

ORDER IN APPEAL :

M/s. Madhuran Industries, 31, 54 Mainva Road, Near Gadiyar Park, SOC, Savarkundala - 382515, District - Amreli (Gujarat) (hereinafter referred to as 'Appellant') filed the present appeal against Order-in-Original No. R/17/2017 dated 19.07.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, GST Division, Bhavnagar (G.Amreli) (hereinafter referred to as "the sanctioning authority").

2. The facts of the case are that the Appellant filed an application for refund of Rs. 4,79,195/- under Notification No.41/2012-ST dated 29.05.2012, of service tax paid to the various service providers for rendering taxable services in relation to export of goods during the period from May, 2015 to January, 2017. Since Customs Notice bearing F. No. 9/ A 30351/2017/18 dated 02.06.2017 was issued on the grounds that the Appellant did not submit original invoices; that the invoices issued by M/s. Universal Metals Ltd. Pvt. Ltd. and M/s. HPHC not correlating with the refund claim; that the invoices issued by M/s. Visha Corporation for goods exported under Shipping Bill No. 1782426 & Shipping Di. No. 2478094 and M/s. Vajra Enterprises for goods exported under Shipping Di. No. 2351617 were not submitted by the appellant; that the amount shown in invoice issued for Shipping Bills No. 9247035 & 3249067 did not match with related DRC; that the Appellant did not clarify whether the service tax paid by them to service provider has been further paid to the Government exchequer. The Appellant vide letter dated 19.06.2017 replied the queries along with supporting documents and the sanctioning authority vide impugned order rendered refund claim of Rs. 2,39,517/- but rejected refund claim of Rs. 2,40,247/- on the grounds that the Appellant did not submit original invoices issued by the service providers; there was difference in amount of invoices of Shipping Bills No. 9247035 & 3249067 and BRC and hence, refund claim was rejected to this extent. In other cases invoices issued by the service providers could not be correlated with the refund claim; that no documentary evidence produced to prove that service tax paid to the service providers (except M/s. Visha Shipping Agencies Pvt. Ltd. and M/s. Vantec Surveyors India Pvt. Ltd.) have been deposited with the Government exchequer.

3. Being aggrieved with the impugned order, the Appellant preferred appeal, *inter alia*, on the following grounds:

(i) that in regard to refund claim of Rs. 1,22,232/- of service tax paid to service provider - M/s. Commercial Logistics Pvt. Ltd. and Rs. 25,410/- of service tax

and to the service provider - M/s. Vinus Corporation is legally not tenable.

(ii) that original invoices for Rs. 1,22,232/- issued by M/s. Contras Logistics Pvt. Ltd. and for Rs. 25,413/- issued by M/s. Vinus Corporation could not be produced at the time of filing of refund claim or during adjudication as they were not available with them as could not be obtained from the said service providers and this was the ground to reject the refund.

(iii) the Appellant submitted original invoices issued by M/s. Contras Logistics Pvt. Ltd. for Rs. 1,22,232/- and M/s. Vinus Corporation for Rs. 25,413/- along with Appeal Memorandum with request to allow refund claim of Rs. 1,47,645/-.

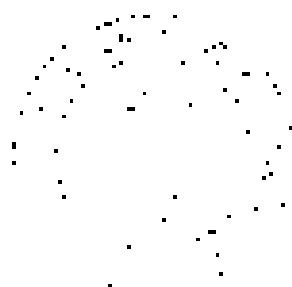
4. Personal hearing in the matter was attended to by Shri Hardik Vora, Chartered Accountant, who presented the grounds of appeal and submitted that original invoices of M/s. Contras Logistics Pvt. Ltd. and M/s. Vinus Corporation were not available with the Appellant at the time of SCB/impaired order but now available with them and filed with the appeal memorandum; that since they have now filed original invoices, Rs. 1,47,645/- is now refundable to them; that they are foregoing refund of balance amount (out of Rs. 2,42,376/-) as they themselves feel that they are not able to claim refund for remaining amount being not complied with rules and regulations.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made by the Appellant during personal hearing. The issues to be decided in the present appeal are as to whether refund of Rs. 1,47,645/- is sanctionable to the appellant and whether the impugned order rejecting refund of service tax on account of non-submission of original invoices is proper or not.

