(2023) 03 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20151 Of 2022

Softline UPVC Windows & Doors APPELLANT

Vs

Commissioner Of Central Tax & Central Excise, Calicut RESPONDENT

Date of Decision : 01-03-2023

Acts Referred:

Finance Act, 2017 — Section 104

Citation : (2023) 03 CESTAT CK 0001

Hon'ble Judges : Dr. D.M. Misra, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Dr. D.M.Misra, Member (J)

1. Heard both sides.

2. This appeal is directed against Order-in-Appeal No. CAL-EXCUS-000-APP-215-2020 dated 27/07/2020 passed by Commissioner of Central Tax (Appeals), Cochin.

3. Briefly, the facts of the case are that the appellants are engaged in providing fabrication services from the premises taken on lease from Kerala Industrial Infrastructure Development Corporation (KINFRA). During the relevant period December 2013 to February 2014 they paid lease premium to KINFRA on which service tax was paid by them. The service tax on such premium was held to be exempted by Notification No.41/2006 dt.22.9.2016 and exemption was granted for the period 01.6.2007 to 21.9.2016 by virtue of Sec.104(1) of the Finance Act,2017. Consequently, they filed refund claim for Rs.2,64,747/- on 27.9.2017. The refund claim was rejected by the adjudicating authority as sufficient documents were not produced before him including the invoices issued by M/s. Kinfra and also the worksheets submitted by the appellant did not tally with the refund claim. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals), who in turn, upheld the rejection of the refund claim as

the appellant also failed to produce the relevant documents before the learned Commissioner (Appeals).

4. Learned Chartered Accountant for the appellant submits that the relevant invoices and other supporting documents have now been received by them from M/s. Kinfra which would indicate that the service tax was paid by them during the relevant period and credit was not availed against the said service tax payment by M/s. Kinfra. He fairly submits that these documents were not placed either before the adjudicating authority or the first appellate authority in support of their case. He placed reliance on the order of this Tribunal in Final Order No.20637/2021 dated 15.7.2021 whereunder in similar circumstances the refund claim was allowed.

5. Per contra, the learned Authorised Representative vehemently argued that the documents which were procured by the appellant during the pendency of the appeal needs to be verified about its authenticity and correctness. He also argued that the worksheet submitted by the appellant before the adjudicating authority did not tally with the certificate issued by M/s. Kinfra. He submits that the case law cited by the Appellant is not applicable to the present case as the circumstances in the said case was different and accordingly, distinguishable. He submits that the present case may be remanded to the adjudicating authority to verify the documents.

6. I have carefully considered the submissions advanced by both sides and perused the records. There is no dispute about the admissibility, in principle, the refund, in view of Section 104 of the Finance Act, 2017. The refund claim was filed within prescribed time period of six months as stipulated under Section 104 of the Finance Act,2017. The only issue to be addressed now is correctness of the documents vis-à-vis the quantum of claim filed by the appellant. The adjudicating authority categorically made observation that the worksheets submitted by the appellant did not tally with the services tax challans, etc., issued by M/s. Kinfra. Learned Chartered Accountant for the appellant on the other hand submits that the relevant Invoices, certificates etc. were procured by them subsequent to the order of the adjudicating authority and the appellant authority, by which now they can establish that the refund amount is correctly claimed by them and admissible. Learned Authorised Representative for the Revenue vehemently argues for verification of the documents.

7. In these circumstances, to meet the ends of justice, it is prudent to remand the matter to the adjudicating authority only for the limited purpose of verification of the documents on record and the documents that would be submitted by the appellant during the remand proceedings so as to verify the claim filed by the Appellant. It is stated by the Ld.CA that the appellant would furnish all the documents within a fortnight from the date of communication of this order. Thereafter, the adjudicating authority would scrutinise and pass an appropriate order after allowing an opportunity of hearing to the appellant. The learned Chartered Accountant submits that since the refund claim has been

pending for almost four years, a timeframe may be fixed. Learned Authorised Representative for the Revenue has no objection. Accepting the said submission, it is directed that the refund claim be adjudicated within three months from the date of the communication of the Order. Appeal is disposed of by way of remand to the adjudicating authority.