CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service tax Appeal No. 85386 of 2014

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/ APPL/911/13-14 dated 31.10.2013 passed by the Commissioner of Central excise & Customs (Appeals), Nagpur)

M/s. Murli Industries Ltd …..**Appellant**
J-140, MIDC, Hingna Road,
Nagpur

Vs.

Commissioner of Central Excise, Nagpur …..**Respondent**
Telangkhedi Road,
Civil Lines,
Post Box no. 81,
Nagpur

APPEARANCE:

None for the appellant
Shri O.M. Shivadikar, AC (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/86074 / 2019

DATE OF HEARING : 03.06.2019
DATE OF DECISION : 03.06.2019

PER: C J MATHEW

This appeal of M/s Murli Industries Ltd is taken up for disposal as it has been pending for long and appellant has chosen not to be represented at any of the hearings held so far.

2. Appellant had sought refund of service tax of ₹3,06,691/- paid on freight utilised for procurement of inputs used in the manufacture of ‘acid oil and gums’. It was their claim that, for the period July 2011 to March 2012, they had discharged tax liability even though notification no. 4/10-ST dated 27th February 2010 covered ‘soya bean’ as one of the exempted articles. The original authority rejected the refund claim for being deficient in documentary evidence such as transport receipts/bills raised by suppliers rendering it impossible for the competent authority to scrutinise the eligibility for refund claim. Furthermore, he has held that ‘soya bean’ is neither oil nor food grain and, hence, beyond the scope for applicability of the notification.

3. Learned Authorised Representative submits that ‘soya bean’ is an oilseed and not ‘food grain’ and hence not entitled to the notification.

4. We find that the first appellate authority, in impugned order-in-appeal no. NGP/EXCUS/000/APPL/911/13-14 dated 31st October 2013, has found no impropriety in the order of original authority by holding that

> *‘8. I find that the appellant failed to furnish proper documents evidencing payment of service tax. Filing of proper document with the refund claim is a statutory requirement. In the present claim refund is sought for payment of GTA. The lower authority find that the documents filed by appellant was not in order. I also find support from the case of Sterling Industries (I) Ltd vs. Commissioner of Central Excise Aurangabad (2010-254-*

ELT-533 (Tri-Mum) wherein was held:- Refund Claim- Document showing duty payment- Their originals should be produced- Since only Xerox Copies of documents were filed with undertaking to produce Originals when required, and they were not produced even before Tribunal, refund claim rejected- Section 11B of Central Excise Act, 1944 – An assessee claiming refund of the duty paid by him should, in the first instance, establish the payment of duty, for which he should produce their relevant original documents.'

5. It would appear that the appellant claimed the benefit of exemption notification based on the presumption of eligibility. It is very clear that the appellant herein had been directed, and given adequate opportunity, to produce documents relating to discharge of payment of freight and the connection of said transport with the exempted goods. As has been rightly held by lower authorities, in the absence of such evidence, the claim of appellant was incapable of being processed.

6. Considering the above, we find no merit in the appeal and dismiss the same.

(Operative part pronounced in Court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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