(2021) 07 CESTAT CK 0023

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20412 Of 2020

M/s Phoenix Rubbers — APPELLANT

Vs

Commissioner Of Central Tax And Central Excise, Calicut — RESPONDENT

Date of Decision : 15-07-2021

Acts Referred:

Finance Act, 1994 — Section 66B, 83, 104, 104(1)
Central Excise Act, 1944 — Section 11B

Citation : (2021) 07 CESTAT CK 0023

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Advocate : Sivadas Chettor, P. Rama Holla

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dated 29.07.2020 passed by the Commissioner (Appeals), Cochin whereby the appeal for

claim of refund is rejected.

2. Briefly the facts of the present case are that the appellant filed a refund claim of Rs.2,54,158/- on 26.09.2017 as per Section 104 of the Finance

Act, 2017 before the Deputy Commissioner, Palakkad. As per Notification No.41/2016 dated 22.09.2016 taxable services (like premium, salami, cost,

price, development charges etc) provided by the State Government or KINFRA by way of providing long term lease exceeding 30 years or more is

exempt from service tax and the said exemption was available from the period from 01.06.2007 to 21.09.2016; along with refund claim, the appellant

filed all the requisite documents. Thereafter, a SCN dated 28.11.2017 issued to the appellant proposing to reject the refund claim on the ground of non-

submission of necessary documents. After following the due process, the Deputy

Commissioner vide Order-in-Original No. 106/2017 dated

11.12.2017 rejected the refund claim of the appellant on the ground that the application for refund did not meet the requirements under Section 11B of

the Central Excise Act, 1944 as made applicable to Finance Act, 1944 vide Section 83 of the Act. Aggrieved by the said order, the appellant filed

appeal before the Commissioner who also rejected the appeal. Hence, the present appeal.

3. Heard both the parties and perused the records of the case.

4. Learned 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, the law and the binding judicial precedents. He further submitted that Section 104 of the Finance Act, 1994 is an independent

standalone provision and is a special provision dealing with the specific circumstances mentioned in Section 104 and the same cannot be controlled or

limited or restricted by the general provision like Section 83 of the Finance Act, 1994 read with Section 11B of the Central Excise Act, 1944. He

further submitted that it is a settled law that a specific provision in an enactment would override a general provision. He further submitted that the

appellant produced documentary evidences justifying the payment of service tax to the KINFRA and a certificate from KINFRA certifying that they

have paid the service tax to the Government and has not claimed CENVAT credit. He further submitted that Section 104 of the Finance Act itself

declares that there will not be any levy or collection of tax, its impact cannot be nullified or controlled or limited by another provision contained in the

very same enactment i.e. Section 83 of the Finance Act. For this submission, he relied upon the decision of the Honâ??ble Madras High Court in

Enmas Andritz Pvt. Ltd. Vs Asstt. Commissioner of S.T. Chennai reported in 2020 (38) GSTL 314 (Mad.). He further submitted that though Section

11B of the Central Excise Act is not applicable in the present case but assuming for the sake of argument that Section 11B of the Central Excise Act,

1944 is applicable even then the appellant has complied with fully or substantially with the requirements specified therein. He further submitted that the

application was filed on 26.09.2017 which is within six months from the relevant date, i.e. date of introduction of Section 104 of the Finance Act, 2017.

He further submitted that the appellant had not passed the incidence of tax and duty to any other person. He further submitted that initially when he

filed the Challan, he did not have the copy of invoices/bills issued by KINFRA but he produced the other documentary evidences to show that they

have paid service tax to KINFRA and in turn KINFRA had paid the same to the Government.

5. On the other hand, learned AR defended the impugned order and submitted that the refund has rightly been rejected on account of nonsubmission

of requisite documents.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant filed refund claim which arose

as a consequence of introduction of Section 104 of the Finance Act w.e.f. 31.03.2017. Further, I find that Notification No.41/2016 dated 22.09.2016

has exempted taxable service provided by the State Government Industrial Development Corporation/Undertakings to industrial units by way of

granting long term lease on industrial plot from so much of service tax leviable thereon under Section 66B of the said Act, as is leviable on the one

time upfront amount payable for such lease. Vide Section 104 (1), exemption was provided from said services for the period from 01.06.2007 to

21.09.2016 and it was provided that the refund claim should be filed within a period of six months from the date from which Finance Act, 2017 is

promulgated and come into force. Further, I find that in the present case, the appellant filed the refund claim within time and the only ground for which

the refund was rejected by the Original Authority and upheld by the Appellate Authority is that the appellant did not produce sufficient documents in

the form of invoices/bills showing that they have paid the service tax to KINFRA. During the pendency of the appeal, the appellant filed various

invoices/bills issued by KINFRA showing the payment of service tax by the appellant for which the refund claim has been filed by the appellant.

Further, I find that KINFRA has also issued a certificate dated 02.02.2021 certifying that they have not availed any CENVAT credit on the service

tax paid by the appellant. Further, I find that these bills/invoices issued by KINFRA clearly show the payment of service tax by the appellant to

KINFRA and KINFRA in turn has paid the same to the Government. Though these invoices/bills were not produced before the Original Authority but various Challans issued by KINFRA were produced along with worksheets showing the payment of service tax to KINFRA by the appellant.

7. In view of the facts that now the appellants have produced sufficient documents to prove the payment of service tax, I do not find any justification

for rejection of the refund claim and hence, I set aside the impugned order by allowing the appeal of the appellant.

(Order pronounced in Open Court on 15/07/2021)