

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 232 of 2012

(Arising out of Order-in-Appeal No. 14/2012 (MST) dated 13.01.2012 passed by the Commissioner of Central Excise and Service Tax (Appeals), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Core Minerals

5th Floor, Tower 2, TVH-Belicia Towers,
94, MRC Nagar, Chennai – 600 028

: Appellant

VERSUS

The Commissioner of Service Tax

M.H.U. Complex, 692, Anna Salai, Nandanam,
Chennai – 600 035

: Respondent

APPEARANCE:

Shri M. Karthikeyan, Learned Advocate for the Appellant

Smt. Sridevi Taritla, Learned Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40071 / 2023

DATE OF HEARING: 15.02.2023

DATE OF DECISION: 22.02.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the assessee against the Order-in-Appeal No. 14/2012 (MST) dated 13.01.2012 passed by the Commissioner of Central Excise and Service Tax (Appeals), Chennai.

2. It is the case of the assessee that it was providing service of Transport of Goods by Road, Mining Services, Renting of Immovable Properties and Supply of Tangible Goods Service. The appellant had filed a refund claim for the period from 01.04.2009 to 30.06.2009 under

Notification No. 17/2009-S.T. dated 07.07.2009, which specifically provided for exemption of specified taxable services used for export of goods by an exporter.

3. A Show Cause Notice dated 24.02.2011 was issued by the authority proposing to reject the refund claim on the grounds that: (i) the amount pertaining to two shipping bills was ineligible on account of the same being hit by the period of limitation, (ii) the amount claimed towards GTA services was ineligible as the invoices pertaining thereto did not contain requisite information as per Notification No. 17/2009 *ibid.*, (iii) certain amount was claimed based only on photocopies of the invoices and (iv) amount pertaining to terminal charges and security charges were ineligible for refund as the same were not specified in the list of qualified input services under Notification No. 41/2007 dated 06.10.2007.

4. The Adjudicating Authority, after due process, vide Order-in-Original No. 21/2011 dated 10.06.2011 sanctioned a partial refund while rejecting an amount of Rs.40,44,376/- and against the said rejection, the appellant preferred first appeal. The First Appellate Authority, after hearing, granted a partial refund. The First Appellate Authority has held that wherever the appellant had produced original invoices with regard to GTA and Port Services which were duly verified by the Department, the appellant would be eligible for refund meaning thereby that wherever photocopy of invoices was produced, no refund was to be granted. With regard to the time-bar aspect, however, he had directed the Department to look into the same while sanctioning the refund. He had made it clear that the appellant was eligible for refund wherever the claim was made within one year, as specified under Section 11B of the Central Excise Act, 1944. Not satisfied with the above order of the First Appellate Authority, the appellant has come in appeal before this forum.

5. The appellant's only grievance, therefore that is to be addressed by us is: whether the direction of the First Appellate Authority to deny the refund for non-submission of original invoices is correct?

6. Shri M. Karthikeyan, Learned Advocate appearing for the appellant, would submit at the outset that the order of the First Appellate Authority was clearly beyond the scope of the very Show Cause Notice. He further invited our attention to Notification No. 17/2009 to urge that even in the said Notification it is nowhere prescribed as to the production of original input service invoices.

7. *Per contra*, Smt. Sridevi Taritla, Learned Additional Commissioner for the Revenue, relied on the findings of the lower authorities.

8. We have anxiously considered the rival contentions and we have also gone through the Notification No. 17/2009 dated 07.07.2009, placed on record.

9. The explanation under the proviso in the said Notification at (g) prescribes as under:-

*"(g) for each taxable service specified in column (3) of the said Table, the exporter shall **enclose all the documents** specified in corresponding entry in column (4) of the said Table and the Form A-I with the claim of refund;"*

[Emphasized by us for clarity]

10. From the above, it is clear that the Notification only requires the production of documents and it is not in dispute that the appellant had indeed produced the documents (though a few photocopy of some invoices). Thus, we are of the clear view that the appellant has complied with the requirement of the Notification under which it had claimed the refund. The view, therefore, of the lower authorities that the refund cannot be granted for

non-production of original documents / export invoices is not a requirement of the said subordinate legislation.

11. Accordingly, we are of the view that the authorities below have erred in rejecting the refund claim, for which reason the impugned order, to the extent it is challenged before us, cannot be sustained and consequently, the same is set aside.

12. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **22.02.2023**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sdd