
(2023) 09 CESTAT CK 0027

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 104 Of 2011

M/s Matrix Clothing Private Ltd

APPELLANT

Vs

CCE & ST- Delhi-III

RESPONDENT

Date of Decision : 18-09-2023

Acts Referred:

Citation : (2023) 09 CESTAT CK 0027

Hon'ble Judges : S.S. Garg Member (J)

Bench : Single Bench

Advocate : Krati Singh, Shreya Khunteta, Shivani

Final Decision : Allowed

Judgement

S. S. Garg, Member (J)

1. The present appeal is directed against the impugned order dated 15.10.2010 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the refund claim of Rs. 4,67,317/- by upholding the order in original.

2. Briefly the facts of the case are that the appellant is exporting the readymade garments manufactured by them and are registered with the Central Excise Department. As per Notification No. 40/2007 S.T. dated 17.09.2007 and Notification No. 41/2007 dated 06.10.2007 exemption from service tax was granted in respect of certain specified services received and used by the exporters for exporting the goods manufactured by them. Accordingly, the appellant opted for availing the refund as per the Notification towards the services used for exporting the goods out of India.

- The Appellant filed a refund claim pertaining to the service tax paid on following taxable services utilized by the Appellant for export of goods:-

Nature of Input Service

Amount of Service Tax claimed as refund (INR)

Clearing and Forwarding Agents services (port services) provided at port rendered by various service providers (Terminal Handling Services)

2,06,350/-

Transportation of goods from place of removal to port ("GTA services")

89,308/-

Customs House Agents ("CHA") services

1,71,659/-

Total Refund Amount

4,67,317/-

- Thereafter, the show cause notice was issued to the Appellant alleging that the Appellant failed to show any correlation between the input services and the export of goods, and no proper documents were produced by the Appellant to claim the refund.

- After following due process, the refund was rejected by the original authority and on appeal before the Commissioner (Appeals), the Ld. Commissioner (Appeals) upheld the order-in-original and rejected the appeal of the appellant.

- Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the binding judicial precedents on identical issues. She further submitted that with regard to rejection of refund on Terminal Handling Services which are rendered for handling the export containers at the port of exports within the port area by authorized service providers and the same are in the nature of port services. She further submits that the service tax paid on such services are clearly eligible for refund under the Notification No. 41/2007 dated 06.10.2007. For this Submission, she relied upon the following decisions:-

- Commissioner of Central Excise v AIA Engineering Pvt. Ltd. 2015 (1) TMI 1044 - Gujarat High Court

- M/s Nahar Fibres v CCE, Chandigarh 2016 (46) S.T.R. 542 (Tri. - Del.)

- M/s Nahar Fibres v CCE, Chandigarh 2017 (3) TMI 314 - CESTAT Chandigarh

- Commissioner of Central Excise v Ramdev Food Products PvtLtd. 2010(19) STR 833 (Tri. Ahmd)

- Macro Polymers Pvt. Ltd. v Commissioner of Central Excise, 2010(19) STR 679 (Tri.-Ahmd)

- TRL Riceland Pvt. Ltd. Versus CCE, Delhi-III 2017 (7) TMI 492 - CESTAT Chandigarh
- M/S Lekh Raj Narinder Kumar Versus C.S. T-Delhi 2019 (11) TMI 537 - CESTAT Chandigarh
- M/S Trident Limited (Formerly Abhishek Industries Limited) Versus CCE, Chandigarh-I 2017 (6) TMI 472 - CESTAT Chandigarh
- M/S Namdhari Food International Pvt. Ltd. Versus CCE, Rohtak 2017 (5) TMI 1343 CESTAT Chandigarh
- M/S TRL Riceland Pvt. Ltd. Versus CCE, Delhi-III 2017 (8) TMI 219 - CESTAT Chandigarh
- M/S Shahi Exports Pvt. Ltd. Versus CCE, Delhi-IV 2017 (3) TMI 1543 - CESTAT Chandigarh
- M/S Winsome Yarns Limited Versus CCE, Chandigarh 2017 (6) TMI 683 - CESTAT Chandigarh

5. She also submits that where the appellant receives the port services, then it is insignificant as to whether the service provider is registered under the head of port services or under a different category. Thus, registration of service provider under a different category will not disentitle the Appellant from claiming the benefit of the Notification. For this submission, she relied upon the following decisions:-

- Overseas Traders v Commissioner of Service Tax, Mumbai, 2016 (8) TMI 188 - CESTAT Mumbai
- Union Of India v Arihant Tiles and Marbles (P) Ltd. 2019 (20) G.S.T.L. 21 (Raj.)
- SRF Ltdv Commissioner of Central Excise, Jaipur-I 2015 (40) S.T.R. 980 (Tri. - Del.)
- CCE, Ahmedabad v M/s AIA Engineering Pvt. Ltd., 2010 (7) TMI 486 - CESTAT Ahmedabad
- C.S.T. -Service Tax - Ahmedabad Versus Saurashtra Fuels Pvt Ltd 2023 (3) TMI 441-CESTAT Ahmedabad

6. As far as the availment of GTA Services, the Ld. Counsel submitted that the appellant received the services of the third-party transporters (GTA) by transporting the stuffed containers with seal from the factory of the Appellant to ICD/CFS or to the port of export. She also submits that the Appellant cleared the said goods for the purpose of exports and the said goods were directly transported by GTA to ICD/ port of export without any intermediate storage with a export invoice which is evident from the bills/ consignment notes/ lorry receipts which clearly mentioned that the goods were transported from the Appellant's factory to ICD for export purposes along with the relevant export documents

which have been also produced on record.

7. As regard, the availment of CHA Services, the Ld. Counsel submits that there is no dispute with regard to the fact that services of CHA are specifically covered by the Notification and the Appellant has also submitted the bills issued by the CHA which contained the specific reference to description of the goods to be exported with specific details like quantity of export consignment, total volume, date of the export invoice, export invoice number etc. which is directly correlatable to the export invoices and shipping bills. Further, she submits that there is no restriction either in the service tax law or in the Notification which restricts the activity of sub-contracting by the CHA. For this submission, she relied upon the decision of *Evergreen Suppliers v Commissioner of Central Excise, Mangalore, 2008(9)STR 467 (Tri-Bang)*.

8. Further, the Ld. Counsel submits that the appellant has duly submitted the copies of invoices issued by the service provider mentioning amount of service tax.

9. On the other hand, the Ld. DR reiterated the findings in the impugned order.

10. After considering the submissions of both the parties and perusal of material on record, I find that as far as the Terminal Handling Services are concerned, these services have been rendered for handling the export containers at the port of exports and they fall in the nature of port services. Further, I find that the Terminal Handling Services have been held to be specified services and the appellant is entitled to refund of the same in view of the various decisions cited above (*supra*).

11. Similarly, with regard to GTA Service, I hold that the GTA service has been received from third party transporter for transporting the stuffed containers with seal from the factory of the appellant to ICD/CFS or to the port of export.

12. Similarly, as per the notification, the CHA Services are specifically covered and the appellant has furnished the bills issued by the CHA containing the details of the payment.

13. In view of my discussion above, I am of the considered view that the impugned order is not sustainable in law and the same is set-aside by allowing the appeal of the appellant.