(2021) 08 CESTAT CK 0070

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 41612, 41613, 41614, 41615 Of 2019

M/s. eShakti.com Private Limited APPELLANT

Vs

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

Date of Decision : 17-08-2021

Acts Referred:

Citation : (2021) 08 CESTAT CK 0070

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1. The above four appeals are filed by the assessee and since the common issue of refund of Service Tax paid on input services is involved, the same are taken up together for the sake of convenience.

2.1 The undisputed facts, as could be gathered from the documents placed on record, are that the appellant is an exporter of readymade garments; the appellant would get the garments manufactured/tailored through job workers located in and around Gurgaon, which were sold online i.e., exported by courier from Delhi airport to their customers, mainly in U.S.A. They are also the holders of Service Tax registration for their Chennai office premises to discharge their Service Tax liability under reverse charge mechanism in respect of certain taxable services.

2.2 It is useful to refer "Table-II" at paragraph 2.3, page number 19 of the impugned Order-in-Appeal for the sake of brevity:

A.No. and date

Refund of Service Tax sanctioned (in Rs.)

Reasons for rejecting refund (in Rs.)

Total amount in appeal (3+6+7)

Input services not used beyond factory, in the export of goods

Time barred includin g SBC & KKC

Courier charges claimed based on credit notes

Courier charges not correlata ble with exports/ shipping bills

Swachh Bharat Cess (SBC) and Krishi Kalyan Cess (KKC)

1

2

3

4

5

6

7

8

138/2019 (CTA-I) (CN) - 16.05.2019

1482529

384595

268212

0

1032315

105893

1522803

139/2019 (CTA-I) (CN) - 16.05.2019

2559448

327006

175629

179145

1818671

182818

2328495

140/2019 (CTA-I) (CN) - 16.05.2019

5321060

724361

0

0

1703440

380076

2807877

141/2019 (CTA-I) (CN) - 16.05.2019

1493049

338398

18968

0

744277

106646

1189321

2.3 In the Order-in-Original, the Adjudicating Authority has sanctioned partial refund. Partial rejection is made by holding that most of the services were not used beyond the factory of production and hence, the appellant was not eligible for refund in respect of the services mentioned at Sl. Nos. 2 to 14 of the "Table:I" at paragraph 17.2, page number 4 of the Order-in-Original No. 60/2018-(R) dated 31.03.2019. The Adjudicating Authority-Assistant Commissioner, however, agrees that the appellant has satisfied the various conditions under paragraphs 1 (c) (d) (e) of Notification No. 41/2012-ST dated 29.06.2012. The Assistant Commissioner also agrees as to the appellant's fulfilling paragraph 3 (g) of the Notification ibid. as regards limitation is concerned. The above denial of refund was upheld vide impugned Order-in-Appeal No. 234-237/2019 (CTA-I) dated 31.07.2019. Aggrieved, the present appeals have been filed before this forum.

3. Heard Shri M. Ponnuswamy, Learned Consultant appearing for the appellant and Smt. Sridevi Taritla (Additional Commissioner), Learned Departmental Representative appearing for the Revenue.

4.1 Admittedly, the appellant is an exporter with no local sales and it is not even suspected by the Revenue about the appellant having any local sales. The Notification in question i.e., Notification No. 41/2012, was substituted vide Notification No. 01/2016-ST dated 03.02.2016 whereby the following substitution was effected :

"(a) in the Explanation,-

(I) In clause (A), for sub-clause (i), the following sub-clause shall be substituted, namely:-

(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;

(II) clause (B) shall be omitted;"

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.

7. The appeals stand partly allowed and partly remanded on the above terms.

(Order pronounced in the open court on 17.08.2021)

