

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76091 of 2018

(Arising out of Order-in-Appeal No.21/S.Tax I/Kol/2018 dated 29.01.2018 passed by Commissioner (Appeals) of CGST & Excise, Kolkata)

M/s Sethia Oils Ltd.

505, Diamond Heritage, 16, Strand Road, Kolkata-700001

Appellant

VERSUS

Commissioner of CGST & Excise, Kolkata North

180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

Appearance:

Mrs. Mitaly Borpuzari, Authorized Representative for the Appellant
Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75397/2022

DATE OF HEARING : 13.07.2022

DATE OF DECISION : 13.07.2022

PER P.K.CHOUDHARY :

The facts of the case in brief are that vide Order-in-Original No.R/126/ST/DIV-I/Kol/2012-13 dated 17.12.2012, the Deputy Commissioner, Division I, Service Tax Commissionerate, Kolkata, sanctioned refund of Rs.5,07,293/- being the service tax amount paid on the input services utilised for export of goods made under 26 shipping bills of export as claimed by the appellant assessee. Subsequently, the order-in-original was reviewed by the Commissioner of Service Tax, Kolkata vide Review Order No.47/Review/Divisional/ST/Kol/2012-13 dated 14.03.2013. It was observed that since the claimant is not registered with the Export Promotion Council sponsored by the Ministry of Commerce, therefore, the appellant is not entitled for refund in terms of provision 3 (h) of Notification No.41/2012-ST dated 29.06.2012. In view of the Review Order, the appeal was filed before the First Appellate Authority. The

Service Tax Appeal No.76091/2018

Ld.Commissioner (Appeals) allowed the appeal filed by the Department. The Id.Commissioner (Appeals) observed that the exporter should be registered with the Export Promotion Council and being registered with "The Solvent Extractors' Association" of India,, which is a Trade Promotion Organisation (TPO), would be of no help in getting the benefit of the said Notification and he allowed the appeal. Thus, the present appeal by the appellant before the Tribunal.

2. The Id. Authorized Representative appearing on behalf of the Appellant Company, has filed a written submission along with copies of relied upon decisions. It is her submission that (3) (h) of the said Notification reads as "the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles..." It is her further submission that this is not the principal condition as laid down in the said Notification. She further submits that no show-cause notice was issued by the Department before sanctioning of the refund claim and there was no question regarding the appellant not being a member of an Export Promotion Council. She further submits that they are registered as member of The Solvent Extractors' Association of India which is a Trade Promotion Organization (TPO) recognized by the Government of India, Ministry of Commerce for export of "De-Oiled Rice Bran" and was sponsored by the Government of India, Ministry of Commerce and hence the condition (3)(h) of the Notification No.41/2012-ST dated 29.06.2012 was satisfied. The appellant has also submitted that as a protective measure, they had also taken membership from Federation of Indian Export Organizations (FIEO) for the financial year 2012-13. They have also referred to Para No.2.64.1 of the Foreign Trade Policy, which says that "RCMC shall be deemed to be valid from 1st April of the licensing year in which it was issued and shall be valid for five years ending 31st March of the licensing year, unless otherwise specified."

3. The Ld.D.R. appearing on behalf of the Revenue, justified the impugned order and submitted that registration with the Export Promotion Council is a mandatory condition and hence, the impugned order should be upheld and the appeal filed by the appellant being devoid of any merit, be dismissed.

Service Tax Appeal No.76091/2018

4. Heard both sides and perused the appeal records.
5. On perusal of records, I find that the Deputy Commissioner of Service Tax has passed a detailed order incorporating shipping bill numbers, date, name of service provider, invoice numbers etc. and in short, he has gone through all the documents and has discussed the conditions of the said Notification or eligibility of refund claim and after making point-wise observation and has finally sanctioned the refund. The Id.Commissioner (Appeals) has allowed the appeal before him mainly on the ground that though the appellants are a member of Solvent Extractors' Association of India, which is a Trade Promotion Organizaion (TPO) recognized by the Government of India, Ministry of Commerce for export of "D-Oiled Rice Bran" and was sponsored by the Government of India, Ministry of Commerce, but they did not satisfy the condition of (3)(h) of the Notification No.41/2012-ST dated 29.06.2012 as laid down.
6. It can be seen that there is no dispute as to the fact that the goods were exported by the appellant-assessee. Once it is not in dispute that the services are specified for refund purpose, and since Service Tax was actually paid on specified services pertaining to export activity, in terms of the broad scheme of refund under Notification No. 41/2012-S.T. (*supra*) as amended with clarifications, refund must be granted to the exporter. It is my considered view that the order passed by the Learned Commissioner (Appeals) cannot be sustained as substantive benefit should not be denied to an assessee if the conditions are fulfilled. It would not be out of place to mention that the sole intention of the Government to bring out these rebate schemes is to promote the Indian exporters to enjoy a level playing field and to compete with the exporters of other countries in the global market. Further, it is not the intention of the Government to export taxes, hence after much research these schemes have been notified and if the refund claims are rejected on such flimsy grounds, it defeats the very purpose of rebate schemes and traps the exporters under unnecessary litigations.

Service Tax Appeal No.76091/2018

7. As a result of entire above discussion, I do not find order under challenge as reasonable and justifiable and accordingly, I set aside the same. Consequently, appeal stands allowed with consequential benefit, if any.

Dictated and pronounced in the open Court.

Sd/
(P.K.Choudhary)
Member (Judicial)

mm