

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76962 of 2019

(Arising out of Order-in-Appeal No.134-135/KOL-North/Kol/2019 Dated 30/04/2019
passed by Commissioner of CGST & CX (Appeal-I), Kolkata.

M/s. Kalpataru Agroforest Enterprises Pvt. Ltd.

(22, Stephen House, 4E, BBD Bagh, Kolkata-700001)

Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

With

Service Tax Appeal No. 76964 of 2019

(Arising out of Order-in-Appeal No.134-135/KOL-North/Kol/2019 Dated 30/04/2019
passed by Commissioner of CGST & CX (Appeal-I), Kolkata.

M/s. Kalpataru Agroforest Enterprises Pvt. Ltd.

(22, Stephen House, 4E, BBD Bagh, Kolkata-700001)

Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

None for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75625-75626/2023

Date of Hearing : 12 June 2023
Date of Decision : 12 June 2023

PER R. MURALIDHAR

The appellant has exported fly ash to Nepal and claimed refund claim of Service Tax paid by them for the freight charges incurred in these exports. The Appellants have filed refund claim for Rs. 68,842/- (Appeal No. ST/76964/2019) & Rs.70,096/- (Appeal No. ST/76962/2019). Both the authorities have rejected the refund claim on the ground that the appellant has received the reimbursement for the

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Railway Freight from the overseas importer. Being aggrieved by the same, the Appellants have filed the present Appeals before the Tribunal.

2. No one appeared on behalf of the Appellants.
3. Perused the documents with the help of Learned AR.
4. He points out that the Appellant has realized the total value from the overseas importer which is inclusive of the freight charges paid to the Railways on account of these exports. However, what is being claimed as refund is the Service Tax paid by the Appellant on such freight charges. It is seen from the records that Appellant has not sought any reimbursement or payment from the overseas importer for the Service Tax paid by him. Therefore, in these two cases, it is clear that the Appellant has borne the Service Tax portion paid by them.
5. Considering the above factual details, I feel that the Lower Authorities have erred in rejecting the refund claim on the ground that Appellant has received reimbursement from the overseas importer. As the Appellant has borne the Service Tax component himself, I hold that he is entitled to get refund of Rs.68,842/- in Appeal No. ST/76964/2019 and Rs. 70,096/-, in Appeal No. ST/76962/2019.
6. Appeals are allowed thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja