IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/87896/2017

[Arising out of Order-in-Appeal No: PK/101/MC/2017 passed 31st August 2017 passed by the Commissioner of CGST & Central Excise (Appeals), Mumbai.]

Sakuma Exports Ltd …*Appellant*

versus

Commissioner of CGST & Central Excise
Mumbai Central ***…Respondent***

Appearance:

Shri Nitesh Agarwal, Chartered Accountant for appellant

Shri Atul Sharma, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 20/03/2018
Date of decision: 20/03/2018

ORDER NO: ____________________________

This appeal is directed against Order-in-Appeal No: PK/101/MC/2017 passed 31st August 2017 passed by the Commissioner of CGST & Central Excise (Appeals), Mumbai.

2. Heard both the sides and perused the records.

3. On perusal of the records it transpires that the issue is regarding rejection of rebate claim of the appellant herein. Filtering out unnecessary details, it transpires from the records that the appellant herein had filed claim for rebate of service tax paid on various services which were utilised for export of the goods. Appellant claimed refund of such amount with the authorities and the adjudicating authority, after considering the factual matrix, held that the appellant being a third party exporter is eligible for the rebate amount so claimed. Revenue was aggrieved by such an order-in-original and preferred an appeal before the first appellate authority. The first appellate authority, in the impugned order, has reversed the order of the adjudicating authority by holding that, as per the Notification No. 41/2012, exports would mean only exporter and not third party exporter and services should have been used for export of the goods.

4. I find that the first appellate authority was in error in coming to such conclusion as there is no dispute to the fact that the goods covered in the shipping bill are exported and the name of the appellant itself appear on the shipping bill as a third party exporter and the services which were rendered were in relation to the export of the goods. When there is no dispute as to the export of the goods, I find that the Learned Chartered Accountant was correct in bringing to my notice that the issue is now settled by the Tribunal in the case of

Commissioner of Central Excise and Service Tax, Tirupati v. Sudalagunta Sugars Ltd 2014 (34) STR 114 (Tri. Ahm).

5. Respectfully following the *ratio* laid down in paragraph No.6 of the said judgment of the Tribunal I hold that the impugned order is unsustainable and liable to be set aside. The impugned order is set aside and the adjudicating authority's order is restored.

6. Appeal stands allowed.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

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