CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 87455 of 2019

[Arising out of Order-in-Appeal No. PVNS/46/APPEALS THANE/TH/2019-20 dated 31.05.2019 passed by the Commissioner of GST & Central Excise, Appeals-Thane, Mumbai]

Rosa Impex Private Limited **.... Appellants**
210, Shiv Plaza, Kandivali Railway Crossing Road
Khandivali (West)
Mumbai – 400 067.

VERSUS

Commissioner of CGST & Central Excise, **.... Respondent**
Thane Commissionerate
Navprabhat Chambers, Ranade Road
Dadar (West), Mumbai– 400028.

APPEARANCE:

Shri Jinav Ghotalia, Director, Representative for the Appellant

Shri A.K. Shrivastava & Shri Vinod Kumar, Authorized Representatives for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85884/2024

Date of Hearing: 09.05.2024
Date of Decision: 09.09.2024

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Rosa Impex Private Limited, Mumbai (herein referred to as 'the appellants' for short) against the Order-in-Appeal No. PVNS/46/APPEALS THANE/TH/2019-20 dated 31.05.2019 (referred to, as 'the impugned order') passed by the Commissioner of GST & Central Excise, Appeals-Thane, Mumbai.

2.1 The facts of the case, leading to this appeal, are summarised herein below:

2.2 The appellants had filed in total four refund claims of service tax paid on input services used for export of goods in four quarters for the period April, 2013 to January, 2014, totally amounting to Rs. 30,23,843/- under the provisions of Notification No. 41/2012-Service Tax dated 29.06.2012. The said claims for refund of Service Tax paid was in respect of the specified input services viz., Postage, Freight and Banking and other Financial (BOF) Services said to have been used by the appellants as input services while exporting medicines during the period from April, 2013 to January, 2014. The details of such refund claims are as under:

S.No.	**Period covered in the refund claim**	**Amount claimed as refund**	**Date of Submission of Refund claim**
1	April, 2013 to June,2013	Rs.9,99,183/-	06.06.2018
2	July, 2013 to September, 2013	Rs.10,35,931/-	06.06.2018
3	October, 2013 to December, 2013	Rs.7,51,993/-	06.06.2018
4	January, 2014	Rs.2,36,736/-	06.06.2018
	Total	**Rs.30,23,843/-**	

2.3 On scrutiny of the aforesaid four refund claims, the original authority i.e., the Deputy Commissioner (CRS), GST & Central Excise, Thane had found that all the said four refund claims are liable to be rejected on the basis of being hit by the limitation of time of one year as prescribed under the law. Therefore, he observed that without going into the merits of the refund claims, these are liable to be rejected. Accordingly, the original authority vide Order-in-Original dated 10.08.2018 had rejected the refund claims as time barred.

2.4 Feeling aggrieved with the order of the original authority, the appellants had preferred an appeal before the Commissioner (Appeals), Thane. In the appeal proceedings, learned Commissioner (Appeals) had partially allowed refund of service tax paid on the inputs services of 'Speed Post' with consequential relief, while upholding the rejection of refund in respect of rest of the input services on the ground that the refund claims have been filed beyond the stipulated time limit of one year vide the impugned order dated 31.05.2019. The appellants feeling aggrieved with the said order in appeal, have filed this appeal before the Tribunal.

3. Heard both sides and perused the case records. The additional submission made in the form written paper book in this case was also perused by me carefully.

4. The short issue for determination before the Tribunal is whether service tax paid on input services used for export of medicines for the period April, 2013 to January, 2014, is refundable in terms of Notification No.41/2002-S.T. dated 29.06.2012 or not?.

5. In order to appreciate the above issue under dispute, the Notification No.41/2012-S.T. dated 29.06.2012 under which the refund has been claimed, which is relevant to the dispute, are extracted and herein given below for ease of reference:

> ***Rebate for Service tax paid on Services used for export of goods — New Simplified Scheme — Notification No. 41/2012-S.T. dated 29.06.2012***
>
> *"In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011-Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the* ***taxable services which are received by an exporter of goods*** *(hereinafter referred to as the exporter)* ***and used for export of goods****, subject to the extent and manner specified herein below, namely :-*
>
> *Provided that –*
> *(a) the* ***rebate shall be granted by way of refund of service tax paid on the specified services****.*
>
> *Explanation. - For the purposes of this notification,-*
> *(A) "specified services" means -*
> *(i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;*
>
> *(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;*
> *but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004;*
>
> *(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act, 1944 (1 of 1944);*
>
> *(b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;*
>
> *(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;*

(d) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken under the CENVAT Credit Rules, 2004;

