

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,  
CHENNAI**

REGIONAL BENCH – COURT No. III

**(1) SERVICE TAX APPEAL No. 40017 of 2014**

(Arising out of Order-in-Appeal No.224 to 228 / 2013 (M-IV) dated 07.10.2013 passed by the Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s.R.K. Industries IV**

**... Appellant**

37/37A, Old Trunk Road,  
 Pallavaram,  
 Chennai 600 043.

Versus

**Commissioner of GST & Central Excise,**

**... Respondent**

Chennai South Commissionerate  
 MHU Complex, No.692, Anna Salai,  
 Nandanam,  
 Chennai 600 035.

**WITH**

**(2) SERVICE TAX APPEAL No. 40018 of 2014**

(Arising out of Order-in-Appeal No.224 to 228 / 2013 (M-IV) dated 07.10.2013 passed by the Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s.R.K. Industries IV**

**... Appellant**

37/37A, Old Trunk Road,  
 Pallavaram,  
 Chennai 600 043.

Versus

**Commissioner of GST & Central Excise,**

**... Respondent**

Chennai South Commissionerate  
 MHU Complex, No.692, Anna Salai,  
 Nandanam,  
 Chennai 600 035.

**WITH**

**(3) SERVICE TAX APPEAL No. 40023 of 2014**

(Arising out of Order-in-Appeal No.235/2013 (M-IV) dated 10.10.2013 passed by the Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s.R.K. Industries IV**

37/37A, Old Trunk Road,  
 Pallavaram,  
 Chennai 600 043.

**... Appellant**

Versus

**Commissioner of GST & Central Excise,**

Chennai South Commissionerate  
 MHU Complex, No.692, Anna Salai,  
 Nandanam,  
 Chennai 600 035.

**... Respondent**

**WITH**

**(4) SERVICE TAX APPEAL No. 40019 of 2014**

(Arising out of Order-in-Appeal No.224 to 228 / 2013 (M-IV) dated 07.10.2013 passed by the Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s.R.K. Industries IV**

37/37A, Old Trunk Road,  
 Pallavaram,  
 Chennai 600 043.

**... Appellant**

Versus

**Commissioner of GST & Central Excise,**

Chennai South Commissionerate  
 MHU Complex, No.692, Anna Salai,  
 Nandanam,  
 Chennai 600 035.

**... Respondent**

**WITH**

**(5) SERVICE TAX APPEAL No. 40020 of 2014**

(Arising out of Order-in-Appeal No.224 to 228 / 2013 (M-IV) dated 07.10.2013 passed by the Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s.R.K. Industries IV**

37/37A, Old Trunk Road,  
 Pallavaram,  
 Chennai 600 043.

**... Appellant**

Versus

**Commissioner of GST & Central Excise,**

Chennai South Commissionerate  
 MHU Complex, No.692, Anna Salai,  
 Nandanam,  
 Chennai 600 035.

**... Respondent**

**WITH**

**(6) SERVICE TAX APPEAL No. 40021 of 2014**

(Arising out of Order-in-Appeal No.224 to 228 / 2013 (M-IV) dated 07.10.2013 passed by the Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s.R.K. Industries IV**

37/37A, Old Trunk Road,  
 Pallavaram,  
 Chennai 600 043.

**... Appellant**

Versus

**Commissioner of GST & Central Excise,**

Chennai South Commissionerate  
 MHU Complex, No.692, Anna Salai,  
 Nandanam,  
 Chennai 600 035.

**... Respondent**

**WITH**

**(7) SERVICE TAX APPEAL No. 40022 of 2014**

(Arising out of Order-in-Appeal No.234/2013 (M-IV) dated 10.10.2013 passed by the Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s.R.K. Industries IV**

37/37A, Old Trunk Road,  
 Pallavaram,  
 Chennai 600 043.

**... Appellant**

Versus

**Commissioner of GST & Central Excise,**

Chennai South Commissionerate  
 MHU Complex, No.692, Anna Salai,  
 Nandanam,  
 Chennai 600 035.

**... Respondent**

**AND**

**(8) SERVICE TAX APPEAL No. 40024 of 2014**

(Arising out of Order-in-Appeal No.269/2013 (M-IV) dated 03.12.2013 passed by the Commissioner of Central Excise (Appeals), No.26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s.R.K. Industries IV**

37/37A, Old Trunk Road,  
Pallavaram,  
Chennai 600 043.

**... Appellant**

Versus

**Commissioner of GST & Central Excise,**

Chennai South Commissionerate  
MHU Complex, No.692, Anna Salai,  
Nandanam,  
Chennai 600 035.

