37,434/- against pre-inspection goods proper that service has not been provided beyond to place of removal.	37,434/-
3.	R/11/ST/BBD Bag-II/Kol/2014-15 dt.17/12/2014 passed by the A.C. of Service Tax, BBD Bag-II, Service Tax-I Commissionerate.	8,68,418/-	a) Refund claim of 53,911/- against per-inspection goods and proper service has not been provided beyond the 'place of removal'	53,911/-
4	R/16/ST-1/BBD Bag-II/Kol/2014-15 dt.13/01/2015 passed by the A.C. of Service Tax, BBD Bag-II, Service Tax-I Commissionerate.	8,74,145/-	Refund claim of Rs.38,680/- against pre-inspection of goods not proper and that service has not been provided beyond the 'place of removal'. b) Refund claim of Rs.1,23,365/- sanctioned against photocopy of invoice, revised invoice.	1,62,045/-
5.	R/07/ST-1/BBD Bag-II/Kol/2015-16 dt.08/04/2015 passed by the A.C. of Service Tax, BBD Bag-II, Service Tax-I Commissionerate.	8,96,487/-	a) Refund claim of Rs.38,630/-against pre-inspection goods in proper that service has not been provided beyond 'place of removal'. b) Refund claim of 1,11,892/- sanctioned against claim debit in which is proper document terms Rule 4A S.Tax Rules, 1994.	1,50,522/-
6.	R/15/ST-1/BBD Bag-II/Kol/2015-16 dt.27/04/2015 passed by the A.C. of Service Tax, BBD Bag-II, Service Tax-I Commissionerate.	7,24,443/-	a) Refund claim of 24,972/- against pre-inspection goods proper that service has not been provided beyond 'place of removal'. b) Refund claim of 23,112/- sanctioned against claim debit which	48,084/-

			is proper document terms Rule 4A of S.Tax Rules, 1994.	
7	R/25/ST-1/BBD Bag-II/Kol/2015-16 dt.23/06/2015 passed by the A.C. of Service Tax, BBD Bag-II, Service Tax-I Commissionerate.	8,96,395/-	a) Refund claim of 9,024/- has been sanctioned but exporter not eligible to claim refund on the basis of documents as per the procedure specified paragraph for fulfilling the conditions specified clause I of Notifn.No.41/2012-ST dt.29/06/2012. b) Refund claim of Rs.3,32,029/- has been sanctioned erroneously as certificate have been given by the Chartered Accountant as prescribed in paragraph of Notifn. No.41/2012-SR dt.29/06/2012 c) Refund claim of Rs.86,651/- against pre-inspection of goods no proper and that service has not been provided beyond the 'place of removal'.	4,07,571/-
8	R/27/ST-1/BBD Bag-II/Kol/2015-16 dt.10/07/2015 passed by the A.C. of Service Tax, BBD Bag-II, Service Tax-I Commissionerate.	7,37,290/-	a) Refund claim of 2,496/- has been sanctioned excess considering the consolidation FOB value total shipping but not each shipping as procedure provided paragraph 2&3 of the Notifn.41/2012-T dt.29/06/2012. b) Refund claim of 4,61,102/- has been sanctioned erroneously as certificate have been given by the Chartered Accountant as prescribed paragraph of Notifn.No.41/2012-ST dt.29/06/2012. c) Refund claim of 36,380/- against pre-inspection goods not proper that service has not been provided beyond the 'place of removal'.	4,81,688/-

4. The fact of export of the goods by the appellant exporter are not in dispute. With reference to the various deficiencies noticed, the appellant has submitted, as also noticed from records, that in respect of refund claims listed above the various

discrepancies pointed out relate to incomplete address, unstamped, copy of invoice, unsigned invoice, vessel name change, refund initially permitted on the basis of a photocopy of the invoice, non-mentioning of service tax registration number, the recipients address and/or services provided beyond place of removal of goods. The appellant in this regard submits that various discrepancies were all unintended omissions for reasons not attributable to them but on part of certain minor and curable omissions in the supplier's invoices. The appellant have further submitted that as for the rejection pertaining to "place of removal" aspect, is concerned, they had applied for the refund in pursuance of amendment to Notification No.41/2012 Service Tax dated 29.06.2012 carried out vide Notification No.1/2016 Service Tax dated 3rd February 2016, entitling them to the availment of necessary benefit in respect of taxable services that were provided beyond the factory gate or the place of production. It is noted that the said amendment substitutes the original sub-clause (i) in clause (A) of the Explanation, as contained in the notification no.41/2012-ST dated 29.06.2012. This would thus imply that the said sub-clause was in existence since the beginning of the notification and the appellant exporters would be entitled to its benefit retrospectively.

5. The appellant has submitted that all the shortcomings pointed out are not so grave as to disentitle them to avail the refund. They submit that export is such an activity where, in order to not to miss the vessel, lot of last minute rush of work happens, which at time distracts from taking note of the supporting invoices being complete in all respects. Addressing

pointwise rebuttal of the reasons for disallowing the refund claims in part, it is submitted by the Id. accountant for the appellant that even though the invoices may be lacking in certain aspects, the fact of receipt of services by them cannot be disputed and revenue has not shown that the appellant had not utilized the services for which tax was paid and credit availed. He further submits that at times because of last minute rescheduling of the vessel, cargo load or availability of space, the steamer agents do carry out changes to the scheduled departure and it may so happen that corresponding necessary changes are not made in the original invoice issued earlier. As for the discrepancy regarding the objection to the photocopy of the invoice, the appellant submits that a revised copy thereto was tendered to the department in lieu of the photocopy and it certainly was not a case of seeking double refund. Likewise, absence of complete address is responded to by stating that in any case from available details it is clear that the appellant only was provided the said services. They further submitted that in all cases original invoices on which credit was taken were enclosed with the refund claims and so acknowledged by the authorities. He strongly asserts that there is substantial compliance of all refund process and requirements, upon export of the goods and that they should not be denied refund for minor procedural infraction, as lapses if any were all of a condonable nature or made good before the appropriate authority.

6. From the foregoing paras, it is evident that the reasons cited aforesaid for rejection of the refunds claimed were not of a

substantive nature and were deficiencies that should not ordinarily pose any impediment in the sanction of the refund. In any case they are all curable defects/incompleteness. The appellant has informed that refund was already paid to them by the department. However, subsequently, the department sought its recovery for which the impugned show cause notice was issued which culminated in the present proceedings.

7. I find from the records that the omissions/lacunae noticed after processing of the refund claims were not meaningful oversights impacting the admissibility of the refunds and are not of such a grave nature as would legally disentitle and impact the grant of the refund, more so when deliverance of service and its utilization has not been questioned. The Cenvat Credit of such duty/tax paid was certainly admissible.

8. Under the circumstances I do not find any justifiable and valid reason to uphold the orders of the lower authority. The same are thus set aside and the appeals filed are allowed.

(Pronounced and dictated in the open court)

Sd/
(Rajeev Tandon)
Member (Technical)

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