

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75676 of 2018

(Arising out of Order-in-Appeal No.280/S.Tax-I/KOL/2017 dated 30.10.2017 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Pragati Agri Products Private Limited

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

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

.....Respondent

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

APPEARANCE

Shri Akshat Agarwal, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75003/2023

DATE OF HEARING : 12 January 2023

DATE OF DECISION : 12 January 2023

P.K.CHOUDHARY :

The present Appeal has been filed by the Appellant assailing the Order-in-Appeal No.280/S.Tax-I/KOL/2017 dated 30.10.2017 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata, relevant particulars of which are as under:-

Sl. No. As per Table-II of O-in- O	Shipping Bill No. & Date	Name of the Service provider	Debit Note No. & date	Amount of S. Tax in Rs.)	Reason of Disallowance
1	2	3	4	5	6
86	3844336 Dt.14.07.2014	Marine Container Services (I) Pvt. Ltd.	13462 Dt.18.07.2014	24,293.00	i.It is debit note.
89	3866520 Dt. 15.07.2014	Do	13468 Dt. 21.07.2014	18,210.00	ii.Debit note is not a proper document as per

92	3881426 dt 15.07.2014	Do	13492 dt. 25.07.2014	14,944.00	provisions of Rule 4A of Service Tax Rules, 1994 and thus refund on them is inadmissible under Notfn. No. 41/2012-ST dated 29.06.2012
115	4215346 dt. 02.08.2014	Do	13575 dt. 07.08.2014	9,600.00	
120	4238953 dt. 04.08.2014	Do	13614 dt. 13.10.2014	14,948.00	
			Total	81,995.00	

2. The Ld.Advocate appearing on behalf of the Appellant submits that the documents in dispute duly fulfilled all the necessary conditions as are required to be provided. He also produced a Certificate from M/s. Marine Containter Services (India) Pvt.Ltd. dated 26.10.2022 confirming the payment and received against debit notes issued. The confirmation letter is reproduced below:-

"Date: 26/10/2022

To
The Manager
Pragati Agri Products Pvt. Ltd.,

Ref: Letter dated 25/10/2022.

Sub:- Confirmation of payment received against note issued.

Dear Sir,

As per your letter dated 25/10/2022 we Marine Container Services India Pvt Ltd would like to confirm you that we have received the below payment from Pragati Agri Products Pvt. Ltd. and deposited services tax on that month.

Chq. No. 974966 Rs. 665144 Inv No. 13468
Chq No. 974974 Rs. 585932 Inv No. 13492
Chq No. 974994 Rs. 379792 Inv No. 13575
Chq No. 975020 Rs. 600547 Inv No. 13614"

3. The Ld.Advocate further submits that this Certificate has not been issued for the first time by M/s. Marine Containter Services (India) Pvt.Ltd. On an earlier occasion similar Certificate was issued which was submitted along with reply to the Show Cause Notice dated

22.12.2015. Since copy of that particular Certificate was not available with the Appellant, they had again obtained the same from M/s. Marine Containter Services (India) Pvt.Ltd. after much pursuation. He relies upon the following decisions in support of his submission.

- (a) Shree Cement Ltd. Vs. CCE, Jaipur-II
[2013 (3) TMI 79-CESTAT NEW DELHI]
- (b) SRF Ltd. v. CCE, Jaipur-I
[2015 (9) TMI 1281- CESTAT NEW DELHI]

4. It is submitted by the Ld.Authorized Representative for the Department that the documents submitted in support of the claim shows that all copies are not duly signed by the authorized person and in the column of name and address of the persons receiving taxable service, the name of M/s. Vas Logistics and Services, Kolkata agent M/s. Pragati Agri Products Pvt.Ltd., the Appellant herein is mentioned. It is his submission that accordingly the debit notes do not satisfy the condition of Rule 4A of the Rules and therefore cannot be considered as a valid Service Tax payment document at all.

5. Heard both sides and perused the Appeal records.

6. The dispute in the present Appeal is relating to the refund sanctioned on the basis of debit notes issued by M/s. Marine Containter Services (India) Pvt.Ltd., which is alleged to be improper documents and are accordingly inadmissible under Notification No.41/2012-ST dated 29.03.2012 read with Rule 4A(1) of the Service Tax Rules, 1994. In order to appreciate the legal and factual position, Rule 4A of the Service Tax Rules, 1994 is reproduced :-

“RULE [4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan. — (1) Every person providing taxable service shall [, not later than [thirty days] from the date of [completion of] such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier,] issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him [in respect of such taxable service] [provided or agreed to be provided] and such invoice, bill or,

as the case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and the registration number of such person;
- (ii) the name and address of the person receiving taxable service;
- [(iii) description and value of taxable service provided or agreed to be provided; and]
- (iv) the service tax payable thereon :"

7. I find that Notification No.41/2012-ST dated 29.03.2012 stipulates the manner in which the rebate shall be claimed. On going through the Notification it is clear that nomenclature of the documents is not necessary but the said document should fulfill all the necessary details as required. In the present case, the debit notes duly fulfilled all the necessary conditions as are required to be provided, but the fact remains that the said documents are not invoices, bills or challans, but are debit notes.

8. I find that the issue is no more *res integra* and the Tribunal in the case of SRF Ltd. (supra) has held as under:-

"9. What remains to consider is the issue whether debit notes are proper documents upon which refund can be claimed. The documents reveal that they contain all the details as required under Rule 4A of the Service Tax Rules, 1994. The purpose sought to be served by specifying the details that are to be contained in the document issued while rendering service is to provide information regarding the registration number and details of service provider details, details of service recipient, description and value of taxable service, and the service tax payable thereon. If the documents provide these necessary particulars, merely because the documents are debit notes the refund cannot be denied at the end of the service recipient."

9. Further, in the case of Shree Cement Ltd. (supra), it was held that –

"6. Substance is more important than the format and the doctrine of substance over format is sanction of Rule 9(1)(f) of Cenvat Credit Rules, 2004. Accordingly, when Revenue did not find that the service tax realized through debit note has not gone into treasury, there is no

scope to deny relief to the appellant. Added to this, the service provider has realized certain reimbursement of expenses while providing consultancy service in terms of debit note appearing at pages 51 to 55 of appeal folder. Therefore, once assessable value of service provider is intended to include even the reimbursement of expenses, the appellant cannot be denied benefit of Cenvat credit without finding no deposit of service tax by service provider."

10. I find that the facts of the present case are squarely covered by the above-mentioned decisions of the Tribunal and therefore the impugned order cannot be sustained.

In view of the above discussions, the impugned order is set aside and the Appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

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

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