(2020) 01 DEL CK 0578

In the Delhi High Court

Case No : SERTA No. 30 Of 2016

Kultar Exports Through: Its Partner — APPELLANT

Vs

Commissioner Of Central Excise, Delhi-I — RESPONDENT

Date of Decision : 30-01-2020

Acts Referred:

Central Excise Act, 1944 — Section 11B, 35G
Finance Act, 1994 — Section 83

Citation : (2020) 01 DEL CK 0578

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;C. Hari Shankar, J

Bench : Division Bench

Advocate : Anjali Gupta, Jitendra Singh, Vipasha Srivastava, Amit Bansal, Aman Rewaria, Vipasha Mishra

Final Decision : Dismissed

Judgement

D.N. Patel, CJ

1. This Appeal has been preferred under Section 35-G of the Central Excise Act, 1944 (hereinafter "the Act") read with Section 83 of Chapter V of the Finance Act, 1994, by the Appellant - M/s Kultar Exports through its partner, Sh. Kultar Singh against the judgment and Final Order dated 9th October, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter "CESTAT") in Service Tax Appeal No. ST/3965 of 2012 whereby CESTAT upheld the Order passed by Commissioner (Appeals), Central Excise, Delhi - I dated 6th September 2012.

2. This Appeal was admitted by this Hon'ble Court vide Order dated 10th February, 2017,whereby the following question of law was framed:-

"Did the CESTAT fell into error in holding that the Appellant was not entitled to refund on account of bar of limitation in the facts and circumstances of the case?"

3. The Appellant M/s Kultar Exports is the exporters of general merchant goods like fabrics, readymade garments artificial jewellery etc. The Appellant exported

goods i.e. educational books in the months of July 2008 to March 2009 wherein the Appellant allegedly received services from a foreign commission agent and service tax was paid on a reverse charge basis. Pursuant to the same, the Appellant filed ST-3 returns on 15th June, 2010.

4. The Appellant on 10th December, 2010, filed an application for refund of the paymentof service tax of Rs. 16,103, for the period of July 2008 to September 2008 and Rs. 6,83,112 for the period of October 2008 to March 2009 under Notification No. 41/2007-ST dated 6th October 2007 (amended by the notification No. 17/2008-ST dated 1stApril 2008) wherein vide the amendment, S.No. 15 was added in the Schedule providing for exemption on taxable services of a commission agent located outside India obtained by an exporter in India for sale of goods, claimed refund as per exemption under S. No. 15 of the said notification.

5. The application of the Appellant was rejected by the Assistant Commissioner (Excise) vide Order dated 28th January, 2011, holding that apart from not having submitted the requisite documents as stated in the aforesaid notification, No. 41/2007-ST, the appellant's claim was time barred as having not been submitted within the prescribed period of six months from the end of the relevant quarter when the goods have said to have been exported. The Assistant Commissioner noted that the Appellant had failed to fulfil the conditions as required under Notification No. 41/2007 - ST, and thus dismissed the application.

6. The Appellant thereafter, filed an Appeal against the same, which was dismissed by the Commissioner (Appeals) vide Order dated 6th December, 2009 noting the non-compliance with the substantive requirements of clause 2 (e) of the Notification No. 41/2007-STof submitting the requisite documents within the time as stipulated in the said notification, and thus being time barred.

7. Moreover, the Commissioner has noted that as per the Circular No. 112/06/2009 - ST dated 12th March 2009 wherein it has been so clarified that the limitation period is to be computed form the date of the exports, the application by the Appellant was time barred and thus did not comply with the substantive condition given in the Notification.

8. The Appellant challenged the aforementioned Order-in-Appeal before CESTAT, which, by its Final Order and judgment dated 9th October, 2015 upheld the Order by Commissioner Appeal and held that the Appellant's application was time barred.

9. Against which, the present appeal has been preferred.

10. We have heard learned counsel for the Appellant, Ms. Anjali Gupta, and Mr. Amit Bansal, Senior Standing Counsel, for the Respondent, at length.

11. Ms. Anjali Gupta,learned counsel for the Appellant contends that the refund claim was filed within one year of the date of payment of service tax as required by Section 11B of the Act, was complied with and thus, the Appellants claim

cannot be denied.

12. Ms. Anjali Gupta contends that substantial benefit cannot be denied on the ground of mere technical breaches. She places reliance on Formica India v. Collector of Central Excise 1995 (77) ELT 0511.

13. Moreover, the counsel contends that the Appellant's claim should not be disallowed merely because of the non-compliance of technical grounds when the Appellant has complied with the substantial requirements of the Notification No. 41/2007-ST.

14. Per contra, Mr. Amit Bansal, Senior Standing Counsel, for the Respondent has argued the Notification has to be treated as part of the Statute in light of the judgements of the Hon'ble Supreme Court, and must be strictly interpreted.

15. Mr. Amit Bansal places reliance on Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi - III 2011 (270) E.L.T. 465 (S.C.), stating that the conditions, as provided for, in the Exemption Notification have to strictly interpreted and non-compliance of the same would disentitle the Appellant from the benefits as provided thereunder.

16. Furthermore, Mr. Amit Bansal contends that the time limit as provided for, are not only procedural requirements but substantive requirements which should have been complied with and as the Appellant's claim had been filed after the prescribed period, and thus Appeal was rightly rejected by CESTAT.

17. It is trite, that while interpreting exemption notifications, such notifications have to be interpreted, stricto sensu [Commissioner of Customs (Import), Mumbai v Dilip Kumar & Co. (2018) 9 SCC 1; Commissioner of Central Excise v Hari Chand Shri Gopal& Others (2011) 1 SCC 236; Commissioner of Central Excise v Mahaan Dairies (2004) 11 SCC 798].

18. The Supreme Court in Saraswati Sugar Mills 2011 (270) E.L.T. 465 (S.C.), has affirmed this principle, assailing in paragraph 7, as follows:

"7. ... A party claiming exemption has to prove that he/it is eligible for exemption contained in the notification. An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification. In Bombay Chemicals (P) Ltd. vs. CCE - (1995) Supp (2) SCC 646, a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly"

19. Therefore, the clause 2 (e) of the Notification No. 41/2007-STmust be applied strictly, and the Appellant cannot selectively seek relief of the said notification. The CESTAT has passed a laconic, well-reasoned and thorough order upholding the order of the Commissioner (Appeals), which merits absolutely no interference by us.

20. Therefore, the question of law raised in this appeal is answered against the Appellant and in favour of the Respondent and this appeal is hereby dismissed.

