

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

REGIONAL BENCH – COURT NO.2

Service Tax Miscellaneous Application (AE) No.75296 of 2022
&
Service Tax Appeal No.75675 of 2018

(Arising out of Order-in-Appeal No.289/S.Tax I/Kol/2017 dated 31.10.2017 passed by Commissioner (Appeals) of CGST & Excise, Kolkata)

M/s Pragati Agri Products Limited

55/1-B, Strand Road, 2nd Floor, Kolkata-700006

Appellant

VERSUS

Commissioner of CGST & Excise, Kolkata North

180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

Appearance:

Shri Akshat Agarwal, Advocate for the Appellant

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

MISC.ORDER NO.75270/2022
FINAL ORDER NO.75518/2022

DATE OF E-HEARING : 07.09.2022

DATE OF DECISION : 07.09.2022

PER P.K.CHOUDHARY :

This is an application filed by the appellant seeking admission to file additional grounds before this Tribunal for the purposes of final hearing of the appeal.

2. In view of the reasons as explained by the Ld.Advocate for the appellant, the application for admission of additional grounds is allowed. Now, with the consent of both sides, the appeal itself is taken up for final disposal as the issue involved in this appeal lies in a narrow compass.

3. The present appeal has been filed by the appellant against the impugned order-in-appeal, whereby the Ld.Commissioner (Appeals) has allowed the Department's Appeal by disallowing Rs.70,980/-, which was sanctioned by the adjudicating authority.

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4. Heard both sides and perused the appeal records.

5. I find that there are two issues in the present appeals :-

(a) the place of removal for export of excisable goods and utilization of taxable services beyond the place of removal are the criteria for determination of specified services and admissibility of refund of such specified services used for export of goods in terms of the proviso (a) and Explanation (A)(i) of Notification No.41/2012-ST dated 29.06.2012 ;

(b) though the appellant had shown that the total export value was of US\$ 66,060.00. Out of that, BRC was submitted for US\$ 9950.00 only and accordingly, the Ld.Commissioner (Appeals) allowed the proportionate rebate amounting to Rs.24,298/-.

6. Regarding issue No.(a), I find that the said issue is no more *res-integra* and the same is a settled proposition of law. The refund in respect of services availed by them at the port of export is available to the exporter. Notification No.41/2012-ST (supra) has been given retrospective effect by amendment Notification No.01/2016-ST dated 3rd February, 2016.

7. In view of the Notifications as have been brought to my notice as on day and have simultaneously being conceded by the Department, it is held that all these Notifications were not available to the adjudicating authorities below. Notification No.41/2012 which reads as follows:-

(a) The rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation – For the purposes of this notification,-

(A) “Specified services” means-

(i) In the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;

(ii) In the case of goods other than (i) above, taxable services used for the export of said goods;

But the same stands amended by Notification No.01/2016-ST dated 3rd February, 2016, which reads as follows:-

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- (a) The rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation- For the purposes of this notification –

(A)“Specified services” means –

[(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;]

(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;”

Further vide letter DOF No.334/8/2016-TRU dated 29.02.2016, the Department of Revenue, Ministry of Finance has clarified as:-

Retrospective effect to Notification No.01/2016-ST :

"Notification No.41/2012-ST, dated the 20th June, 2012 was amended vide Notification No.01/2016-ST dated 3rd February, 2016 so as to, inter-alia, allow refund or service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods. The said amendment is being given retrospective effect from the date of application of the parent notification, i.e., from the date of application of the parent notification, i.e., from 01.07.2012. Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected in absence of amendment carried out vide Notification No.01/2016-ST dated 3rd February, 2016. The said change was clarified in terms of the amendment in Section 93A of the Finance Act, 1994."

8. I find that when the present matter came before the Ld.Commissioner (Appeals), he had no occasion to verify the BRC, which was received by the assessee as the impugned order was passed *ex-parte*. Accordingly, in view of the overall facts and circumstances of the case and in view of the subsequent amendments, which have been given the retrospective effect and the details as submitted by the appellant, which entitled the appellant for the rebate, the order in hand

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is hereby set aside and the appeal is allowed by way of remand to the Ld.Commissioner (Appeals), who could decide both the issues in view of the above detailed observations.

9. As a result, the appeal filed by the appellant is allowed by way of remand.

Dictated and pronounced in the open Court.

Sd/

(P.K.Choudhary)
Member (Judicial)

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