

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.01.2020
CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.690 of 2019

The Commissioner of GST & Central Excise
Chennai Outer Commissionerate
Newry Towers, 12th Main Road, Anna Nagar
Chennai 600 040. ... Appellant/Respondent

-Vs-

M/s.Hyundai Motor India Limited
Plot No.H-1, SIPCOT Industrial Estate
Irungattukottai, Sriperumbudur Taluk
Kancheepuram - 602 105. ... Respondent/Appellant

For Appellant : Mr.V.Sundareswaran,
Senior Standing Counsel

For Respondent : Mr.S.Muthu Venkatraman

Prayer : Civil Miscellaneous Appeal under Section 35G of the
Central Excise Act, 1944 read with Section 83 of Finance Act,
1944 to set aside the Final Order No.41431 of 2018 dated
01.05.2018 passed by the Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench, Chennai.

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The Revenue has filed this appeal against the order of the learned CESTAT dated 01.05.2018. The limited ground on which the present appeal is pressed by the learned Senior Standing Counsel for the Revenue Mr.V.Sundareswaran is as discussed by the learned Tribunal in Paragraph 5(i) of the impugned order. Though the Coordinate Bench of this Court had admitted the appeal on 31.01.2019 on four substantial questions of law, the only question pressed by the learned Senior Standing Counsel for the Revenue is Question No.(a), which reads as follows:-

"(a) Whether the Tribunal was correct in allowing the appeal of the assessee in respect of the part of the refund claim relating to invoices for port services?"

2. The relevant findings of the learned Tribunal in paragraph No.5(i) of the order dated 01.05.2018 reads as follows.

"5(i). On the issue of invoices issued by M/s.Natvar Parikh Industries relating to port services, we find that the matter is fully covered by the Tribunal decision in the case of SRF Ltd (supra), the relevant portion of which is reproduced for ready reference:-

"8. The above clarification throws light on difficulties faced by exporters to produce documents in accordance with Section 65(105) (zn) as there is no procedure of issuing permission letters or authorization to such service providers. The Board in its circular dated 12-3-2009 has clarified that granting refund does not require the verification of registration of service provider and refund can be granted if otherwise in order. The implication of these two clarifications read together, along with the amendment brought forth in the definition of port services, in our view, is that the exporter should not be unduly burdened with a condition to establish that the service provider was registered under port services. The learned counsel for appellant has placed reliance on the judgment in Commissioner Vs. Adani Enterprises Ltd., 2014 (35) S.T.R.741 (Guj.) wherein the Hon'ble High Court has considered the very same issue and held in favour of the assessee. The said decision squarely covers the issue in the present case the facts being similar. Revenue placed reliance on the decision rendered by CESTAT in Rajasthan Textile Mills Vs. Commissioner of Central Excise, Jaipur reported in 2015 (37) S.T.R.410 (Tri-Del). The refund claim therein was denied as the appellants had availed drawback also in respect of goods exported by them. Facts being different the said case is distinguished from the case in hand.

In the event, that part of the impugned order rejecting the refund claims relating to invoices for port services issued by M/s. Natvar Parikh Industries is set aside and appeal on that score is allowed. So ordered.

(ii) Amount of refund claimed for services availed of commission agent, rejected by the adjudicating authority and upheld in the impugned order, is not pressed by the Ld. Advocate and hence we do not interfere with the impugned order on that score. So ordered.

(iiii) On the issue of the exact period of refund, we find there is some confusion. The SCN produced by the appellant in para 4(iii) indicates that the amount of Rs.10,23,976/- is related to export clearances made prior to 01.04.2008. However, that aspect is not forthcoming from the annexure to the SCN. We therefore deem it fit to remand this issue to the adjudicating authority for reconsideration of this issue as per law, laid in provisions, notification, Circular and case laws applicable thereon.

(iv) So also, with regard to the portion of the refund claim pertaining to courier services, the matter is being remanded to enable the appellants to produce all the related invoices issued by the service provider. Once the appellant is able to establish the co-relation between the goods exported and/or export documents and the invoices issued by such service provider, the refund should be sanctioned as held by the Tribunal in Antak Agencies (International) (supra). So ordered."

3. Learned counsel for the Revenue Mr.V.Sundareswaran, drawing our attention to Notification No.17 /08-ST, by which the main Notification No.41/07-ST dated 06.10.2007 was amended, submitted that the Assessee M/s.Hyundai Motor India Limited had not established that the service provider M/s.Natvar Parikh Industries engaged in Port Services, had provided any specific service to the Assessee M/s.Hyundai Motor India Limited, on which the CENVAT / Refund of the service tax was claimed by the Assessee in terms of the said amending Notification dated 01.04.2008. The said amending Notification No.17 dated 01.04.2008, to its relevant extent is quoted below for ready reference.

[Notification No.17/2008-S.T., dated 01.04.2008]
Exemption to specified taxable services used for
export of goods - Notification No.41/2007-S.T., dated
06-10-2007 amended

In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following further amendments in the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No.41/2007-Service Tax, dated the 6th October 2007 which was published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section (i) Vide number G.S.R.645(E) dated the 6th October 2007, namely:-

In the said notification, in the schedule after Sr.No.12, and the entire relating thereto, the following shall be inserted, namely:-

(1)	(2)	(3)	(4)
13	Section 65(105)(h)	Services provided by a custom house agent in relation to export goods exported by the exporter.	Exporter shall produce:- (i) invoice issued by custom house agent for providing services specified in column (3) specifying: (a) number and date of shipping bill, (b) description of export goods.

4. After hearing the learned counsel for the parties, we find that the learned Tribunal has not discussed the relevant facts relating to grant of refund of the service tax to the Assessee with regard to service provided by M/s.Natvar Parikh Industries to the Assessee. The first appellate authority viz., the Commissioner of Appeals, in his order dated 24.10.2008 with regard to the said refund claim of the Assessee of Rs.74,79,959/- had given the following findings.

"The service provider, M/s.Natvar Parikh Industries Ltd., having Registration No.AAACN5361LCH002 (Custom House Agent) have issued their bills M/s.HMIL indicating the services. The service tax seems to have been collected from the exporter claimant only in their capacity of providing Custom House Agent service. As required evidence was not made available to conclude that M/s.Natvar Parikh Industries Ltd., are the persons authorised by the port to provide post services and that tax was actually paid on port service, I am of the view that M/s.HMIL is not

eligible for the exemption claimed in relation to wharfage services that is available to specified service of port services."

From the above, it is clear that M/s.Natvar Parikh Industries Limited., is not the provider of 'port services' and have not discharged the service tax liability. In as much as the Registration No. Of the Port has been indicated in the bill M/s.Natvar Parikh Industries Ltd., in no way could have discharged the service tax liability. In the instant case, Chennai Port Trust have rendered the said service and paid the service tax as they are holders of the above said Service Tax Registration and not M/s.Natvar Parikh Industries Ltd., in any case. Accordingly, only based on the invoices/bills as envisaged in Rule 4A of the Service Tax Rules, 1994 raised by M/s.Chennai Port Trust, the appellant is entitled to claim refund of service tax on 'Port Services' . In this regard attention is drawn to Central Board of Excise and Customs Circular No.106/9/2008-ST (F.No.137/84/2008-CS.4) dated 11.12.2008. With reference to Notification No.41/2007-ST dated 06.10.2007 in issue No.II the following clarifications was given which is reproduced below."

5. The contention of the Revenue is that in the invoices of this Service Provider M/s.Natvar Parikh Industries, they only charged wharfage charges, which were directly payable to Chennai Port Trust and since no other services were specified for their services, which could be said to have any relation to the export of goods exported by the Assessee M/s.Hyundai Motor India Limited, the conditions in the Notification dated 01.04.2008 were not satisfied and therefore, the learned Tribunal has misapplied the decision of the Tribunal in the case of "SRF Ltd -vs- CCE, Jaipur [2015 (40) STR 980 (Tri-Del)]" cited supra, in which the issue was with regard to the registration of the service providers as Port Service Providers.

6. Therefore, prima facie we are satisfied that the learned Tribunal has not decided the real issue arising in the matter as is sought to be canvassed before us by the learned counsel for the Revenue.

7. In these circumstances, we are left with no other option but to remand the case back to the learned Tribunal for deciding this issue between the parties once again. As was expected from the final fact finding body, the learned Tribunal ought to have discussed the relevant facts in the light of the order passed by the first appellate authority. But, we do not find any such discussion in the afore quoted Paragraph 5(i) of the order passed by the learned Tribunal and therefore, we allow the present appeal of the Revenue, without answering the question of law at this stage, with a direction to the learned Tribunal to decide the said issue, after giving reasonable opportunity of hearing to both the parties once again, discussing the relevant facts in the matter. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

KST

To

1.The Commissioner of GST & Central Excise
Chennai Outer Commissionerate
Newry Towers, 12th Main Road, Anna Nagar
Chennai 600 040.

2.The Customs, Excise and Service Tax Appellate Tribunal,
No.26, Sashtri Bhavan, Annexe Building,
Haddows Road, Chennai-600 006.

+1cc to Mr.V.Sundareswaran, SSC, SR.No.6335.

+1cc to Mr.Muthuvenkataraman, Advocate, SR.No.6514.

SJ(CO)
CSR: 28.02.2020

C.M.A.No.690 of 2019

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