

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.154 of 2011

(Arising out of OIA-371-375-2010-AHD-I-CE-MM-COMMR-A--AHD dated 22/12/2010 passed by Commissioner of Central Excise-AHMEDABAD-I)

Balkrishna Textiles Pvt Ltd

Bombay Highway, Narol,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-i

C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

.....Respondent

WITH

- i) **Service Tax Appeal No.388 of 2012 (Balkrishna Textiles Pvt Ltd)**
- ii) **Service Tax Appeal No.389 of 2012 (Balkrishna Textiles Pvt Ltd)**
- iii) **Service Tax Appeal No.390 of 2012 (Balkrishna Textiles Pvt Ltd)**
- iv) **Service Tax Appeal No.391 of 2012 (Balkrishna Textiles Pvt Ltd)**

APPEARANCE:

Shri Amal Dave, Advocate for the Appellant

Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/10678-10682 /2022

DATE OF HEARING: 15.02.2022

DATE OF DECISION: 10.06.2022

RAMESH NAIR

All these appeals are directed against the common impugned Order-in-Appeal No. 371 to 375/2010(Ahd-I)CE/MM/Commr(A)/Ahd dated 22.12.2010 passed by the Commissioner (Appeals), Ahmedabad whereby the appeals for claim of refund are rejected.

1.1 Briefly the facts of the present case are that the appellants are engaged in the manufacture of Woven Fabrics of Syn, Staple-fiber falling

under Tariff heading No. 52.12 of Central Excise Tariff Act, 1985. The Appellant are also exporting their goods. The Appellant have filed the five refund claims of accumulated credit during the period April 2008 to March 2009 in respect of service tax paid on Commission Agent's service. The service provider i.e. Commission Agent is located outside India and his services were used for export of goods under Notification No. 41/2007-ST dated 06.10.2007 read with Notification No. 17/08-ST dated 01.04.2008. Department has issued five Show Cause Notices as the Appellant had not allegedly fulfilled the conditions as laid down in the said Notification. The said refund claims were rejected vide Orders-In-Original all dated 28.10.2010 on merit as well as on the ground of time bar under the provisions of Section 11B of the Central Excise Act, 1944. Aggrieved by the said orders, the appellant filed appeal before the Commissioner (Appeals) who also rejected the appeals. Hence, the present appeals.

02. Shri Amal Dave, learned counsel appearing on behalf of the Appellant submits that during the period April 2008 to March 2009, service of commission agent located in foreign countries was availed by the appellant but no service tax was paid by the appellant under reverse charge because the appellant was unaware about the liability of service tax on such service availed in foreign countries and the reverse charge mechanism of Section 66A of the Finance Act, 1994. Since the Range and Divisional officers informed the appellant about the service tax liability, a total amount of Rs. 9,55,645/- has been paid by the Appellant on commission agent service in respect of the goods exported during the period April 2008 to March 2009.

2.1 He submits that Notification No. 41/2007-ST dated 06.10.2017 allowed the refund of service tax paid on services used for export of goods by the exporter. The refund claim is required to be filed within six months from the end of quarter during which the goods were exported. Since the Service tax was paid by the appellant on 31.03.2010 and 21.04.2010, five refund claims for Rs. 9,56,645/- were filed for such service tax. The denial of the Appellant's refund claims on the ground of time bare is wholly illegal because refund claims filed on 31.05.2010 for the amount of service tax paid as tax on 31.03.2010 were not barred by limitation. An exporter can file a refund claim for service tax in respect of taxable services used for export, only if service tax was actually paid on the service, and not if no service tax was

paid. In the present case, the Appellant acquired a right or locus to claim refund only when service tax was actually paid on Commission Agent's Service and no service tax have been paid on such services during the period April 2008 to March 2009, when the export were made, the appellant had no right to claim refund at that time. The Notification No. 41/2007-ST does not contemplate a situation where a refund claim has to be filed by the exporter even if service tax was not paid because the pre-condition for claiming any refund is payment of any amount as tax or duty.

