
(2014) 02 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal Nos 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 810, 811 Of 2012

?Commissioner Central Excise - Delhi-II

APPELLANT

Vs

Orient Craft Limited

RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Customs Act, 1962 — Section 51

Citation : (2014) 02 CESTAT CK 0009

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Jayant Sahay, A.K.Jain

Final Decision : Disposed Of

Judgement

1. M/s. Orient Craft Limited (hereinafter referred to as Appellant) are a manufacturer exporter of readymade garments. In connection with export of

readymade garments, they have availed several services like the services of Goods Transport Agency, custom house agents services, port and other

port services, transportation of goods by rail services etc. The period of dispute in these appeals is from 1st September 2009 to December 2009.

Exemption Notification No.17/2009 dated 07/07/09 exempts the from the service tax, the services mentioned therein which have been received by an

exporter and used for export of goods. This exemption is subject to certain conditions as specified in this notification in respect of different services. In

terms of the conditions of the notification, the refund claim is required to be filed to the Assistant Commissioner/Deputy Commissioner of Central

Excise having jurisdiction over the factory of manufacture or registered office or head office, as the case may be, within a period of one year from the

date of export. The date of export for the purpose of this notification is the date on which the proper officer of customs makes an order permitting

clearance and loading of the goods for export under Section 51 of the Customs Act, 1962, that is, the date of 'let export' order.

1.1 In this case 12 refund claims under Notification No. 17/2009-ST were filed out of which 11 claims were for the amounts of Rs.3,56,483/-,

Rs.79,259/-, Rs.52,745/-, Rs.2,68,016/-, Rs.1,18,497/-Rs.5,30,747/- Rs.1,62,346/-, Rs.1,41,867/-, Rs.4,02,514/-, Rs.1,04,974/- and Rs.2,51,020/- and

were only partially sanctioned by separate orders for the amounts of Rs.39,977/-, Rs. 98,017/-, Rs. 20,844/-, Rs.58,505/-, Rs.25,302/-, Rs.30,347/-,

Rs.29,518/-, Rs.15,388/-, Rs.55,620/-, Rs.24,188/- and Rs.50,040/- respectively and the claims for the balance amounts were rejected. The twelfth

refund claim for an amount of Rs.1,87,734/- for January 2009 was rejected in toto, as the same was held to have been filed after the expiry of the

limitation period of one year from the date of 'Let Export Order'. Against these orders of the Assistant Commissioner, the Appellant (M/s.

Orient Craft Limited) filed appeals before the Commissioner (Appeals), which were disposed of by a common order-in-appeal dated 01/11/11 by

which the Commissioner (Appeals) held that the impugned orders to the extent of rejecting the claims are not sustainable in law and accordingly, to

that extent, the Assistant Commissioner's orders, were set aside. Against this order of the Commissioner (Appeals), these 12 appeals have been

filed by the Revenue.

1.2 The Assistant Commissioner, Central Excise Division- III, Gurgaon, by two separate orders rejected the refund claims of Rs.1,62,738/- and

Rs.1,60,840/- filed by the Appellant M/s Orient Craft Limited for the period from October 2009 to December 2009 and January 2010 to March 2010

respectively. These refund claims had also been filed in terms of Notification No. 17/2009-ST and the same had been rejected on the grounds that-

(a) the documents evidencing the payment of service tax were not enclosed along with the claims and only a chart had been submitted which shows

the cheque number only and does not show the evidence of payment of service tax;

(b) most of the service provider invoices did not contain their service tax registration number and the invoices had been raised on addresses other than

those from where the goods were exported; and

(c) certain services provided by the said persons in the ports do not fall within the ambit of "port services", as the same was neither provided by

the ports nor by the persons authorized by the ports in relation to a vessel or goods.

1.2.1 On appeals being filed to Commissioner (Appeals), the Commissioner (Appeals) vide final order No. 163-164/BK/GGN/2012 dated 13/03/12

dismissed the appeal against which the two appeals No. ST/810-811/2012 have been filed.

