(2024) 01 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 10332 Of 2015

Nirma Limited APPELLANT

Vs

C.C.E. & S.T.-Vadodara-I RESPONDENT

Date of Decision : 01-01-2024

Acts Referred:

Citation : (2024) 01 CESTAT CK 0011

Hon'ble Judges : Somesh Arora, (J)

Bench : Single Bench

Advocate : P.P Jadeja Himanshu P Shrimali

Final Decision : Allowed

Judgement

Somesh Arora, Member (J)

1. The matter pertains to refund of Service Tax paid which has gone into the export goods and which was required to be rebated as per Notification No. 41/2012-ST dated 29.06.2012. The Notification requires payment of Service Tax first on various services involved and then to claim rebate on provision of prescribed documents.

2. The Learned Advocate for the appellant submits that in the present case issue is concerned with condition "C" as is reproduced below:-

"(c) The rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2."

2.1 As per the condition as has been referred above, the rebate should only be disallowed in those cases where the difference between amount of rebate under the prescribed procedure between para 2 & 3 is less than 20% of the rebate available. It was his contention that in the instant matter, there were claiming benefit under condition para 3 of the proviso to the notification and the computation indicated by them which is part of the show cause notice under para 5 indicated that they were entitled to rebate of Rs. 2,80,506/- in any case. However, this factum is not been considered and pronounced upon by the lower authority and the whole claim amounting to Rs. 3, 07,119/- was rejected in Toto. On the ground that para 2 is required to be considered by the customs authority and not the Central Excise. The appellant on the other hand also maintained that they were claiming under para 3 and in any case there is no constraint to claim either through customs or excise authorities in the notification. It therefore is clear that the argument advanced by them has escaped detail scrutiny by the lower authorities and are required to be pronounced in the light of the stated position. Matter is, therefore, prayed to be remanded back to the original authority for it to adjudicate the matter afresh.

3. Learned A.R. reiterates the findings of the impugned order, but has no serious objection to remand.

4. Considering that there is no constraint as has been highlighted, of either the matter being required to be dealt with by the customs authority or Excise and also there is nothing to show that para 3 under which the appellants are claiming the refund in the instant case is not applicable, on prima facie considerations, the matter deserves to be remitted back to the original authority.

5. Appeal is, therefore, allowed by way of remand.