6. I find that the sanctioning authority rejected refund of service tax for Rs. 2,42,376/- on various grounds including non-submission of original invoices of the service providers. The Appellant has preferred present appeal only for Rs. 1,47,645/- submitting original invoices issued by the service providers. I would like to reproduce the condition enunciated in para 3(h) of Notification No. 1/2012-ST dated 23.05.2012, which is as under:

(h) where the total amount of service sought under a contract is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Industry, Form A is being submitted along with payment towards 0% or 0.50% or any other document for each specified service, in original, issued in the name of the exporter.



evidencing payment for the specified service used for export of the said goods and the amount so paid therein, certified in the manner specified in sub clauses (A) and (B):

(A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be attested by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be attested by the person authorized by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorized by the Board of Directors, to the effect that specified service to which the document pertains has been rendered, the amount so payable thereon has been paid and the specified service has been used for export of the said goods under the aforesaid conditions.

(Emphasis supplied)

5. I find that para 3(h) of Notification No.41/2012 ST dated 29.05.2012 requires submission of documents i.e. "Invoice, challan, or any other documents for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon". Thus, the sanctioning authority has rightly rejected the refund claim for part amount where the Appellant had not submitted original invoices in terms of para 3(h) of the Notification No. 41/2012-ST (case 20.06.2012). However, I find that the Appellant has submitted the original invoices along with the appeal memorandum of this case. The original invoices so furnished by the Appellant at this stage, contain the name and registration number of the service provider, export invoice number, nature of service, taxable value and the service tax charged by the service provider in the amount of the exporter. The authenticity of the original invoices and its correlation with the goods exported need to be verified by the sanctioning authority.

6. In view of aforesaid, it is appropriate to remand the case back to the sanctioning authority as the Hon'ble CESTAT in the case of *Shree Alloys (P) Ltd* reported as 2012(294) ELT 97 (Til-Del) has held that Commissioner (Appeals) can remand the cases. I also rely upon the decision of the Hon'ble CESTAT in the case of *Honda Del Power Products Ltd*, reported as 2013 (287) ELT 353 (Til-Del) wherein the similar views have been paraphrased, holding that Commissioner (Appeals) has inherent power to remand a case under Section 35A of the Act. The Hon'ble Gujarat High Court in Tax Appeal No. 275 of 2014 filed by Associated Hotels Ltd. has held that even after the amendment in Section 35A(3) of the Central Excise Act, 1944 w.e.f. 11.05.2012, the Commissioner (Appeals) would retain the power of remand.



Page No. 5 of 5

10

5.3 In view of above facts & legal position, I hereby order the appellant order rejecting refund and remand the case back to the jurisdictional sanctioning authority to decide the refund claim within 3 months from the receipt of this order. I also direct the Appellant to obtain all original invoices/documents subscribed by them with this appeal, from this office, under proper acknowledgement within 7 days and submit the same, within 15 days from the receipt of this order, to the jurisdictional sanctioning authority, who shall verify the genuineness of the invoices etc. and shall pass speaking and reasonable order within 3 months from the date of receipt of this order allowing fair and proper opportunities to the Appellant to explain their case.

આવકવેંઈ હાલ વર્ગીકૃતિ નહીં કરે તક મિલકત ઉપર વેલ નહીંકે શે કિલ્લો જાલ છે।

A. આ અપીલ ફાઈલ થી આ અપીલનું કારણ સી-પ્રકારના ઠીક ઠીક હાલ છે.

સહાયક મુદ્દા, 

 નવલ ડો. મુદ્દા
 સહાયક મુદ્દા

By Special Post.

To,

M/s. Madhuran Industries,
 21, SA Kirtanva Road,
 Near Kirti Park, SOC, Sevankundala
 382414,
 District - Anand (Gujarat)

મ. મધુરા ઇન્ડસ્ટીઝ
 રૂ. ૨૧ સી કીર્તન વાડ રોડ
 નજીક કીર્તી પાર્ક, સાવકુંડલા -
 ૩૮૨૪૧૪
 ડિસ્ટ્રિક્ટ - અણંદ (ગુજરાત)

Copy for information and necessary action to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for its kind information.
- 2) The Commissioner, CGST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
- 3) The Assistant Commissioner, CGST Division, Bhavnagar (UAT/11), Bhavnagar.