2. Heard both the sides.

3. Sh. Jayant Sahay, the learned Departmental Representative assailed the impugned order-in-appeal No.394-405/BLK/D-II /2011 dt. 01.11.11 by

reiterating grounds of appeal in the Revenues Appeal and defended the impugned order of the Commissioner (Appeals) No.163-164/BLK/GEN/LOIL

dt. 13.03.12 by reiterating the findings of the Commissioner (Appeals) in it. He emphasized that Notification No. 17/2009-ST provides for tax

exemption in respect of certain services, as specified in the Notification, which have been used in the export of the goods out of India, that the

exemption under this Notification is subject to fulfillment of certain general condition and also service wise conditions as mentioned in the Notification,

that in respect of the refund claim of Rs.1,87,734/- for Jan. 09, the same was required to be filed in the office of the Jurisdictional Assistant/Deputy

Commissioner within a period of one year from the date of "Let Export Order", but the claim was filed long after this date, that just because the

assessee had filed the refund claim within time in the office of the Assistant Commissioner which was not the Jurisdictional Assistant

Commissioner's office and he was advised by that Assistant Commissioner to file the claim in the office of the Jurisdictional Assistant

Commissioner, it would not save the claim from becoming time barred, as claim would be treating as filed only on the date on which the same was

filed in the office of the Jurisdictional Assistant Commissioner/Deputy Commissioner and hence the Commissioner (Appeals)'s order allowing this

refund by treating the same as having been filed within the prescribed limitation period, is not correct, that in respect of a number of service

provider's invoices, the same cannot be co-related with the goods exported,

as the service provider's invoices do not mention the shipping bill numbers, that certain services like Terminal Handling and Account Management fee collected by the Custom House Agents (CHAs), are not the specified service and hence not eligible for refund and that in view of the above, the impugned order permitting the refund claim is not correct. As regards the Commissioner (Appeals)'s order dt. 30.03.12 against which the assessee has filed an appeal ST/810-811/2012, he pleaded that the Commissioner (Appeals) has correctly upheld rejection of the refund claims, as in some cases documentary evidence of the payment of service tax in respect of the service received has not been provided and in other cases, the invoices do not contain the requisite details. He, therefore, pleaded that there is no infirmity in the impugned order in appeal dt. 30.03.12 passed by the Commissioner (Appeals).

4. Sh. A.K.Jain, Consultant, representing the Appellant M/s. Orient Craft Limited, in all these appeals, pleaded that so far as the impugned order-in-appeal dt.01.11.11 passed by the CCE (Appeals) is concerned, there is no infirmity in the impugned order, that refund claim for Jan.09 had been filed within time and just because it was filed in the office, which according to the Department was not the concerned office and on the advice of that office, the claim was submitted in the office of the Jurisdictional Assistant Commissioner/ Deputy Commissioner, the claim cannot be rejected as time barred, that co-relation of the services received with goods exported stands clearly established, that in respect of service of Terminal Handling, the service tax has been collected as 'Port Service' and in respect of 'Account Management Charges' charged by 'Custom House Agents', the service has been collected by the Jurisdictional Authorities by treating it as service of Custom House Agent and that the Jurisdictional Assistant Commissioner considering the refund of the service tax to exporter under Notification No.17/09-ST cannot seek to review the assessment of service tax accepted and finalized by the Jurisdiction Central Excise & Service Tax Authorities at the end of the service providers. As regards the appeal No. ST/810-811/2012 against order-in-appeal dt.30.03.12, he pleaded that the impugned order upholding the rejection of refund claim is totally wrong, that as regards clearing and forwarding service and CHA service, the export invoice numbers are mentioned in the invoices of the service

providers and cross verification could be done from the export invoice number mentioned in the correspondence export documents/shipping bills and, therefore, it is absolutely incorrect to say that the service provider's invoices cannot be co-related with the shipping bills, that as regards the Port Service, the assessee has exported the goods by availing the service and ultimately the shipping companies who are responsible for making payment to port authority, that the appellant have included all the services provided in the port under Port Service, as the same has been clarified by Board vide Circular No. 104/07/ 08-ST dt. 16.08.08 which says that the service which are incidental to main service should be classified in the category of the main service, that as regards not mentioning the ICD/port/airport, the Appellant in the export invoices have clearly mentioned the name of ICD from which the goods have been exported, that the Commissioner (Appeals) has not considered the submissions of the Appellant and has summarily dismissed their appeal and that in view of this, the impugned order is not correct.

