CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87813 of 2017

(Arising out of Order-in-Appeal No.PK/57/MC/2017 dated 18.08.2017 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s Associated Aluminium Industries Pvt. Ltd. **.... Appellant**
B-1, Tulsi Vihar, First Floor, Dr. A.B. Road,
Worli Naka,
Mumbai – 400 018

Versus

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai Central
GST Bhawan, 3rd Floor,
115, Maharshi Karve Marg, Churchgate,
Marine Lines,
Mumbai – 400 020

APPEARANCE:

Ms. Ginita Bodani, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85929/2026

Date of Hearing: 20.07.2026
Date of Decision: 20.07.2026

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Denial of the refund benefit filed under Notification No. 41/2007-S.T. dated 06.10.2007, is the subject matter of present dispute. The original authority had rejected the refund claim filed by the appellant on the grounds that the Custom House Agent (CHA) service was not specifically included in the Notification dated 06.10.2007 (supra) and also the appellant did not follow the prescribed procedures and fulfilled the conditions laid down in the said notification. On an appeal filed against the original order dated 28.05.2013, the learned Commissioner (Appeals) has

rejected the appeal vide impugned order dated 18.08.2017, by upholding the said original order. Feeling aggrieved with impugned order dated 18.08.2017, the appellant has preferred this appeal before the Tribunal.

3. Both the authorities below had denied the benefit on the grounds that the CHA service was specifically included for the purpose of refund benefit w.e.f. 01.04.2008 vide Notification No. 17/2008-S.T. dated 01.04.2008 and since the refund application was filed prior to 01.04.2008, the appellant should not be eligible for the benefit of refund. Further, reason assigned for rejection of refund benefit was that the service towards 'technical testing and analysis' availed by the appellant was not specific to any service with regard to exportation of the goods.

4. We have examined the invoices issued by M/s Seaport Logistics Pvt. Ltd. to the appellant. In the said invoices, the service provider had furnished the narration of service as "*Additional Transportation charges from Port to Warf through Weighment*", "*Wagon Terminal Charges*" etc. On perusal of the said invoices, we are convinced that those services were availed by the appellant within the 'port area', facilitating exportation of the goods. We find that in respect of the services provided within the port, Tax Research Unit (TRU) in the Department of Revenue, Ministry of Finance had issued a Circular dated 26.02.2010 clarifying as under: -

> ***"1. Services provided in an airport or port***
>
> *1.1 Two services, namely ' port services ' and the ' airport services ' were introduced in Budgets 2001 and 2004 respectively. The services provided by minor ports covered under 'other ports ' became taxable from 2003. The purpose behind creating these services was that since a number of activities are undertaken within the premises of ports and airports, it would be easier to consolidate all such services under one head.*
>
> *1.2 It was reported that divergent practices are being followed regarding classification of services being performed within port / airport area. In some places, all services performed in these areas [even those falling within the definition of other taxable services] are being classified under the port / airport services. Elsewhere, individual services are classified according to their individual description on the grounds that the provisions section 65 A of Finance Act, 1994 prescribes adoption of a specific description over a general one.*

1.3 Further, both the definitions use the phrase 'any person authorised by port / airport '. In many ports / airports there is no procedure of specifically authorizing a service provider to undertake a particular activity. While there may be restriction on entry into such areas and the authorities often issue entry-passes or identity cards, airport / port authorities seldom issue authority/permission letters to a service provider authorising him to undertake a particular task. Many taxpayers have claimed waiver of tax under these services on the ground that the port / airport authority has not specifically authorised them to provide a particular service.

1.4 In order to remove these difficulties, the definitions of the relevant taxable services are being amended to clarify that all services provided entirely within the port / airport premises would fall under these services. Further, specific authorisation from the port / airport authority would now not be a pre-condition for the levy."

On reading the above Circular issued by the TRU, we find that irrespective of the category of taxable service provided within the Port, the same should be considered as 'Port Service', when used/utilized within the port for facilitating exportation of goods therefrom. In the present case, since the department had not specifically objected to the fact of use/ utilization of the disputed services within the port area in or in relation to export of goods, we are of the view that denial of refund benefit by the authorities below, holding that CHA service was specifically amended, would not hold good for denying the benefit of refund claim.

5. With regard to technical testing and analysis service, learned Advocate for the appellant submitted that clauses of the agreement entered into between the appellant and overseas buyers, provide that such testing is mandatory for completion of export transaction and thus, the refund benefit in respect of service tax paid thereon should be available to the appellant. We are in agreement with the submissions made by the learned Advocate that technical testing and analysis service was in fact used for facilitating exportation of the goods and for that purpose, there were agreements entered into between the overseas buyers and the appellant, prescribing fulfillment of the conditions laid down therein. Thus, in our considered view, the benefit of refund should also be available to the appellant on such service.

6. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has denied the refund benefit to the appellant. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha