

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Service Tax Appeal No.77419 of 2018**

(Arising out of Order-in-Appeal No.62/ST/RKL-GST/2018 dated 23.03.2018 passed by Commissioner(Appeals), GST, CX & Customs, Bhubaneswar.)

**M/s. Kashvi Power & Steel Private Limited**

(At/PO: Madhapur, Dist: Keonjhar, Odisha, Pin-758001.)

**...Appellant**

*VERSUS*

**Commissioner of CGST & CX, Rourkela Commissionerate**

**.....Respondent**

(KK-42, Civil Township, Rourkela-769012.)

**APPEARANCE**

Shri Tarun Chatterjee, Advocate & Ms.Vineeta Pandey, Company Secretary  
for the Appellant (s)

Shri A.Roy, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)**

**FINAL ORDER NO. 75487/2022**

DATE OF HEARING : 20 July 2022  
DATE OF DECISION : 23 August 2022

**P.K.CHOUDHARY :**

The facts of the case in brief are that vide Order-in-Original dated 17.03.2016, the Assistant Commissioner, Central Excise, Customs and Service Tax, Keonjhar Division allowed the exemption by way of sanctioning an amount of Rs.58,74,409/- as refund of Service Tax paid on the taxable specified service for export of goods made under Bills of Export claimed by the Appellant assessee. Pursuant to the Review Order dated 29.08.2016, the Department filed an Appeal before the Ld.Commissioner(Appeals) on the ground that the Adjudicating authority had erred in sanctioning refund of Service Tax amounting to Rs.55,92,035/- only against the Bill No.P1194/14-15 dated 16.08.2014 issued by the traffic department, Paradeep Port Trust for the full year

i.e. from 09.04.2014 to 08.03.2015, which is beyond the coverage period of the last month of export i.e. August 2014. The Ld.Commissioner(Appeals) allowed the Appeal filed by the department and modified the Order-in-Original on the ground that the Appellant assessee is eligible for refund of Service Tax paid on pro-rata basis and is not entitled to Rs.32,62,020/-. In short, Rs.26,12,389/- has been considered as allowable by the Ld.Commissioner(Appeals) out of total claim of Rs.58,74,409/-. Hence the present Appeal before the Tribunal.

2. The Ld.Advocate, appearing on behalf of the Appellant assessee submitted that a claim for refund of Service Tax paid on specified taxable service received and used for export of goods under Bill of Exports amounting to Rs.58,83,482/- under Notification No.41/2012-ST dated 29.06.2012 in Form-A-1 was filed on 22.07.2015. It is his submission that the Ld.Adjudicating authority after detailed verification of the documents as submitted by the Appellant assessee in reply to the Show Cause Notice, found that barring the credit in the few input invoices amounting to Rs.9,073/-, the refund claim of Rs.58,74,489/- fulfilled the conditions/requirements as prescribed in the Notification No.41/2012-ST (supra) and the said amount was found to be admissible for refund. Accordingly, the Appellant assessee was granted refund. The Ld.Advocate further submitted that the Ld.Commissioner(Appeals) has rejected a sum of Rs.32,62,020/- on the ground that the same was not a condition prescribed in the Notification No.41/2012-ST (supra). The Ld.Advocate also submitted that Notification No.41/2012-ST (supra) is a beneficial Notification for refund of Service Tax paid on 'specified service', which is received by the exporter and used for export of goods. It is his submission that there is no dispute regarding the use of 'specified service' for export and payment of Service Tax thereon, hence under the circumstances the rejection of refund is totally unwarranted, unjust and uncalled for.

3. The Ld.Authorized Representative for the Respondent Revenue justified the impugned order and reiterated the department's grounds of appeal before the first appellate authority.

4. Heard both sides and perused the appeal records.

5. On perusal of records, I find that the Ld.Assistant Commissioner of Central Excise, Customs & Service Tax has passed a detailed order incorporating the shipping Bill No., date, name of the service provider, invoice No., date, etc.. In short, he has gone through all the documents and has discussed the conditions of the Notification or eligibility of the refund claim and after making a point-wise observation, has finally sanctioned the refund. The Ld.Commissioner(Appeals) has allowed the Appeal before him mainly on the ground that the Adjudicating authority has not taken into consideration the allegation made in Para 4.0 of the Show Cause Notice properly while considering the refund claim of Rs.55,92,035/- and the Appellant assessee is eligible to refund on pro-rata basis for the period (09.04.2014 to 05.08.2014) during which export is made by the Appellant assessee. On perusal of the reply dated 29.12.2015 to the Show Cause Notice, it reveals that the Appellant assessee has submitted detailed explanation on Para 4.4 to Para 4.4.6 which is part of the Appeal Paper book from Pages 43-48.

6. On bare perusal of the Notification and the amendment thereof makes it abundantly clear that any service which is being received by an exporter of goods and are used exclusively for the export of goods and the Service Tax thereof has been paid, the refunds can be claimed provided that the services are rendered at a place which is neither the factory, nor any other place or premises of production or manufacture. This perusal makes it abundantly clear that the question of the service being rendered pre or post export has no significance.

7. It has also been observed that there is no dispute as to the fact that the goods were exported by the Appellant assessee and the spot in respect of which licence fee has been paid. Paradeep Port Trust has been allotted only for export purposes. Once it is not in dispute that the services are specified for refund purposes and since Service Tax was actually paid on 'specified service' pertaining to export activity, in terms of particular scheme of refund under Notification No.41/2012-ST (supra) as amended with clarifications, the exporter is eligible for

refund. It is my considered view that the order passed by the Ld.Commissioner(Appeals) cannot be sustained as substantive benefit should not be denied to an assessee if the conditions are fulfilled. It would not be out of place to mention that the sole intention of the Government to introduce this rebate schemes is to promote Indian exporters to enjoy a level playing field and to compete with the exporters of other countries in the global market. Further, it has never been the intention of the Government to export taxes hence after much deliberation these schemes have been notified and the refund claims if rejected on such grounds, will defeat the very purpose of rebate schemes.

8. In view of the above discussion, the impugned order is set aside and the order passed by the Ld.Adjudicating authority stands restored. Appeal is thus allowed with consequential relief, as per law.

(Order pronounced in the open court on 23 August 2022.)

Sd/  
**(P.K.CHOUDHARY)**  
**MEMBER (JUDICIAL)**

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