

ORDER IN APPEAL

The Appellate Commissioner (Appellate Officer) and Service Tax Enforcement (hereinafter referred to as "the appellant") has filed the appeal against the CIO No. 4/2012-5 dated 15.03.2012 passed by the Assistant Commissioner, Service Tax, Dhawan, Dhawanagar (hereinafter referred to as "the adjudicating authority") in case of M/s. Sun Traders, 12328/14, Industrial Area, Amritsar (hereinafter referred to as "the claimant").

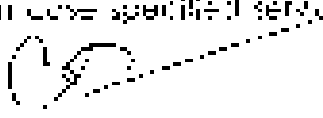
A. Briefly stated, the facts are that M/s. Sun Traders, 12328/14, Industrial Area, Amritsar holding Service Tax Registration No. AAC-1409485H01, engaged in providing C/A Services, C/A and Fuel Services. The claimant claimed that a refund claim of Rs. 15,91,067/- on 04.10.2011 in the period from 01.04.2010 to 30.03.2011 for Service Tax paid for services rendered in export of Government Goods. The refund claim was sanctioned by the Service Tax Division, Dhawanagar and was found to be lacking in documents and also a further technical queries as per the verification conducted by the concerned Range Superintendent. Accordingly, a query letter dated 05.11.2011 was issued in the amount owing for clarification as detailed below:

- a. The bills pertaining to services rendered to any shipper etc.
- b. The amount mentioned in such invoices and corresponding invoices was not correct.
- c. The name of the C/A mentioned in the shipping Bill and the one who provided C/A services and other details were different.
- d. The invoices of M/s. Sun Traders were not verified by the service provider.
- e. The invoices of PA/Sea were not found to bear stamp of the service provider.
- f. The correct payment to service provider was not obtained.

B. The said notice was adjudicated vide CIO No. 8/74/2011 dated 24.01.2012 by the Assistant Commissioner, Service Tax Division, Dhawanagar, wherein the Adjudicating Authority has allowed a refund of Rs. 15,44,607/-, eligible to the claimant under provision Section 11B of the Central Excise Act, 1944 as amended, made applicable to Service Tax under Section 65 of the Finance Act, 1994 and rejected the balance amount of Rs. 4,38,774/- as inadmissible to the claimant, as certain shipping Bills had the name of C/A mentioned therein and actual service was provided by a different service provider who was not an authorized C/A.

C. The Department has filed this Appeal on the following grounds against the impugned order:

- That the refund claimant has been filed with self-verified computer generated invoices which does not fulfil the conditions of the Regulation No. 4/2012-5 dated 15.03.2012 whereas it is prescribed in clause 3(b) that the original invoices are required to be filed by the claimant.
- That the service provider have issued computer generated invoices which are not signed by anybody. In view of considering these invoices as valid as per paragraph 3(b) of the Service Tax Notification No. 4/2012-5T dated 24.03.2012.
- That in terms of the Notification No. 4/2012-5T dated 24.03.2012, the refund is permissible in case specified services have been provided from



copies of final products with original copy of Board Invoice, Shipping Bill, Bill of Lading as proof of export. Original Invoices raised by service providers duly certified. In absence of original invoices and the necessary certificates by the specified person the refund is not admissible.

5. The order was filed before the Commissioner (Appeals), Export, the undersigned has been notified as Commissioner (Appeals), / Additional Authority as regards to the case of appeal filed against Order of the Additional Authority dated 16.11.2017 issued by the Under Secretary (Service Tax), CBIC, M/S., Dept. of Revenue, CBIC, Service Tax Wing on the basis of Board's Circular No. 200/A/2017-Service Tax dated 17.10.2017.

6. Refund relating was granted to the export price but none reported by the claimant. However, the claimant submitted written submission on 26.03.2019.

7. I have carefully gone through the facts of case and grounds mentioned in the declaration. Special one has submitted made by the claimant. The question to be decided is the special is whether the refund amounting to Rs. 1,47,491/- sanctioned under provision of Section 113 of the Central Excise Act, 1944 as amended, made applicable to Service tax under Section 113 of the Finance Act, 1994 vide the impugned order is admissible to the claimant or otherwise.

8. The fact that the refund claim was started by the concerned vendor earlier with regard to the genuineness of the claim and related bank documents and the same was found to be in order.

9. As regards to the aforesaid justification submitted by the claimant and findings of the investigating authority, as summarized at Para 09 to 25 of the impugned order, I find that the claimant has submitted bank passbooks in lieu of 18000 credited bank entries. In which the amount of Rs. 1,47,491/- was credited in various entries. The fact that the claimant has conducted banking bills carrying all entries of A/c's and no one report prepared being provided by an unauthorized service provider have been duly reported. The investigating authority has come to conclusion that the Mumbai CBIC computer generated invoices are authentic and the services of Rs. 500/- approx, without stamping the original invoices according with the ledger accounts of the claimant. I agree to the above and find that the question have been to this:


10. I find that the case law in respect of Jay Ashwin Mills vs. CIT and CIT vs. Anandabai (2004) 174 ITD 511 (Mumbai) cited by the claimant in the submissions is applicable in the instant case, wherein it is adjudged that the Credit taken on the basis of Computer generated invoices is allowed, hence when the credit can be allowed on the strength of computer generated invoices refund can be allowed likewise and conditioned.

11. The claimant has submitted a Certificate stating the details with regard to payment of the service tax in the Govt. accounts as claimed for refund, and that the amount has not been passed on to the customers or any other person, and we is submitting that without submissions. The fact that when the Service tax is charged by the service provider and has been paid by the exporter which has been eventually deposited in the Govt. accounts, substantiated conditions are considered to be fulfilled and the intended benefit of refund can be decided to the transferee.



12. I find that the purpose of the Government to amend Article 105 while having intention to mitigate the burden of tax and to promote exports to making domestic goods saleable in the international market. Hence, the amendment issues as they may come have to be viewed favourably with some adjustment, preventing the misuse of various forms by the Government of the territory.

13. In view of the above, I find that the impugned order by the authority has fully satisfied the legal amount of Rs. 10,46,694/- to the said traders, Asses. The impugned order is accordingly upheld and the appeal filed by the Department is hereby dismissed. The appeal in the original case is hereby disposed of.


Dr. Selli Suresh
Additional Director of Customs
Ass. Ahmedabad.

Date: 11/4/2018

F.No. 12719-CC/PPV/2017

34/3431



To:
The Principal Commissioner,
Central Excise & Service Tax,
Plot No. 07 76/2-1, Siddh Jordan,
Narayan Road, Mysore Nagar,
Shimoga-576401

Copy to

- 1. Mys Sid Traders, 2/3/36/37, Industrial Area, Ahmed 365001, Gujarat
- 2. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
- 3. The Commissioner (Appeals), Rajkot
- 4. The Commissioner, CGST, Shimoga
- 5. The District Commissioner, System's CGST, Rajkot
- 6. The District and Dy. Assistant Commissioner, Shimoga

