Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11218 of 2014-SM
(Arising out of OIA-RJT-EXCUS-000-APP-576-13-14 dated 28/11/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT)

Welspun Global Ltd **.....Appellant**
Village : Varsamedi, Taluka : Anjar,
Kutch, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.....Respondent**
Central Excise Bhavan,Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri. S. Suriyanarayanan, Advocate for the Appellant
Shri. Tara Prakash, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10044 /2023

DATE OF HEARING: 08.12.2022
DATE OF DECISION: 12.01.2023

Raju

This appeal has been filed by the Welspun Global Ltd against an order of the Commissioner (Appeals) remanding the matter relating to refund of Service Tax paid for export of goods under Notification No. 17/2009-ST.

2. Learned Counsel for the appellant pointed out the issue involved in the instance case is denial of refund of Service Tax paid under Notification No. 17/2009-ST in respect of the :-

1. The foreign Agent commission Service availed by the appellant in respect of export of goods.
2. Banking and Financial Services
3. Custom and House Agent Service

2.1 Learned Counsel further pointed out that refund in respect of Service Tax paid on business promotion of Foreign Commissioner Agent has been denied. Learned Counsel pointed out that they had availed the said service of Foreign Commission Agent and paid Service Tax under Business Auxiliary

Service on reverse charge basis. Learned Counsel pointed out that the issue regarding admissibility of refund in respect of Foreign Commission Agent has been examined by Tribunal in the case of M/s. VST INDUSTRIES LTD-2017 (10) TMI 24 (CESTAT-HYDERABAD) and in the case of Manner EXPORTs-2018-4-TMI-66 (CESTAT.-MUMBAI) and in case of BHANSALI INTERNATIONAL LTD-2017 (7) TMI-1109 (CESTAT-NEW DELHI).

2.2 Learned Counsel pointed out that the refund of Service Tax paid on Customs House Agent Service has been denied on account of failure of appellant to produce the original invoices. He argued that CBIC clarification issued in respect of the Notification No. 41/2007-ST dated 06.10.2007 has clarified that the production of original is not necessary, Certified copy of the documents can be accepted. He argued that the said instruction of CBIC has been ignored by the impugned order. He further argued that the refund of service tax is paid on Banking and Financial Services have been denied on the ground that the appellant have failed to correlate the said services availed by them with the export of goods. He argued that the entire operation of the appellant relates to export of goods and therefore, the said services could not have been used anywhere else. In these circumstances the refund of Service tax should not have been denied.

3. Learned AR relies on the impugned order.

4. I have considered the rival submissions.

4.1 The admissibility of refund on Foreign Agent Commission has been examined by Tribunal in the case of M/s. VST INDUSTRIES LTD. wherein, the said order following has been observed:-

> 7. I have considered the submissions made by both sides. As already reproduced herein above, there is no dispute as to the fact, that goods have been exported and service tax liability has been discharged under reverse charge mechanism for the commission for the commission paid by appellant.
>
> 8. I find that the appellant had filed the refund applications under Notification No. 17/2009 dt. 07.07.2009 while he should have filed the refund claim under Notification No. 18/2009. It is the finding of the lower authorities that appellant had not complied with the conditions of Notification no. 18/2009 in order to authorities that appellant had not complied with the conditions of Notification No. 18/2009 in order to extending the benefit of refund. I find that the first appellate authority has not mentioned as to which conditions have not been satisfied by the appellant in order to deny him the benefit of Notification no. 18/2009 which entitles the appellant to claim the refund. I find that Ld. Counsel was correct in relying upon the judgment of this Bench in the case of M/s. Coromandel Stampings & Stones Ltd. Wherein identical set of facts arose

before the Bench and after considering the condition so Notification No. 18/2009, he Bench held in paragraph no. 5 as under:

> "5. It is submitted by the learned Consultant appearing for the appellant that all the conditions except the condition that the appellant has to intimate the concerned Ass/Dy. Commissioner by filing For,-EXP-1 was not complied. So also, appellant failed to submit the reform in Form EXP- 2 as stipulated in sub-clause (c) of the conditions stated in the Notification. Needless to say that exemption/refund/rebate etc. are export oriented schemes. If the fact of export has been established, refund is not to be denied on merely technical interpretation of procedure. In Suksha International Vs UOI 1989(39) ELT 503(SC) the Hon'ble Apex Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided, so that it may not take a way with one hand, what the policy gives with the other. The Hon'ble Apex Court in Mangalore Chemicals and Fertilisers Ltd Vs Dy.Commissioner 1991 (55) ELT 437(SC) while drawing a distinction between procedural condition of a technical nature and substantive condition, held that procedural conditions of technical nature can be condoned. The procedures prescribed in the notification are to facilitate verification of the claims. Since there is no dispute with regard to the export made or the service tax paid, the non-fulfilment of the conditions in my view is condonable. Following the judgments laid in the above cases, am of the view that the non-fulfilment of the conditions is only a procedural lapse and can be condoned. In view thereof, I hold that the appellants are eligible for refund."

