
(2021) 12 CESTAT CK 0041

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 51182 Of 2020

M/s Jagannath Polymers Pvt Ltd

APPELLANT

Vs

Commissioner, CGST- Jaipur 1

RESPONDENT

Date of Decision : 15-12-2021

Acts Referred:

Customs Act, 1962 — Section 2(26)

Service Tax Rules, 1994 — Rule 7C, 7CA

Central Goods and Services Tax Act, 2017 — Section 142(3), 142(8)(a)

Citation : (2021) 12 CESTAT CK 0041

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The issue involved in this appeal is whether the Appellant is entitled to Cenvat credit and consequential refund of Service Tax paid on 27th December 2018 (during GST regime) pursuant to audit objection, under reverse charge mechanism.

2. Appellant is manufacturer of poly bags which attracts Central Excise Duty under the First Schedule to CETA 1985. Appellant imports raw material for the purpose of manufacturing. An audit objection was raised vide IAR no. 60/2018-19 dated 31st January 2019 for non-payment of Service Tax Rs. 61,627/- under RCM, on ocean freight, as required under Serial No. 12 of Notification no. 30/2012-ST as amended by subsequent Notification No. 15/2017-ST dated 13.04.2017, effective from 23.04.2017, wherein the provisions was made that any person liable for paying service tax under reverse charge mechanism in respect of services provided or agreed to be provided by a person-service provider located in non-taxable territory, to a person located in the taxable territory, by way of transportation of goods by a vessel from a place outside India upto the customs clearance in India, the person liable for paying service tax other than the service provider shall be the importer as defined under

clause (26) of Section 2 of the Customs Act.

3. Further, Service tax Rules were amended by inserting sub-rule 7CA after rule 7C, vide Notification No. 16/2017-ST w.e.f. 23.04.2017. The newly inserted sub-rule 7CA provides-the person liable for paying service tax for the taxable services provided or agreed to be provided by a person located in non-taxable territory to a person located in taxable territory, shall have the option to pay an amount calculated @ 1.4% of the sum of CIF value, of such imported goods, plus cess.

4. On being pointed out by the audit, the Appellant assessee agreed and deposited the service tax amount of Rs. 61,627/- vide challan dated 27th December 2018 alongwith interest. As the Appellant could not take Cenvat credit of service tax paid relating to the period prior to 1st July 2017, under the GST regime, they applied for refund of this amount on 30th April, 2019.

5. Revenue issued show cause notice as it appeared that the appellant have deposited the said amount only after being pointed out by the audit and hence, Cenvat credit is not available to them as well as the consequential refund as per Section 142(8)(a) of CGST Act. The SCN was adjudicated on contest and the SCN was confirmed rejecting the claim for refund. Being aggrieved, the Appellants referred the Appeal before the Commissioner (Appeal) who was pleased to reject the appeal upholding the order of the Assitant Commissioner, observing that Section 142(8)(a) of CGST, Act specifically debars the admissibility of input tax credit under the CGST, Act. It was also observed that the appellant is not entitled to refund in terms of Section 142 (3) of the CGST, Act as the instant case is appropriately covered under the provision of Section 142(8)(a) of the Act.

6. Being aggrieved, the appellant is before this Tribunal inter alia on the ground that as the appellant was entitled to Cenvat credit of the Service tax paid/ payable by them, there was no incentive for them to avoid the payment of service tax. Secondly, the said levy was admittedly introduced w.e.f. 23rd April, 2017, and the appellant had no knowledge of the same. Soon thereafter, there was lot of discussion going on about the implementation and the compliance required by the assessee on transition to GST regime. GST was introduced and implemented w.e.f. 1st July 2017. And in all this melee, the appellant assessee missed to deposit the service tax on ocean freight under reverse charge mechanism.

7. Accordingly, I find that there is no mala fide on the part of the appellant in not depositing the service tax on ocean freight under the reverse charge mechanism. Even otherwise, leviability of service tax on ocean freight has been highly debatable issue, and the same travelled to this Tribunal earlier also in different Appeals as well as before the higher courts. Accordingly, I hold that the appellant is entitled to Cenvat credit of the said amount deposited under the erstwhile service tax law. As the Cenvat credit is not available, due to the implementation of GST w.e.f. 1st July 2017, the appellant is entitled to claim refund under the transitional provision of Section 142 (3) of CGST Act.

8. Accordingly, this Appeal is allowed, the adjudicating authority is directed to disburse the refund to the appellant within a period of 30 days from the date of receipt of the copy of this order, alongwith interest as per Rules.

(Dictated in open Court)