

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.**

APPEAL No.E/76/2011

(Arising out of Order-in-Appeal No.PKS/359/BEL/2010 dated 07/10/2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

Raymond Ltd., : Appellant

VS

Commissioner of Central Excise, Mumbai-III : Respondent

Appearance

Shilpi Jain, Advocate & Mihir Deshmukh, Advocate for Appellant
Shri A.B. Kulgod, Asst. Comm. (A.R) for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)

**Date of hearing : 01/10/2018
Date of decision : 01/10/2018**

ORDER NO. A/87787 / 2018

1. Rejection of refund claims filed under Notification No.41/2007-ST dated 16/10/2007, as amended, is the subject matter of the present dispute.

2. The authorities below have denied the refund benefits on the ground that the refund applications were filed beyond the prescribe time limit and that in respect of two shipping bills, the Commission amount has not been shown, which is also required to be supplied with as per the said notification.

3. Ld. Advocate appearing for the appellant submits that the issues arising out of the present dispute regarding rejection of refund applications are no more open for any debit, in view of the decision of the Tribunal decision in the case of *CCE, Pune Vs. Chandrashekhar Exports – 2015-TIOL-2448-CESTAT-MUM* and also the judgement of the Hon'ble Gujarat High Court in the case of *CCE & Cus. Surat-I, Vs. AGB Shipyard Ltd. – 2013 (31) STR 11 (Guj)*.

4. On the other hand, the learned DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. It is the accepted economic policy of any Government that the goods or services exported should not suffer payment of duty or tax. Thus, various notifications have been issued by the Government of India from time to time, providing the mechanism for refund of duties and taxes paid on exported goods and services. In context with service tax matters, notification dated 06/10/2010 considers refund of service tax paid on the input services used/utilised for exportation of output services by the assessee. The basic/mandatory condition enumerated in the said notification is to effect that the output service should be exported by the assessee upon utilisation of the service tax suffered input services. Considering the scope of notification dated 16/10/2007, this Tribunal in the case of *Chandrashekhar Exports (supra)* has held that even if the refund claim was filed beyond the stipulated period, the benefit cannot be denied, once it is substantiated

that the mandatory requirements of the notification have been duly complied with. The relevant paragraph of the said decision is extracted below:

6. *On consideration of submissions made by both sides, we find that there is no dispute as to the fact that the appellant had exported the goods and had utilized the services of the service provider for such exports. It is also not in dispute that appellant is eligible for the refund of the amount of service tax paid by the service providers. The dispute is regarding whether the appellant can get the refund of the amount having filed the refund claim on 31/03/2009 instead of 30/09/2008. We find that the first appellate authority has correctly recorded the fact that it is settled principle as to Rules and Notifications are issued from time to time to supplement the provisions of main Act and grant of relief of refund of service tax paid on services used in export of goods has to be sanctioned to the respondent when conditions prescribed in the main Act are fulfilled. We also find strong force in the submissions made by learned Counsel for the respondent that this Bench in the case of Raymond Ltd. (supra) has held as under:-*

“5. I have carefully considered the submissions made by both the sides. In the present case the refund claim pertains to the quarter October-December, 2008. The appellant have filed the refund claim on 30/07/2009 for the refund under Notification 41/2007-ST. The said Notification was amended vide Notification No.17/2009, dated 7/7/2009 so as to allow filing of the refund claim within a period of one year from the date of export of the goods. Inasmuch as the appellant filed the refund claims in July, 2009 for the quarter ending October-December, 2008, the refund claims are within a period of one year from the date of export of the goods. Therefore, the appellant would be eligible for the benefit of refund under the aforesaid Notification subject to satisfaction of other conditions stipulated in the Notification.

5.1 The Hon'ble High Court of Bombay, which is the jurisdictional High Court, in the case of Uttam Steel Ltd. (supra) has held that when procedure and practice are amended they have to be amended retrospectively and the benefit allowed if the procedures are satisfied. This Tribunal in the case of Sandoz Polymers Pvt. Ltd. (supra) has also held the same view. Further, the CBE&C in Circular dated 12/3/2009 cited supra, have also held that the so long as the refund claims is filed within the extended period of time provided for in the Notification, the assessee would be eligible for the benefit of refund, subject to satisfaction of other conditions stipulated in the Notification.

6. *Following the above decisions, I hold that, in the present case also, the appellant is eligible for the benefit of refund claim filed under Notification No.41/2007 as amended by Notification No.17/2007 and the time bar aspect is not attracted. However, the appellant has to satisfy that they have fulfilled the other conditions stipulated in the Notification. Therefore, the matter is remanded back to the original adjudicating authority only for satisfying that the appellant has fulfilled the other terms and conditions stipulated in Notification No.41/2007 and the time bar issue will have no application.*

6.1 *The above reproduced ratio of the Tribunal is squarely applicable in this case also and the conclusion reached by the first appellate authority cannot be faulted with."*

7. With regard to non-compliance of the condition regarding reflection of commission amount in the shipping bill, I find that the Hon'ble Gujarat High Court in the case of AGB Shipyard Ltd. (supra) has held that non-mentioning of the commission made in the shipping bill is a technical error and since such amount has been paid by the assessee, the refund benefit cannot be denied.

8. In view of the above settled position of the law, I do not find any merits in the impugned order. Accordingly, by setting aside the same, the appeal is allowed in favour of the appellants, with consequential benefits of refund.

(Pronounced and dictated in court)

(S K Mohanty)
Member (Judicial)

PJ