(e) the rebate shall not be claimed by a unit or developer of a Special Economic Zone;

(2) the rebate shall be claimed in the following manner, namely :-

(a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;

(b) exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;

(c) service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that --

> *(i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board (FOB) value of the said goods, on the basis of rate specified in the Schedule;*
> *(ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;*
> *(iii) conditions of the notification have been fulfilled;*

(e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;

(f) amount so calculated as rebate shall be deposited in the bank account of the exporter;

(g) shipping bill or bill of export on which rebate has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, shall not be used for rebate claim on the basis of documents, specified in paragraph 3;

(h) where the rebate involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;

(3) the rebate shall be claimed in the following manner, namely :-

(a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;

(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;

(c) the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;

(d) the exporter who is not so registered under the provisions referred to in clause (c), shall before filing a claim for rebate of service tax, file a declaration in Form A-2, seeking allotment of service tax code, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the exporter referred to in clause (d), within seven days from the date of receipt of the said Form A-2;

(f) on obtaining the service tax code, exporter referred to in clause (d), shall file the claim for rebate of service tax to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, in Form A-1;

(g) ***the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.***

Explanation. - For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);

(h) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B) :

(A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

(i) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above shall stand modified to the extent that the certification prescribed thereon, in sub-clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of 1961), as the case may be;

(j) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed;

(k) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-
(i) that the service tax rebate claim filed in Form A-1 is complete in every respect;
(ii) that duly certified documents have been submitted evidencing the payment of service tax on the specified services ;
(iii) that rebate has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2; and
(iv) that the rebate claimed is arithmetically accurate,
refund the service tax paid on the specified service within a period of one month from the receipt of said claim :
Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such rebate, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder;

(5) This notification shall come into effect on the 1st day of July, 2012……"

6.1 On perusal of the above notification under which refund of service tax has been claimed, it transpires that the refund is being allowed in respect of service tax paid on the specified services used in respect of export of goods at the prescribed schedule of rates, subject to fulfilment of the conditions mentioned in clause (a) to (h) of paragraph 1; clause (a) to (h) of paragraph 2. Further, the claim for refund of service tax is required to be filed within a time period of one year from the date of export of goods. This aspect has been examined in the impugned order, and the learned Commissioner (Appeals) to the extent that the appellants have paid service tax, where there is no service tax was payable by them, he had held that the limitation of one year prescribed under Section 11B(1) of the Central Excise Act, 1944 was not applicable. However in respect of all of the input services such as freight and banking and other financial services where the service tax is initially paid by the appellants and subsequently such amount of service tax paid is being claimed as refund, he had held that the time limit of one year is applicable.

6.2 It is the fact on record, that the original authority had scrutinized the refund claim filed by the appellants and after recording his findings that the appellants have not filed refund applications within one time had rejected the refunds.

7. In this regard, I find that in order to claim the refund of service tax paid on the input services on export of goods as per the Notification No.41/2012-S.T. dated 29.06.2012, the requirements are that in respect of various extent/conditions prescribed therein, have to be fulfilled by the claimant/ exporter and the refund shall be granted in the manner specified therein. Further, in terms of Section 11 B of the Central Excise Act, 1944 as made applicable to matters relating to service tax under Section 83 of the Finance Act, 1994, any application for refund of duty/tax shall be filed before the expiry of one year from the relevant date prescribed therein. On the above basis and as per the condition 3(g) of the aforesaid Notification, the refund claim shall be filed within one year from the date of export of the goods for which such input services were used.

8. In the impugned order, the learned Commissioner (Appeals) had examined this aspect of filing of refund claim by the appellants, whether the same were filed within the prescribed time of one year. The findings in this regard by him as recorded in paragraphs 9 and 10 are extracted and given below:

> *"8. ……….. Therefore, in view of the said judgment, I hold that the amount paid as service tax towards the services extended by the Department of pot is to be treated as 'deposit' only and not as a tax' and hence, it is not under the restrain of Section 11B of the Central Excise Act, 1944 which stipulates a time limit of one year to seek a refund of duty or tax. Therefore, in view of this, the component of refund claim in relation to service tax on speed post is refundable. Held accordingly.*
>
> *9. I also find that the refund claims filed by the appellant are showing service tax amount paid on other services viz. Freight and Banking and Other Financial Services is to be governed by the provisions of the Notification No. 41/2012-ST dated 29.06.2012 and Section 11B of the Central Excise Act, 1944 which stipulates a time limit of one year to seek a refund of duty. Hence, I find that the refund claims of service tax involved in these services are obviously filed after the stipulated time limit of one year. As such, these are clearly time barred and no interference in the impugned order is needed to such extent. Held accordingly.*
>
> *10. In view of the above discussion, I allow the appeal partially to the extent of allowing refund of service tax on speed post with consequential relief, if any, and for the rest of the amount of refund, the impugned order is upheld."*

