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

REGIONAL BENCH - COURT NO.3

Service Tax Appeal No.77815 of 2018

(Arising out of Order-in-Appeal No.314/S.Tax-II/KOL/2018 dated 05.04.2018 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. S.K.Sarawagi Company Private Limited
(1, Sarojini Naidu Sarani, 5th Floor, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate

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

APPEARANCE

Ms. Mitali Borpujari, Consultant for the Appellant (s)

Shri A.Roy, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75044/2023

DATE OF HEARING : 8 February 2023
DATE OF DECISION : 8 February 2023

P.K.CHOUDHARY :

The instant appeal has been filed by the assessee, M/s S K Sarawagi & Co. Pvt Ltd., assailing the Oder-in-Appeal dated 05.04.2018 passed in appeal filed against *de novo Order-in-*Original dated 10.03.2016 whereby the assessee is aggrieved by the rejection of refund claim of Rs. 36,00,235/-.

2. Briefly stated the facts of the case are that the Appellant is a merchant exporter and is having their Regd. Office at 1, Sarojini Naidu

Sarani (Subham), 5th Floor, Kolkata-700017 and corporate/branch office at 10-1-31, Signature Towers, Level-4, Waltair Apartments, Visakhapatnam, Andhra Pradesh. The Appellant had filed a refund claim in terms of Notification No. 41/2007-ST dated 06.10.2007 as amended by Notification No. 3/2008-ST dated 19.02.2008 for the rebate of service tax on specified services received and used by them for export of iron ore fines during the quarter April 2008 to June 2008. Vide the impugned appellate order, the Ld.Commisioner(Appeals) allowed the Appeal filed by the Department and set aside the Order-in-Original dated 10.03.2016 which allowed refund to the extent of Rs.36,00,235/-. The dispute regarding admissibility of refund in the present Appeal relates to 'GTA Service', 'Port Service', Technical Testing and Analysis Service'. It is the observation of the Ld.Commissioner(Appeals) that one to one co-relation of the services i.e. datewise accumulation of the materials within the port as per LR, loading of the same in the ship etc. has not been done and in absence of one to one co-relation the refund is inadmissible and cannot be allowed. He further observed that conditions specified in the Notification must be strictly complied with for availing the benefits.

3. In terms of the Notification No.41/2007-ST dated 06.10.2007, as amended by Notification No.03/2008-ST dated 19.02.2008, the exporter shall file application for claiming refund of Service Tax on the specified service used for export of the said goods in proper form to the jurisdictional Deputy/Assistant Commissioner subject to the condition fulfilled as laid down in the said Notifications, M/s. S.K.Sarawagi & Co. Pvt.Ltd. submitted subject refund claim.

4. Heard both sides and perused the Appeal records.

5. It is the case of the Appellant that in case of bulk cargo the goods are to be aggregated at the port premises even before the shipping documents are prepared. The export invoices are prepared only after the iron ore fines are loaded on to the vessel as per the

contractual terms and conditions and factors like quality, size, etc which are variable. Reliance was made on the decision of the Tribunal in the case of Jumbo Mining Ltd. vs. CCE [2012 (26) STR 525 (Tri-Bang)] wherein it was held that compliance of condition No. 11 of Notification No. 3/2008 dated 19.02.2008 should be ascertained by broadly correlating the evidence of transport and service tax paid on such transport charges and quantity exported. Further reliance was made on the decision of the Tribunal in East India Minerals Limited vs. CCE & ST [2012 (27) STR 18] wherein it was held that the policy of the government is not to export domestic tax along with export of such goods. It was also contended that the Chartered Accountant's certificate broadly correlated the quantity exported and the quantity transported along with bill and challans is on record.

6. In the present Appeal, the Appellant is aggrieved by the rejection of refund of Rs.36,00,235/. The undisputed facts of the case are that the conditions for claiming refund on GTA services as prescribed in the Notification No. 41/2007 dated 06.10.2007 as amended by Notification No. 03/2008 dated 03.02.2008 have not been complied with as the details of the exporters invoice relating to export goods are not mentioned in the lorry receipt and the corresponding shipping bill which is the mandatory condition in terms of the notification.

7. The issue involved in these proceedings is whether Appellant is eligible to refund of services availed in relation to export of goods under Notification No. 41/2007-S.T., dated 6-10-2007. As per Notification No. 41/2007-S.T. certain co-relations are required to be made before sanctioning the refund claims. It is observed from C.B.E. & C. Circular No. 120/01/2010-S.T., dated 19-1-2010 that exporters were facing certain difficulties in relation to one to one co-relation between input services and the exports made. The Ld.Counsel for the Appellant brings to the notice of the Bench para 3.2.1 of C.B.E. & C. Circular dated 19-1-2010 to argue that self-certification of the exporter or a Chartered Accountant, if given, is sufficient to sanction

refund. In para 6.2 of this Circular, C.B.E. & C. has clarified that only a broad co-relation of input services and Service Tax paid is required to be made with respect to exports. This Circular was relied upon by the Appellant before the Adjudicating Authority, as mentioned in submissions of the assessee. At the same time Ld. Authorized Representative appearing on behalf of the respondent Revenue could not produce the required documents before the Bench to ascertain as to what extent co-relation can be made and whether any liberal view can be taken in these proceedings in view of C.B.E. & C. Circular No. 120/01/2010-S.T., dated 19-1-2010.

8. So far as admissibility of Service tax paid on GTA Services is concerned, it is observed that similar refunds were allowed by CESTAT in the case of *Jumbo Mining Ltd.* v. *CCE Hyderabad* (supra) by making following observations in Para 6.2 as follows :-

> "6.2 It is not disputed that the exported goods are transported from the appellant's factory to kakkinada Port directly. In view of the peculiar nature of the goods. The entire consignments convered by one Shipping Bill cannot be transported by a single lorry, as an export consignment is in the order of 6000 to 8000 tonnes. Therefore, it requires to be aggregated at the Port premises before the shipping documents are prepared. The fact of exports is not being disputed. It cannot be the case that the goods are exported from Kakkinada Port without being transported from the factory of the appellants as claimed by them. Therefore, in the peculiar facts and circumstances of the case, the compliance of condition No. (iii) should be ascertained by broadly correlating the evidence relating to transport and service tax paid on such transport charges and the quantity exported. As regards the decisions, of the Tribunal relied upon by the appellant ignoring procedural violation while granting refund in respect of exports can be applied to the facts of present case as well.
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> 7. In view of the above, the orders of the authorities below are set aside insofar as the same relating to denial of refunds to the extent

mentioned above and the matter remanded to the original authority for fresh consideration after granting reasonable opportunity of hearing the appellants."

9. C.B.E. & C. in Para 3.2.1 of Circular No. 120/01/2010-S.T., dated 19-1-2010 also clarified as follows on the issue :-

"3.2.1. Similar problem of co-relation and scrutiny of large number of documents was being faced in another scheme (Notification No. 41/2007-S.T., dated 6-10-2007) which grants refund of service tax paid on services used by an exporter after the goods have been removed from the factory. In Budget 2009, the scheme was simplified by making a provision of self-certification [Notification No. 17/2009-S.T.] whereunder an exporter or his Chartered Accountant is required to certify the invoices about the co-relation and the nexus between the inputs/input services and the exports. The exporters are also advised to provide a duly certified list of invoices. The departmental officers are only required to make a basic scrutiny of the documents and, if found in order, sanction the refund within one month. The reports from the field show that this has improved the process of grant of refund considerably. It has, therefore, been decided that similar scheme should be followed for refund of CENVAT credit under Notification No. 5/2006-C.E. (N.T.). The procedure prescribed herein should be followed in all cases including the pending claims with immediate effect."

10. Though the above clarification was with respect to Notification No. 5/2006-C.E. (N.T.) but it clearly conveys that in budget 2009 the scheme under Notification No. 41/2007-S.T. was simplified in Notification No. 17/2009-S.T. by providing self certification or Chartered Accountant's certification about co-relation and nexus between input Services & the exports. That above logic can be followed for Notification No. 5/2006-C.E. (N.T.) where such simplification of Notification No. 17/2009-S.T. may not be available.

In view of the above discussions, the impugned order cannot be sustained and is accordingly set aside. The Order-in-Original dated 10.03.2016 is restored. The Appeal filed by the Appellant is allowed with consequential benefits.

(Dictated and pronounced in the open Court.)

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

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