**... Respondent**

**APPEARANCE:**

Mr. Hari Radhakrishnan, Advocate  
For the Appellant

Mr. M. Ambe, Deputy Commissioner (A.R)  
For the Respondent

**CORAM :**

**HON'BLE MS. SULEKHA BEEVI, C.S. MEMBER (JUDICIAL)**

**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**DATE OF HEARING : 25.05.2023**

**DATE OF DECISION : 30.05.2023**

**FINAL ORDER No.40366-40373/2023**

**Order : [ Per Ms. Sulekha Beevi C.S.]**

These eight appeals are filed against the order of rejection of refund claim of service tax filed in terms of Notification No.17/2009-ST dated 07.07.2009.

**I. Appeals Nos.ST/40017/2014, ST/40018/2014 & ST/40023/2014**

Brief facts are that the appellants are engaged in manufacture of ready-made garments and filed refund claim in terms of Notification No.17/2009-ST dated 07.07.2009 for refund of service tax paid by them on services provided to them by Custom House Agents, Technical Testing and Analysis Agencies. The refund claim was rejected on two grounds. Firstly, that it is time-barred. Secondly, that the conditions set out in the notification have not been fulfilled by the appellant.

2. Ld. Counsel Shri Hari Radhakrishnan appeared and argued on behalf of the appellants. With regard to the issue that the refund claim is time-barred, Ld. Counsel submitted that as per para 2(f) of the notification, the refund claim has to be filed within one year from the date of export of the goods. The explanation provides that for the purpose of this clause, the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the goods for exportation under Section 51 of the Customs Act, 1962. Thus the period of one year has to be reckoned from the date of let export order. Adverting to the dates of the shipping bills, it is submitted by the Ld. Counsel that a

few of the shipping bills in each claim is beyond the time limit of one year. However, majority of the shipping bills filed in the refund claim for a quarter is well within the period of one year. The authorities below have rejected the entire claim holding that the refund claim is time-barred. The claims in regard to shipping bills / invoices which are within the time limit of one year ought to have been considered by the authorities below for sanction of refund.

3. The second ground for rejection is that the appellant has not fulfilled the conditions of the notification. The appellants had availed input services for testing of the raw materials as well as the finished products before export. The department has held that testing and analysis services provided by the agency is for testing of raw material only and not for testing of the finished products and therefore the refund of service tax is not eligible. Ld. Counsel adverted to Column-4 of Sl.No.3 of the Table of the Notification No.17/2009 and submitted that there are no conditions attached in regard to the testing and analysis services. The department has sought to deny the refund claim on assumptions and presumptions. It is submitted that the appellant has to test the raw materials to comply with the stipulation of the foreign buyer. The raw materials as well as the finished products have been tested and the services are input services for which the appellant has paid service tax. It is urged that rejection of refund by the authorities below on this ground is not legal and proper.

4. The refund claim in respect of certain invoices has been rejected alleging that invoices issued by the service provider contains the address of the Head office at Guindy whereas the refund claim has been filed by the manufacturing unit situated at Pallavaram. The department has taken the view that for this reason, the invoice does not indicate that the input services have been used by the appellants for goods exported by the Pallavaram unit. The Ld. Counsel explained that the goods were exported from the factory of the appellant situated at Pallavaram and the Head office is at Guindy. Both these entities remain same and since the department does not dispute that the goods have been actually exported, the refund ought not to have been denied. It is asserted by the Ld. Counsel that it is not required to establish one to one correlation with regard to input services. The decision in the case of *Commissioner of Central Excise, Pune Vs Rosy Group India Pvt. Ltd.* 2016 (41) STR 994 (Tri.-Mumbai) was relied to support the argument put forward in respect of technical inspection and analysis services. The said decision has also referred the decision of Tribunal in the case of *Commissioner Vs Convergys India Pvt. Ltd.*- 2009 (16) STR 198 (Tribunal) wherein it has been held that there cannot be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate. When there is no dispute with regard to credit availed, the same is permitted to be utilised and when it is not possible for the assessee to utilize the credit, the claim of refund in terms of notification cannot be restricted.

5. Ld. Counsel adverted to circular No.120/01/2010-ST 19.01.2010. Para 3.2 of the said circular states that when one to one correlation between inputs and outputs is not possible due to voluminous documents, the department can process refund on the basis of a declaration filed by the assessee which is certified by a person authorized by the Board of Directors, if the amount of refund is less than Rs.5 lakhs in a quarter. If the amount is in excess of Rs.5 lakhs, the declaration should also be certified by the Chartered Accountant. It is submitted by the Ld. Counsel that refund amount in these cases is very less and the declaration which was filed by the appellant ought to have been accepted to process and sanction the refund.