9.1 The various aspects of refund of duty/tax under indirect taxes have been dealt in detail by the Hon'ble Supreme Court in the case of *Mafatlal Industries Limited Vs. Union of India*– 1997 (89) E.L.T. 247 (S.C.). On careful reading of the aforesaid judgement of the Hon'ble Apex Court, it transpires that there could be three different types of situations in which the refund of duty/tax could arise viz., (i) unconstitutional levy, i.e., where a provision of the Act under which tax is levied is struck down as unconstitutional for transgressing the constitutional limitations; (ii) illegal levy, i.e., where the duty/tax is collected by the authorities under the Act by mis-construction or wrong interpretation of the provisions of such Act, Rules and Notifications made thereunder or by an erroneous determination of the relevant facts or an erroneous finding of fact; and (iii) An individual assessee pays duty/tax either without protest or after registering his protest, and fights the case at various appellate forums such as first Appellate or second Appellate/Revisional level and gives up the fight, being unsuccessful therein; therefore the said assessee pays the duty/tax demanded or it is recovered from him, as the case may be and the levy of duty/tax becomes final and his claim that the duty/tax is not leviable is finally rejected. But it may so happen that sometime later, the Hon'ble Supreme Court may hold, in the case of some other assessee that the levy of that kind is not exigible in law. In such cases, if he files the refund claim, then that is the third category of refund claim. In the first category, the provisions relevant to a particular taxing statute would not have any application, as the levy itself is held to be unconstitutional and the general law relating to refund including time limit etc. would apply. In the second category, the refund of duty/tax would be governed solely by the provisions of the specific taxation statute. In the third category of case, it would depend on the facts of the case and the claimant of refund could file a writ petition or a suit within three years of such "discovery of mistake of law".

9.2 In the present factual matrix of the case, I find that the case in hand does not relate to the first category of unconstitutional levy or the third category of refund on the basis of the judgement delivered by the Hon'ble Supreme Court. It squarely falls under the second category of duty/tax paid by the claimant which could at the most be treated as illegal levy. However, even in such cases, the legal provisions of Section 11B of the

Central Excise Act, 1944 as made applicable to service tax, would apply for refund of service tax. With respect to the time limit for filing of a refund claim in such case, it is mandated under said Section 11B of the Act of 1944 that such refund claim is required to be filed within one year from the relevant date. It is a fact on record that the Notification No.41/2002-S.T. dated 29.06.2012 under which the refund has been filed in this case, had prescribed that the refund claim shall be filed within one year from the date of export. It is also a fact on record that the refund claims are related to exports done the four quarters during April, 2013 to January, 2014, i.e., April to June, 2013; July to September, 2013; October to December, 2013 and for January, 2014 and for which all the four refund claims have been filed on 06.06.2018. Thus, the factual position clearly indicates that the refund claims have been filed in the present case beyond the period of one year from the time of export.

9.3 I find that this aspect has also been examined by the learned Commissioner (Appeals) in the impugned order and recorded that such refund claims have been filed beyond one year period. However, he had allowed part of the refund claimed on the ground that the amount paid as service tax towards the services extended by the Department of Post is to be treated as 'deposit' only and not as a 'tax' and hence, it is not under the restrain of Section 11B of the Central Excise Act, 1944 which stipulates a time limit of one year to seek a refund of duty or tax. I find that though the basis on which learned Commissioner (Appeals) had allowed the refund of such service tax paid in respect of illegal levy is disputable in view of the discussion in paragraph 9.2 above, since the Revenue has not appealed against such sanction of refund, and the appellants being the beneficiary of such refund has also not appealed against the same, I am not examining the same on merits.

9.4 As regards the disputed part of the refund claim relating to Freight, Banking and other Financial services for which the appellants have filed this appeal, I find that the respective refund claims have been filed beyond the prescribed time limit of one year from the relevant date, and therefore these are clearly barred by limitation of time as mandated under Section 11B of the Central Excise Act, 1944, as made applicable to service tax under Section 83 of the Finance Act, 1994 and as per condition 3(g) of the Notification No. 41/2012-S.T. dated 29.06.2012.

10. In view of the foregoing discussions and analysis, I do not find any grounds for interfering with the impugned order passed by the learned Commissioner (Appeals). Therefore, the appeal preferred by the appellants is liable to be dismissed on the grounds of time bar.

11. In the result, the appeal filed by the appellants is dismissed.

(Order pronounced in the open court on 09.09.2024)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha