

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 77962 of 2018

(Arising out of Order-in-Appeal No.218/S. Tax-II/Kol/2018 Dated 16.03.2018 passed by Commissioner of CGST, Howrah Commissionerate, Kolkata)

M/s. Logan Minerals Pvt. Ltd.

(224A, A. J. C. Bose, Krishna Building, Suit No. 904 & 905, Kolkata-700017)

Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate

(GST Bhawan (8th Floor), 180, Shantipally, Kolkata-700107)

Respondent

APPEARANCE :

Mr. Abhishek Jalan, Advocate for the Appellant

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

CORAM:

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

FINAL ORDER NO.75371/2023

Date of Hearing : 11 May 2023

Date of Decision : 11 May 2023

PER R. MURALIDHAR

The Appellant has exported Iron Ore and other products during the period 07/7/2015 to 19/3/2016 in terms of Notification No.41/2012-ST dated 29/6/2012. They claimed the refund of Rs.6,28,956/- which was sanctioned by the Adjudicating Authority vide OIO No. R/87/ST-II/Ballygunge Division/Kol/2016-17 dated 31.01.2017. The Department filed an Appeal before the Commissioner (Appeals) on the ground that refund Rs.3,81,213/- should not have granted on the main ground that the claim does not fulfill the conditions of Para 3(1)(c) of this Notification. The Commissioner (Appeals) allowed their Appeal. Being aggrieved by the impugned OIA, the Appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellant submits that the issue is no more *res-integra*. He submits that the very issue was taken up and decided by this Tribunal in the case of The Tinsplate Company of India Limited Vs. Commr. of CGST & CX, Kolkata

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North Commissionerate vide Final Order No.75514-75517/2022 dated 06 September 2022. Relying on this case law, he submits that the present Appeal may be allowed.

3. The Learned AR reiterates the submissions of the lower Appellate Authority but does not dispute that the issue is covered by the case cited by the Learned Advocate.

4. Heard both sides.

5. This Tribunal in the case of The Tinsplate Company of India Limited cited supra has gone through the issue and has held as under:-

5. I find that the Revenue had preferred the appeals before the Ld. Commissioner (Appeals) on the following grounds, which have been decided in favour of the Revenue:

1. That the refund claims did not fulfil the conditions under clause 1(c) of the Notification inasmuch as that individual shipping bills have to be considered while arriving at the amount of rebate to be sanctioned under Para 3 of the Notification and for deciding the eligibility criteria of the shipping bills for claiming rebate under para 3 of the Notification.

2. That the refund claim which was less than Rs. 500/- could not be allowed as per Paragraph 3(j) of the Notification.

3. That the pre-inspection of excisable goods had been undertaken inside the manufacturer's plant and such service had not been provided beyond the 'Place of Removal' and was therefore, in violation of Circular No. 999/6/2015-CX dated 28th February 2015.

6. I find that issue No. 1 has already been decided by this Tribunal vide FO/77622-77631/2017 dated 30th October 2017, wherein it was held that from a bare reading of the Notification, it is amply clear that rebate may be claimed on the service tax actually paid on any specified service used for export of goods as per the procedure specified under Paragraphs 2 and 3 of the Notification. Further, on perusal of Para 1(c), a claim may contain one shipping bill or more than one shipping bill, however, no restriction has been imposed on the number of shipping bills to be covered in each claim. The only requirement is that the details of shipping bills vis-a-vis the details of goods exported and details of specified services used for such export have to be furnished.

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Further, it was observed that in Form A-1, details of shipping bill/bill of export, details of goods exported, details of specified services used for export of goods, documents evidencing payment of service tax and total amount of service tax paid and claimed as rebate have to be furnished. Therefore, the claim is not shipping bill wise only that the details have to be furnished separately for each shipping bill. [emphasis supplied]

7. I find that Para 3 of the Notification does not impose any condition which requires the claims to be filed shipping bill wise. Further, the total amount of service tax paid which is claimed as rebate has to be shown in figure and as a percentage of total FOB value in shipping bill. This goes on to show that it is not shipping bill specific when more than one shipping bills are involved in a claim. Therefore, there is no requirement to determine FOB value shipping bill wise to determine the formula under Para 1(c) or Para 3 of the Notification. On reading Para 1 in conjunction with para 3, it is evident that rebate under Para 3 may be claimed for more than one shipping bill in a single claim without going for filing separate claim for each shipping bill. Accordingly, issue No. 1 is decided in favour of the Appellants. [emphasis supplied]

6. Respectfully following the above decision, I allow the present Appeal along with consequential relief, if any.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja