

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.77950 of 2018

(Arising out of Order-in-Appeal No.251/S.Tax-I/Kol/2018 dated 26.03.2018 passed by Commissioner of CGST, Howrah Commissionerate, Kolkata.)

M/s. The Tinplate Company of India Limited

(4, Bankshall Street, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

.....Respondent

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

WITH

(i) Service Tax Appeal No.77963 of 2018 (M/s. The Tinplate Company of India Limited Vs. Commissioner of CGST & CX, Kolkata North Commissionerate); (ii) Service Tax Appeal No.77964 of 2018 (M/s. Tata International Limited Vs. Commissioner of CGST & CX, Kolkata South Commissionerate); (iii) Service Tax Appeal No.77965 of 2018 (M/s. Maithan International Vs. Commissioner of CGST & CX, Kolkata South Commissionerate);

(i) (Arising out of Order-in-Appeal No.211/S.Tax-I/Kol/2018 dated 21.03.2018 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

(ii) (Arising out of Order-in-Appeal No.216/S.Tax-II/Kol/2018 dated 16.03.2018 passed by Commissioner of CGST, Howrah Commissionerate, Kolkata.)

(iii) (Arising out of Order-in-Appeal No.248/S.Tax-II/Kol/2018 dated 20.03.2018 passed by Commissioner of CGST, Howrah Commissionerate, Kolkata.)

APPEARANCE

Shri Abhishek Jalan, Advocate for the Appellant (s)

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

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

FINAL ORDER NO. 75514-75517/2022

DATE OF HEARING : 13 May 2022
DATE OF DECISION : 06 Sept 2022

P.K.CHOUDHARY :

The facts and issues in the above appeals are similar and hence, they are taken up together and being disposed by this common order.

2. The brief facts in these appeals are that the Appellants had submitted their respective refund claims for refund of Service Tax paid on specified services used for export of goods under certain Bills of Entry as per Notification No. 41/2012-ST dated 29th June 2012.

3. The respective Adjudicating Authorities found the refund claims preferred by the Appellants to be in order and that the conditions/requirements under Notification No. 41/2012-ST dated 29th June 2012 had been fulfilled by the Appellants. Accordingly, the Adjudicating Authorities sanctioned the refund amounts, as claimed by the Appellants. Aggrieved by such Adjudication Orders, the Revenue preferred appeals before the Ld. Commissioners (Appeals). The Ld. Commissioners (Appeals) partially modified the Adjudication Orders in favour of the Revenue. Aggrieved by the orders passed by the Ld. Commissioners (Appeals), the Appellants have preferred the present appeals before this Tribunal.

4. Heard both sides and perused the appeal records.

5. I find that the Revenue had preferred the appeals before the Ld. Commissioner (Appeals) on the following grounds, which have been decided in favour of the Revenue:

1. That the refund claims did not fulfil the conditions under clause 1(c) of the Notification inasmuch as that individual shipping bills have to be considered while arriving at the amount of rebate to be sanctioned under Para 3 of the Notification and for deciding the eligibility criteria of the shipping bills for claiming rebate under para 3 of the Notification.

2. That the refund claim which was less than Rs. 500/- could not be allowed as per Paragraph 3(j) of the Notification.

3. That the pre-inspection of excisable goods had been undertaken inside the manufacturer's plant and such service had not been provided beyond the 'Place of Removal' and was therefore, in violation of Circular No. 999/6/2015-CX dated 28th February 2015.

6. I find that issue No. 1 has already been decided by this Tribunal vide FO/77622-77631/2017 dated 30th October 2017, wherein it was held that from a bare reading of the Notification, it is amply clear that rebate may be claimed on the service tax actually paid on any specified service used for export of goods as per the procedure specified under Paragraphs 2 and 3 of the Notification. Further, on perusal of Para 1(c), a claim may contain one shipping bill or more than one shipping bill, however, no restriction has been imposed on the number of shipping bills to be covered in each claim. The only requirement is that the details of shipping bills vis-a-vis the details of goods exported and details of specified services used for such export have to be furnished. Further, it was observed that in Form A-1, details of shipping bill/bill of export, details of goods exported, details of specified services used for export of goods, documents evidencing payment of service tax and total amount of service tax paid and claimed as rebate have to be furnished. Therefore, the claim is not shipping bill wise only that the details have to be furnished separately for each shipping bill.

7. I find that Para 3 of the Notification does not impose any condition which requires the claims to be filed shipping bill wise. Further, the total amount of service tax paid which is claimed as rebate has to be shown in figure and as a percentage of total FOB value in shipping bill. This goes on to show that it is not shipping bill specific when more than one shipping bills are involved in a claim. Therefore, there is no requirement to determine FOB value shipping bill wise to determine the formula under Para 1(c) or Para 3 of the Notification. On reading Para 1 in conjunction with para 3, it is evident

that rebate under Para 3 may be claimed for more than one shipping bill in a single claim without going for filing separate claim for each shipping bill. Accordingly, issue No. 1 is decided in favour of the Appellants.

8. In respect of issue No. 2, I find that the Ld. Commissioner (Appeals) have rightly interpreted the condition under Paragraph 3(j) of the Notification and hence, this issue is decided in favour of the Revenue.

9. In respect of issue No. 3, I find that this issue has already been decided by this Tribunal vide order dated 24th July 2017 in Appeal Nos. 76979/2016 and 76993/2016, wherein it was held that on perusal of Notification No. 41/2012-ST dated 29th June 2012 as amended by Notification No. 01/2016-ST dated 03rd February 2016, specified services means taxable services that have been used beyond the factory or any other place or premises of production or manufacture of the said goods and refund of service tax paid on such specified services are eligible. Accordingly, issue No. 3 is decided in favour of the Appellants.

10. In view of the above discussion, the appeals filed by the Appellants are allowed in the above terms.

(Order pronounced in the open court on 06 Sept 2022.)

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

sm