2.2 He also submits that the period of limitation for claiming refund on commission agent service cannot be computed prior to the date of payment i.e. 31.10.2010. The refund of Service tax was governed by Section 11B of the Central Excise Act, 1994 as made applicable to the service tax matter, when this statutory provision thus clearly laid down a time limitation of one year from the date of payment of tax and when the appellant's claim was within the period of limitation as prescribed under this provision, the department had no jurisdiction to hold that the Appellant's refund claim as time barred. He placed reliance on the following decisions:-

- COMMISSIONER, KANPUR VS. PACIFIC LEATHER FINISHERS 2016(43)STR273 (TRI. ALL.)
- COMMISSIONER OF CENTRAL EXCISE- PUNE-II VS. MERCEDES BENZ (I) PVT. LTD. -2018(11)GSTL389 (TRI. MUMBAI)
- PNC CONSTRUCTION CO. LTD. VS. COMMISSIONER -2016(344) ELT 906
- SUNRAYS ENGINEERS PVT. LTD. VS. COMMISSIONER – 2015(318)ELT 583(SC)
- SONY INDIA PVT. LTD. VS. COMMISSIONER, NEW DELHI 2014(304) ELT 660
- COMMISSIONER VS. MAHINDRA & MAHINDRA -2007(214) ELT 234
- FORD INDIA PVT. LTD. VS. COMMISSIONER, CHENNAI -2010-TIOL-1153
- COMMISSIONER, PONDICHERRY VS. G. JIJITH KUMAR & OTHERS - 2009-TIOL-592

03. On the other hand, Shri Dharmendra Kanjani, learned Superintendent (AR) defended the impugned order and submitted that the refunds have rightly been rejected on account of time bar. He placed reliance on the following decisions:-

- CMS INFO SYSTEMS LTD. VS. UNION OF INDIA -2017 (349) ELT 236 (BOM)
- TRANSIA BIO-MEDICALS LTD. VS. COMMISSIONER OF CUS. - 2021(376) ELT 381
- MMTC LTD. VS. COMMUR OF C.EX & ST. – 2019(26)GSTL. 248

04. After considering the submissions of both the parties and perusal of the material on record, we find that Learned Commissioner (Appeals) denied the refund claims solely on limitation. There is no dispute of the fact that the goods have been exported by the appellant during the period April 2008 to March 2009 by utilizing the services on which service tax was payable for the exported goods. The assessee has raised the contention that payment of service tax on commission agent service was made only on 31-3-2008 and 21.04.2010 and therefore refund claim is within the time limit of one year from the date of payment of service tax. We find that a similar issue came up before Tribunal in the case of Commissioner of Central Excise & Service tax, Kanpur Vs. Pacific Leather Finishers 2016 (43) S.T.R. 273 (Tri. - All.) (supra) wherein Tribunal observed as under:

"3. Being aggrieved, the Revenue is in appeal on the ground that under the condition of Notification, the time limit prescribed is six months from the quarter, exports took place.

4. The respondent assessee is absent today in spite of notice. We find that the respondent was also absent on the previous date i.e. 18-9-2015 without any representation for time. Under these circumstances, the appeal is taken up for hearing with the assistance of the Id. AR for the Revenue.

5. Heard the Id. AR for the Revenue and perused the records.

6. Having considered the rival contentions, we find that the issue of time bar in this appeal is no longer res integra, and is decided by the Hon'ble Delhi High Court in the case of Sony India Ltd. - [2014 \(304\) E.L.T. 660](#) (Del), wherein the Hon'ble High Court has held that the limitation cannot start to run unless right to receive a claim or refund crystallized. In the present case, the right to claim/refund under Notification No. 41/2007-S.T. crystallized only when the service tax was deposited in October, 2008. Thus, the refund claim was filed within six months on 30-3-2009. Accordingly, we hold that the refund claim is within time. In view of the above findings, we dismiss the appeal of the Revenue and confirm the order-in-appeal. The respondent assessee will be entitled to consequential benefit, if any, in accordance with law."

4.1. As issue has already been settled in favour of the appellant wherein it has been held that the 'relevant date' for computing six months periods under Notification No. 41/2007-ST to be taken the date when service tax paid and not first day of month following quarter in which export made. Therefore, merely on the ground of limitation refund cannot be rejected. In the light of the above cited decisions in the case of *Pacific Leather Finishers* (supra) we hold that the refund claim is within time.

05. In these terms impugned orders are set aside and appeals are allowed with consequential relief.

(Pronounced in the open court on 10.06.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul