

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 32 Of 2012**

[Arising out of OIA No. 163-164/ST/Apl/CHD-II/2011 dated 05.10.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-I]

**M/s Nahar Spinning Mills Ltd.**

**: Appellant (s)**

Village Jalapur, Lalru, P.O. Dappar, Distt. Mohali

Vs

**Commissioner of Central Excise Chandigarh-I : Respondent (s)**

C.R. Building, Sector 17-C, Chandigarh

**with**

**Service Tax Appeal No. 33 Of 2012**

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**M/s Nahar Spinning Mills Ltd.**

**: Appellant (s)**

Village Jalapur, Lalru, P.O. Dappar, Distt. Mohali

Vs

**Commissioner of Central Excise Chandigarh-I : Respondent (s)**

C.R. Building, Sector 17-C, Chandigarh

APPEARANCE:

Shri Surjeet Bhadoo, Shri Veer Singh, Advocates for the Appellant  
Ms. Shivani, DR for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60499-60500/2023**

Date of Hearing:08.09.2023

Date of Decision:13.10.2023

**Per : S. S. GARG**

These two appeals are directed against the impugned order dated 05.10.2011 passed by the Commissioner (Appeals), Chandigarh-I whereby the Ld. Commissioner (Appeals) has rejected the appeals of the appellant. As the issues involved in both the appeals are identical, therefore, both the appeals are taken up

together for discussion and disposal, the details of which are given herein below in tabular form:-

| S. NO. | APPEAL NO. | NOTIFICATION NO             | ISSUE, PERIOD & AMOUNT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------|------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | ST/32/2012 | 17/2009-ST dated 07.07.2009 | <p>Jan 2009 to March, 2009<br/>Refund Amount Rs. 5,02,779/-<br/>Claim filed on 30.12.2019</p> <p><b>CHA-SERVICES</b><br/>CHA-invoices whose name is not mentioned in shipping Bills.</p> <p><b>FOREIGN BASED COMMISISON AGENT</b><br/>No Agreement provided for Foreign Commission Agent.</p> <p><b>TRANSPORT OF GOODS</b><br/>Details of Exporter's invoice are not mentioned in lorry receipt.</p>                                                                                                                                                                                                                                                               |
| 2.     | ST/33/2012 | 17/2009-ST dated 07.07.2009 | <p>April 2009 to June, 2009<br/>Refund Amount Rs. 3,85,993/-</p> <p><b>TRANSPORT OF GOODS BY ROAD</b><br/>Invoice of M/s Transmarinus, lorry receipt &amp; transporter. Lorry receipt does not mention details of Exporter invoice.</p> <p><b>TRANSPORT OF GOODS BY RAIL</b><br/>For 3 services providers no proof of payment of Service Tax furnished-same for lorry receipt.</p> <p><b>CHA SERVICE</b><br/>Name of CHA in shipping bills is different form invoices of CHA submitted for refund-terminal handling not specified service details not contained in invoices.</p> <p><b>FOREIGN COMMISSION AGENT</b><br/>Proof of Actual payment not submitted.</p> |

2. Briefly the facts of the case are that the appellant are manufacturer and exporter of 100% Cotton Yarn and are registered with the Service Tax Department under the category of "Transport of goods by road" and "Business Auxiliary Service". The Appellant is clearing its final product for export and utilizing various services

during the course of export on payment of service tax. The appellant filed two refund claims as cited (supra) in respect of service tax paid on invoices of service providers for Custom House Agent services, Export Commission paid to foreign Agent, Transport of Goods by road from Factory to ICD and Transport of Goods by Rail from ICD to Port of Export used for export of goods for the period cited above in the table.

- Thereafter, Revenue issued Show Cause Notices proposing to rejection of the refund claims on various grounds as stated in the table above.
- The appellant filed a detailed reply to the show cause notices and after following due process, the original authority vide order dated 06.07.2010 rejected the refund claim of the appellant.
- Aggrieved by the said order, the appellant preferred appeals before the Ld. Commissioner (Appeals) who upheld the order-in-original.
- Hence, the present appeals.

3. Ld. Counsel appearing for the appellant submitted that the impugned orders qua rejecting the refund of service tax paid to various persons for facilitating the export of goods is not sustainable in law as the same has been passed without properly appreciating the requirement of Notification No. 41/2007-ST dated 06.10.2007. He further submits that the present issues have been decided by this Tribunal in favour of the appellant in the case of M/s Winsome Yarns Limited (Unit-III) vs. CCE, Chandigarh vide Final Order No. 60910-60912 dated 09.05.2017 and in the case of M/s Vardhman Spinning & General Mills (Unit-I) vs. CCE, Chandigarh-II vide Final Order No. 60709-60711 of 2017 dated 27.04.2017.

4. On the other hand, the Ld. DR reiterated the findings in the impugned order.

5. Now, we will take up all the services on which refund has been rejected.

**(i) CHA Services:-**

In this regard, the service tax paid on CHA Services was rejected on the ground that the Appellant provided the documents in the shape of Expense Vouchers/Debit Notes/Invoices issued by M/s Baid International Services, M/s NSL Agency (India) Pvt. Ltd., M/s Orchid Shipping Pvt. Ltd., and M/s Transmarines, whereas the services are provided by M/s United Custom House Agency Pvt Ltd., M/s Speed Impex, M/s R.N. Orange Overseas Pvt. Ltd. and M/s Reliable Travel & Cargo Ltd. It is pertinent to mention here that the Revenue has not disputed the availment of services for affecting the export.

Further, the Ld. Counsel has submitted that in order to facilitate the export, the appellant appointed M/s United Custom House Agency Pvt Ltd. and other CHAs to act as a pure agent of the Appellant during the course of export. Such payments were later reimbursed by the appellant to the CHA. He further submitted that the CHA's enters into a contract of composite services which consist of various services which are related to export. Therefore, the CHA is covered within the scope of service provider and invoices/debit notes issued by them are valid documents under Rule 4A of the Service Tax Rules.

Further, we find that in this case the Customs House Agent has entered into agreement/contract with other parties to provide the said services on their behalf and the copies of agreements between service providers and the Custom House Agent and the certificates from the CHAS for acting as pure agents have been furnished by the appellant

but the same were not considered by the Ld. Commissioner (Appeals) while rejecting the refund claim.

In view of these facts, we hold that the appellants are entitled to refund of service tax paid on CHA Services subject to verification by lower authorities.

**(ii) Foreign Based Commission Agent:-**

As regards the refund of service tax paid to the commission agent, the Ld. Commissioner has rejected the refund on the ground that no agreement/contract was provided showing the payment of commission to foreign agent.

In this regard, we note that as per the Notification No. 41/2007-ST dated 06.10.2007, it is not necessary that the exporter must provide the agreement or contract, rather any other document showing the payment of commission to foreign agent is sufficient to claim refund of service tax.

Further, we find that in this case, the appellant has submitted the copy of confirmation of contract which is nothing but acceptance of agreement to sell goods to buyer by the appellant as commission agent. The confirmation document specifies the percentage of commission amount which creates indefeasible right of the commission agent.

Ld. Commissioner failed to consider the confirmation of contract which has been produced by the appellant.

In view of this, we are of the view that the condition laid down in the notification are satisfied and the appellant is entitled to get the refund on this service subject to verification by the lower authorities.

**(iii) Transport of Goods by Road and By Rail:-**

The Ld. Commissioner has rejected the refund of service tax paid on transport of goods by Road and Rail on the ground that the details of exporter invoices are not mentioned in lorry receipts and the appellant has not provided any proof of payment of service tax.

Ld. Counsel for the appellant submitted that the debit notes which are issued by the service providers in lieu of their services, is a prevalent practice in trade, wherever commercial accounts are settled between the parties, debit notes are issued instead of invoices. He further submits that the debit notes contained requisite particulars as specified under Rule 4A of Service Tax Rules, 1994 such as, the kinds of service provided, value of taxable service, amount of Service Tax, registration number and address of service provider etc, and therefore are eligible document and are valid in law. He further submitted that CBEC has issued Circular No. 106/9/2008 dated 11.12.2008 so as to facilitate the sanction of refund under Notification 41/2007-ST dated 06.10.2007 and as per clarification issued by CBEC Challan, invoices, bills are sufficient to prove the payment of service tax.

Further, it has also been clarified by the CBEC Vide Circular No. 112/06/2009-ST dated 12.03.2009 that the certified copy of the documents should be accepted in order to facilitate the refund.

Further, we find that the Tribunal in the case of CCE, Indore vs. Grasim Industries Ltd. reported as 2011 TIOL 1660 CESTAT DEL has held that the "debit notes" contain all the details which are required to be mentioned in the invoice and except for its name. Therefore, it can be treated as equivalent to invoice. The relevant findings of the Tribunal are as follow:

"4. The only point of dispute in this case is as to whether the Respondent could take Cenvat credit of service tax paid in respect of input services received, on the basis of documents called 'debit notes' issued by service provider. The

department's objection is that debit note is not the document prescribed in Rule 9 of the Cenvat Credit Rules, 2004 for availing Cenvat credit. However, there is a clear finding in the impugned order that it is not disputed that document called 'debit note', contain the details like the name and registration number of the service provider, the nature of the service provided, service tax payable, service tax charged etc, or in other words all the details which are required to be mentioned in the invoice. Since the "debit notes" contain all the details which are required to be mentioned in the invoice and except for its name it can be treated as invoice, in my view, the Commissioner (Appeals)'s order permitting Cenvat credit on the basis of debit note is correct.

In view of these facts, we are of the view that the refund on this ground has wrongly been rejected and the appellants are entitled to refund of service tax paid on the impugned services subject to verification by the lower authorities.

6. In view of above, the appeals are allowed by way of remand, directing the original authorities to verify the documents and thereafter, allow the refunds.

*(Pronounced on 13.10.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.