5. We have considered the submissions from both the sides and perused the records.

6. Coming first to the 12 appeals filed by the Revenue against Order-in-appeal dt. 01.11.11 passed by the Commissioner (Appeals) by which 12 orders

of the Assistant/Deputy Commissioner rejecting the refund claims of various amounts have been set aside, we find that refund claim for Jan.09 for an

amount of Rs.1,87,734/- had been filed within the stipulated period i.e. within one year from the date of Let Export Order on 13.12.09 before

the Assistant Commissioner Central Excise Gurgaon. He, however, returned the claim on 21.01.10 advising the Appellant to file the refund claim

before the Assistant Commissioner Central Excise having jurisdictional over their Head Office/Registered Office. In this regard we find that in terms

of Clause (e) of para 2 of the Notification No.17/09-ST dt.07.07.09 a manufacturer exporter registered with Central Excise or an exporter not so

registered can file the refund claim in the office of Assistant Commissioner/Deputy Commissioner Central Excise having jurisdictional over his factory

of manufacture, registered office /head office, as the case may be. When the assessee have their factory at Udyog Vihar, Phase-I, Sector-36

Gurgaon (Haryana) and are a manufacturer exporter, they had correctly filed the refund claim before the Assistant Commissioner/Deputy

Commissioner Central Excise, Gurgaon. In any case, if the Assistant Commissioner/Deputy Commissioner Central Excise, Gurgaon was of the view that the refund claim should be filed before the Assistant Commissioner having Jurisdiction over the Registered Office of the assessee, he should have forwarded the claim to that office. In view of this, we do not find any infirmity in the Commissioner (Appeals)'s Order and hold that the refund claim had been filed within time.

7. As regards the other issue regarding lack of co-relation between the service used and the goods exported, since the shipping bills did not mention in the service provider's invoices, attempt should have been made to correlate the service provider's invoices with the shipping bills on the basis of the export invoice numbers. Moreover, when there is provision of self certification and certification regarding availment of the services, in question, has been given by the assessee, the same has to be accepted unless there are serious doubt about the correctness of the same. We, therefore, do not find any infirmity in the Commissioner's order on this point.

8. As regards the third issue regarding service of Terminal Handling and Account Management charges etc. when service tax by the Jurisdictional Authorities has been charged in respect of these services under the Heading 'Port Service' and 'Custom House Agent service' respectively, the Assistant Commissioner while considering refund claim of assessee under Notification No. 17/09-ST cannot review, the assessment of service tax done by the Jurisdictional Service Tax Authorities.

8.1 In view of the above discussion, we do not find any infirmity in the order dt. 01.11.11 passed by the Commissioner (Appeals).

9. As regards the appeal No. S/810-811/2012 against order-in-appeal dt.30.03.12 passed by Commissioner of Central Excise (Appeals), we find that the Commissioner (Appeals)'s impugned order has summarily dismissed the appeals without considering the submissions made by the assessee regarding co-relation of the service provider's invoices with the shipping bills. The plea of the assessee is that providers of clearing & forwarding Agents services and CHA services have in their invoices, mentioned the assessee's export invoice numbers in respect of which the service was provided and it is possible to link the service provider's invoices with the shipping bills on the basis of the export invoice numbers, as all the

shipping bills mention the export invoice number. As regards the objection that in respect of charges for transportation of the export consignment from

container depot to gateway port, the export invoice does not mention the ICD, according to the appellant, the name of the ICD is clearly mentioned but

this plea has not been examined at all in the impugned order. As regards the cargo handling service, the appellant plea is that in terms of the

Board's Circular No B11/1/2002-TRU dt. 01.08.2002 this service provided by the Port has to be treated as "Port Service" and accordingly

though the service tax has not been paid under "Port Service" and the same would be eligible for refund. We agree with the pleas of the

assessee which have not been examined at all in the impugned order. In view of this the impugned order upholding the rejection of the refund claim is

not sustainable and the same is set aside.

10. In view of the above discussion, while the Appeal No. ST/172-183/2012- CU [DB] filed by the Revenue, are dismissed, the Appeal Nos: ST/810-

811/2012 are filed by the assessee are allowed.

[Operative portion of the order are already pronounced in the court]