9. In my view, identical issue having been settled by this Bench, ratio needs to be followed and I do not find any reason to deviate from such a view. The facts on which the Ld. DR try to distinguish is also not applicable in the case in hand.

In view of the above refund of Service Tax on Foreign Agent Commission cannot be denied. Appeal on this count is allowed.

4.2 The second issue involved is rejection of refund in respect of CHA services were appellant failed to provide the original copy of invoices. The commissioner (Appeals) in para 6.2 and 6.2.1 has observed as follows:-

> *"6.2. On the issue of submission of the photocopies of original invoice, I observe that as per the provisions of rule 4A of the Service Tax Rules, 1994, and clause 2(i)(D) of the said notification, I am of the view that the requirement of submission of original invoice/ bill or challans or any other document issued in the name of exporter, showing the payment for services availed and specified under the provisions of said notification, have to be submitted in original. Further, I observe that due to statutory requirement of rule 4A of the Service Tax Rules, 1994, the Invoice/ bill/ challans, on which the refund is sought, has to be mandatorily signed by the person providing*

taxable service or by a person authorized by him in respect of such taxable service. Therefore, it can be clearly inferred that the invoices are to be submitted in original. The relevant text of rule 4A of the Service Tax Rules, 1994, and the clause 2(i)(D) of the said notification are reproduced as follows, for the sake of convenience:

"4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan- (1) Every person providing taxable service shall issue, not later than [thirty days] [fourteen 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, 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][provided or to be provided] and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following.....

(Emphasis supplied)

"2(1)(D) Invoice, bill or challan, or any other document issued in the name of exporter, showing payment for such service avalled and the service tax payable shall be submitted in original after being certified in the manner specified in sub-clause (E) and (F)."

(Emphasis supplied)

In this regard, I rely on the decision delivered by CESTAT, Ahmedabad, in the case of Sky Network Vs. CCE, Rajkot, vide their Order No. M/2169/WZB/AHD/2012 dated 02.11.2012, wherein, it has been specifically held as follows:-

> *"3…….But, unfortunately, due to statutory requirement invoices are required to be signed by authorized signatory for availing credit and at the time of passing the stay order also this point was taken note of and it was also taken note of that the appellant had got as many as 5 opportunities to produce the documents. The appellants continued to make the same submission, knowing fully well that the submissions have not been accepted, without even looking at the correctness of the submissions made by them. Under these circumstances, I do not find any reason for considering the application for modification....."*

"6.2.1 Thus, in view of above facts and discussion, I uphold the impugned order passed by the lower authority, to the extend rejecting the refund claims 15,116/- on the ground that the original copy of invoices have not being provided by the appellant."

Learned Counsel relying on the CBEC clarification issued in respect of Notification No. 41/2007-ST dated 06.10.2007. In Serial No. Vi following has been clarified.

S.No.	*Issue Raised*	*Clarification*
VI	*Authorities granting refund are insisting on original documents such as invoice, BL, SB, BRC etc such documents are required under the law to be kept in the Head Office for audit.*	*Normally certified copy of the documents should be accepted. Only in the case of in-*

	Refunds are denied on this ground.	*depth enquiry original documents can be verified.*

Learned Counsel argued that they had produced this circular before the lower authority but no findings have given. It is seen that the observations of Commissioner (Appeals) are in contradiction with the directions of CBIC. The order of Commissioner (Appeals) on this count is set aside and matter remanded to the original adjudicating authority with directions to follow the Circular of CBIC in this regard.

4.3 The next issue raised in the impugned order relates to denial of refund of Service Tax paid on Banking and Financial Services. The said refund has been rejected on the ground that the appellant has failed to correlate the services availed with the exports of goods. Learned Counsel pointed out that they are engaged only in the export of goods and there is no other business therefore, all the services availed are in relation to export of goods. He pointed out that they had made a specific claim before the lower authority. All the business of the appellant was export of goods, therefore, no co-relation was necessary as all the services were availed for export of goods. It is seen that the Commissioner (Appeals) has not taking note of this observation. If the said assertion is correct then no co-relation may be required for claiming the refund. However, since this fact has not been examined by the lower authority. The order of this account is set aside, the matter remanded to the Adjudicating authority.

5. The appeal is partly allowed in the above terms.

(Pronounced in the open court on 12.01.2023)

(RAJU)
MEMBER (TECHNICAL)

Prachi