(2021) 06 CESTAT CK 0052

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 53841 Of 2018

M/s.SA Impex APPELLANT

Vs

Commissioner Of Central Goods And Service Tax RESPONDENT

Date of Decision : 29-06-2021

Acts Referred:

Citation : (2021) 06 CESTAT CK 0052

Hon'ble Judges : Anil Choudhary, J`

Bench : Single Bench

Advocate : Archana Jain, Pradeep Gupta

Final Decision : Allowed

Judgement

1. Heard the parties.

2. The issue involved in this appeal is whether the appellant has filed their refund claim for Rs.3,94,529/- for service tax paid against the specified

services in the course of export under the provisions of Notification No.41/2012-ST dated 29.06.2012.

3. The appellant is registered with the Department and engaged in the export of oil seeds and oils. They exported certain consignments during the

quarter of 1st October, 2015 to 31.12.2015 totalling 9 consignments. The last consignment was through shipping bill dated 17.12.2015 against the LET

export order dated 18.12.2015. The appellant filed, admittedly, the refund claim on 27.12.2016. The Court below rejected the refund claim on the

ground that the claim has been filed after expiry of prescribed limit of one year from the date of eligibility for filing of the claim.

4. According to the Notification no.41/2012-ST, refund claim has been filed within one year as per para 3(g) from the date of export of the goods. It is

further mentioned that the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of

the goods for export (LEO). It has been observed by the ld. Commissioner (Appeals) that the time limit should have been strictly followed. The goods

having been exported during October-December, 2015, the appellant was not required to wait till the December, 2016 to file the claim and agreeing

with the adjudicating authority upheld the rejection of the refund claim on the ground of limitation

5. Ld. Counsel, Ms. Archana Jain for the appellant contends that on harmonious reading of the provisions, the period of one year is to be counted from

the end of the quarter, as the notification provides for filing one claim for each quarter. She refers to precedent notification no.41/2007- ST

dated06.10.2007, wherein, in para 2(e), it is mentioned that the claim for refund shall be filed on a quarterly basis, within 60 days from the end of the

relevant quarter, during which the said goods have been exported; provided that the said goods shall be deemed to have been exported on the date on

which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation. She also refers to the

Notification no.5/06-CE (NT) wherein also in the earlier notification for similar refund in Appendix to the notification at para 2, it is mentioned that the

claim for such refund is submitted not more than once for any quarter in a calendar year. Admittedly, it is not disputed that the period of limitation is

one year from the relevant date. Accordingly, she further urges that the refund claim filed on 27.12.2016 may be held in time within one year as the

limitation has to be counted from 1.1.2016 for the quarter ending 1.12.2015.

6. Ld. Authorised Representative relied on the impugned order and further relies on a Coordinate Benchâ?? decision of this Tribunal in MMTC Vs.

CCE & ST, Vishakhapattnam-I â?" 2019 (26) GSTL 248 (Tribunal- Hyderbad).

7. Having considered the rival contentions, I find that the provisions have to be read harmoniously. When the provisions require that only one claim has

to be filed for each quarter, definitely, an assessee has to file one claim only at the end of the quarter. Thus, the limitation cannot be counted from the

day of LEO or the last LEO in a quarter, as the assessee cannot file more than one refund claim for each quarter. Thus, I hold that on harmonious

reading of the provisions and also the earlier Notification no.5/2006-CE (NT) read with notification no.41/2007-ST and read with notification

no.41/2012- ST, the limitation has to be counted from the first day and after the end of the quarter, and accordingly, I find that refund claim filed on

27.12.2016 is within limitation.

8. Accordingly, in view of my findings, the impugned order is set aside and the appeal is allowed. Further, I find that the refund claim is rejected only

on the ground of limitation, which is evident from the show cause notice dated 11.05.2017 as well as from the orders of the Court below.

Accordingly, the Adjudicating Authority is directed to disburse the refund within a period of 45 days upon the receipt of the copy of the order with

interest as per Rules for the period from 27.03.2017 (3 months ending the date of claim), till the grant of refund.

[order dictated & pronounced in open court]