(2021) 11 CESTAT CK 0047

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 41873, 41874, 41875, 42726, 42727, 42728, 42750, 42751, 42752 Of 2018

M/s. eShakti.com Private Limited APPELLANT

Vs

Commissioner Of G.S.T. And Central Excise RESPONDENT

Date of Decision : 23-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0047

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1. Heard both sides.

2.1 Shri M. Ponnuswamy, Learned Consultant for the appellant, submits that in so far as the issue of time-bar is concerned, he is not pressing and hence, no order be passed.

2.2 He would also contend that this very Bench vide Final Order Nos. 41750 to 41753 of 2021 dated 17.08.2021 passed in Service Tax Appeal Nos. 41612 to 41615 of 2019, has decided the very same issues in the appellant's own case for earlier periods and requests for similar orders in these appeals as well.

3. Shri Vikas Jhajharia, Learned Departmental Representative for the Revenue, agrees that the very same issues are involved.

4. After hearing both sides and after going through the orders of lower authorities and also the earlier Final Order of this Bench (supra), I find that the contentions of the Learned Consultant for the appellant are correct in as much as the very same issues are involved.

5. The relevant observations and finding in the earlier Order of this Bench are as under:

"4.2 Most of the services which are held to be not eligible for refund for the reason of them being not used after the production stage were such that, as explained by the Learned Consultant for the appellant, used in the places located beyond the factory or the place of manufacture, like tailoring units, corporate office, clearing and forwarding services, advertisement, legal and accounting services, etc., which were obviously not located within the factory premises.

4.3 In view of this, the reasons attributed by the Adjudicating Authority cannot be sustained since there is no doubt that these services were not used in the factory of production but in any other place or premises of production or manufacture of the said goods, for their export. In view of this alone, it is seen that the appellant satisfies the conditions of Notification No. 41/2012 ibid., as substituted vide Notification No. 01/2016 ibid., and therefore, the denial cannot be sustained. Revenue has not doubted about the nature of service at the tailoring units, corporate office, clearing and forwarding services, advertisement, legal and accounting services, etc. To this extent, the impugned order is set aside and the appeals are allowed with consequential benefits, if any, as per law.

5.1 The second reason attributed for rejection of refund from the impugned order in respect of courier bills, is for want of correlation of such bills with the exports/ shipping bills. Learned Consultant for the appellant vehemently contended that the appellant had submitted the Chartered Accountant Certificate which had specifically correlated the bills with the relevant exports/shipping bills, which aspect has not at all been considered by the lower authorities.

5.2 In view of the above and in the interests of justice, I am of the opinion that this issue requires re-adjudication in the light of the submission made by the Learned Consultant for the appellant. The impugned order on this issue is therefore set aside and the matter is restored to the file of the Adjudicating Authority, who shall cross-verify with the help of the appellant/appellant's representative as regards correlation is concerned and then pass an appropriate order in accordance with law. All the contentions on this issue are left open.

6.1 The last disallowance is the rejection of claim of refund of Swachh Bharat Cess and Krishi Kalyan Cess. It is the settled position of law that these cesses form part of the Service Tax paid on various input services used in or in relation to the export of goods. This is a direct consequence of the issue of refund for want of correlation, which has been remanded hereinabove vide paragraph 5.2 by this forum.

6.2 In view of the above, this issue is also sent back to the file of the Adjudicating Authority. All the contentions of the appellant on this issue are left open."

6. The ratio in the above appeals squarely applies to these appeals also and hence, same order is required to be passed. Consequently, the impugned orders are set aside and the appeals are partly allowed and partly remanded, as indicated in the earlier order.

(Order dictated and pronounced in the open court)

