

IN THE HIGH COURT OF ORISSA AT CUTTACK  
OTAPL No.12 of 2018

**M/s. Auroglobal Comtrade**

....

**Appellant**

Mr. J.M. Pattanaik, Advocate

-versus-

**The Chairman, Central Board of  
Excise & Customs, Ministry of  
Finance, New Delhi & Others**

**Respondents**

Mr. Tushar Kanti Satapathy, Sr. Standing  
Counsel for GST, Central Tax and Customs

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE M. S. RAMAN**

**ORDER  
10.01.2023**

**Order No.**

17. 1. Mr. Tushar Kanti Satapathy, learned Senior Standing Counsel appearing for GST, Central; Tax and Customs files a memo of appearance on behalf of the Respondents in Court, which is taken on record.
2. The present appeal by the Assessee is directed against the order dated 20<sup>th</sup> July, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata (CESTAT) allowing the Department's Excise Appeal No.471 of 2012 and thereby setting aside an order in the appeal dated 23<sup>rd</sup> April, 2012 passed by the Commissioner (Appeals) in favour of the Assessee.
3. While admitting the present appeal by the order dated 10<sup>th</sup> February, 2020, the following questions were framed for consideration by the Court:

*“(I) Whether the learned Tribunal was justified in taking a contrary view denying the rightful claim of refund of service tax being the Petitioner is an exporter*

*coming under the Customs Act on the ground of hyper technicality when export have taken place actually?*

*(II) Whether the Learned Tribunal was justified in denying the statutory right of the Petitioner for mere procedural lapse contrary to the law laid down by the Hon'ble Supreme Court in the case reported in 1991 (55) ELT 437 (SC)?*

*(III) Whether the learned Tribunal was justified in ignoring the decision of co-ordinate Bench on the very same facts while denying the just claim of the Petitioner in deviation of doctrine of precedent which is a fundamental constraint on judicial decision-making.?"*

4. The background facts are that the Appellant-Assessee filed four refund claims on 25<sup>th</sup> April, 2011 in regard to service tax paid towards export of Iron Ore Fines of various quantities in terms of a notification dated 7<sup>th</sup> July, 2009. The claims were rejected on the ground that the shipping bills and bills of lading in all the cases were not in the name of the Appellant-Assessee and since it was not the exporter of Iron Ore Fines, it is not entitled to refund in terms of the above notification.

5. The exports were made through Paradeep Port. It was noted by the Commissioner (Appeals) in the appeal filed by the Assessee against the rejection of his refund claims that the exports had made by the Appellant through M/s. Liberty Marine Syndicate Pvt. Ltd. (M/s. Liberty) and M/s. Resources International Pvt. Ltd. (M/s. RIPL). The Commissioner (Appeals) examined the documents and found that it was the Appellant which had entered agreements with the foreign buyers and it is pursuant to those agreements that the exports took place. Each of the contracts was specifically mentioned in the shipping bills, under which the exports were made. There was separate agreement between the Appellant and M/s. Liberty and M/s.

RIPL, under which the latter had a limited role “in just filing the shipping bills”.

6. The Commissioner (Appeals) further noted in para 7 and 8 of the order dated 23<sup>rd</sup> April, 2012 as under:

*“7. It is also seen the appellant had employed the clearing house agent to export the goods. Further, stevedores had also been engaged by the appellant and so also at the behest of the appellant, service providers of intraport transportation, weighment, unloading and wharfage were engaged and paid for. Further whatever expenses had been incurred by M/s. Liberty Marine Syndicate Pvt., & M/s. Resources International Pvt. Ltd. were realized by them for the appellant. The survey, sampling, appellant. Under the contracts the appellant ran the risk of penalties if were below specifications. It is not out of place to mention that the LC had been opened in the bank by the appellant. The appellant had in all cases raised the invoices for sale of goods on the buyers and had in turn received the remittances for these exported goods in their own name. The BRCs had also been issued to them. It is the appellant who had complied with the other laws like FEMA.*

*8. The appellant did not have lease of land at Paradip Port. Therefore, the appellant could not export goods through Paradip Port. In order to facilitate the appellant in the export of goods, M/s. Liberty Marine Syndicate Pvt. & M/s. Resources International Pvt. Ltd. acted as third party exporters which is in acceptable proposition under law. In other words, except for the fact that names of M/s. Liberty Marine Syndicate Pvt. & M/s. Resources International Pvt. Ltd. are appearing on the shipping bills, the appellant in all aspects is the exporter of goods.”*

7. The appeal of the Assessee was accordingly allowed and the Assessee was held entitled to the refund claimed.

8. The Department then went in appeal before the CESTAT. By the impugned order dated 20<sup>th</sup> July, 2017 while setting aside the order of

the Commissioner (Appeals), the CESTAT held that under Section 2(19) of the Customs Act, 1962 (Act) and the term 'exporter' under Section 2(20) of the Act, it was M/s. Liberty and M/s. RITL whose names were mentioned in the shipping bills, who could be considered to be the exporters and not the Assessee.

9. The expressions 'entry', "export goods" and 'exporter' as defined in Sections 2(16), 2(19) and 2(20) of the Act read as under:

*"2(16) "entry", in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84;*

*2(19) "export goods" means any goods which are to be taken out of India to a place outside India;*

*2(20) "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter;"*

10. It is seen that the aforesaid definitions are inclusive in nature. In other words, under Section 2(20) of the Act the term 'exporter' would include any owner or any person holding himself out to be the exporter. In other words, the person holding out to be the exporter (in this case M/s. Liberty and M/s. RIPL) need not be the exporter. It could well include an entity like the present Assessee which in fact entered into the agreement pursuant to which the export took place.

11. Added to this fact is the finding of the Commissioner (Appeals), that for the limited purposes of facilitating the export, separate agreements were entered into by the Appellant with M/s. Liberty and M/s. RIPL whose limited role was to file the shipping bills for the purposes of export in their names. It has been being factually further

found by the Commissioner (Appeals) that the entire cost of effecting the export was borne by the Appellant. It ran the risk of penalties if the goods were not exported or if there was delay in export or the goods were below the specifications. Importantly “the LC had been opened with the Bank by the Appellant”. The invoices of sale of goods was raised by the Appellant-Assessee on the buyers and it is the Assessee which had remittances in its own name pursuant to the exports made.

12. All the above factors go to show that it was in fact the Assessee which was the real exporter of the goods for the purpose of Section 2(20) of the Act.

13. Consequently, the Court is unable to concur with the view of the Tribunal that in the present case the Assessee was not entitled to the refunds since it was not the exporter.

14. Accordingly, the questions framed are answered in favour of the Assessee and against the Department. The impugned order of the Tribunal is set aside and the order of the Commissioner (Appeals) is restored to file. The refunds will now be made by the Department of the amounts claimed by the Assessee within a period of eight weeks from today in accordance with the Rules.

15. The appeal is disposed of in the above terms.

**(Dr. S. Muralidhar)**  
**Chief Justice**

**(M. S. Raman)**  
**Judge**