6. Ld. A.R. Mr. M. Ambe for the Revenue supported the findings in the impugned order.

7. Heard both sides.

8. The first issue is with regard to rejection of refund claim on the ground of being time-barred. As per para 2(f) the notification No.17/2009, the refund has to be filed within a period of one year. In these appeals, it is seen that the refund claim for different quarters has been entirely rejected by the authorities below. It is submitted by the Ld. Counsel that a few shipping bills may be beyond the time limit. In our view, the authorities below ought to have considered the refund claims in regard to shipping bills which are within the time limit of one year. The entire claim



for a quarter cannot be rejected merely because few of the shipping bills pertaining to that quarter is beyond the period of one year. The invoices which are filed within the period of one year ought to have been considered for the different quarters. This issue is therefore required to be remanded to the adjudicating authority who is directed to look into the matter as to the shipping bills which are within the time limit of one year. Needless to say that the appellant would be eligible for refund in cases of input services with regard to the shipping bills which are filed within the period of one year.

9. The second issue is with regard to rejection of refund claim on input services availed for testing and analysis. The authorities below have held that testing is done for raw material and therefore it cannot be said that these services have nexus with the finished products which are exported. We have to say that even if the services are used for testing of raw materials such services have nexus with the manufacturing of finished products and therefore eligible for credit/refund. Further, the period involved is prior to 01.04.2011 when the definition of "input services" had a wide ambit as it included the words "activities relating to business". It is also to be stated that there is no condition attached to the notification with regard to refund claim in regard to testing and analysis services. The rejection of refund claim on the ground that the testing and analysis services is availed for testing of raw materials does not find favour with us.

10. The next issue is with regard to rejection of refund claim for the reason that the invoices are issued by the service provider in the address of their Head office at Guindy whereas the input services have been availed by the manufacturing unit at Pallavaram. The appellants furnished the address of their Head office to the service provider as it happened to be the Head office. The service provider mentioned such address in the invoices and also for the reason that they received payment from the Head office of the appellant. The Department does not dispute that the appellant has received the services as per the invoices. When there is no dispute with regard to the services availed and the service tax paid, we are of the opinion that rejection of refund is without any basis.

11. From the discussions made above, we hold that the issue with regard to rejection on the ground of time-bar has to be remanded to the adjudicating authority for de novo consideration. In such de novo adjudication, the adjudicating authority shall take into consideration the discussions and view expressed above by us in regard to issue of testing and analysis services and the issue of invoices mentioning the address of the Guindy unit.

In the result, the impugned orders in these appeals are set aside. The appeals are allowed by way of remand to the adjudicating authority in above terms.

## **II. Appeals Nos.ST/40019-40022/2014 & ST/40024/2014**

12. In these five appeals, the refund claim was rejected on the following grounds :-

(i) The testing and analysis services provided by services provider is for testing of raw material only and it has no nexus with the finished products exported by the appellant and therefore the refund of service tax is not eligible.

(ii) The invoices issued by the service provider mentions the address of the Head office at Guindy whereas the input services have been availed by the manufacturing unit at Pallavaram. Hence refund under Notification No.17/2009-ST dated 07.07.2009 is not admissible.

13. As regard the first issue, in view of our findings recorded at para-9 above that there is no condition attached to the notification in regard to testing and analysis services for the purpose of refund and that even if the services are used for testing of raw materials such services have nexus with the manufacturing of finished products, we hold that appellants are eligible for credit/refund. The issue is decided in favour of the appellants.

14. As regards the second issue, in view of our findings recorded at para-10 above that there is no dispute with regard to the services availed and the service tax paid, we hold that rejection of refund is without any basis. This issue stands decided in favour of the appellants. The appellant

has also filed declaration as per para 3.2 of the circular dated 19.01.2010. The amount of refund claimed is below Rs.5 lakhs. Such declaration ought to have been considered for process of refund. Therefore, the impugned orders in these five appeals are required to be set aside. The appeals are allowed with consequential relief, if any.

15. In the result –

(i) Appeal Nos.**ST/40017/2014, ST/40018/2014 & ST/40023/2014** are allowed by way of remand to the adjudicating authority as per the directions contained in para-11 above.

(ii) Appeal Nos.**ST/40019 to 40022/2014 & ST/40024/2014** are allowed with consequential relief, if any, as per law.

(order pronounced in court on 30.05.2023)

Sd/-  
**(M. AJIT KUMAR)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(SULEKHA BEEVI C.S.)**  
**MEMBER (JUDICIAL)**

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