



भारत सरकार, दिल्ली, भारत  
GOVERNMENT OF INDIA, DELHI

राष्ट्रीय आवास आयोग, दिल्ली  
NATIONAL HOUSING BOARD, DELHI

राजधानी क्षेत्र, नई दिल्ली, भारत  
CAPITAL TERRITORY OF DELHI, INDIA

राजधानी क्षेत्र, नई दिल्ली, भारत  
CAPITAL TERRITORY OF DELHI, INDIA

दिल्ली, भारत  
DELHI, INDIA

फोन नं. 2501-2502/2503/2504/2505, दिल्ली, भारत  
PHONE NOS. 2501-2502/2503/2504/2505, DELHI, INDIA



संख्या: एन.डी.ए.ए. 19

आवेदन संख्या  
Application No.  
12446/1980/19

आवेदन संख्या  
Application No.  
8175/19

दिनांक  
Date  
19.07.2018

आवेदन संख्या: एन.डी.ए.ए. 19

**BHV-EXCLUS-INDS-APP-170-2018-19**

आवेदन संख्या  
App. No.

11.07.2018

आवेदन संख्या  
App. No.

12.07.2018

आवेदन संख्या: एन.डी.ए.ए. 19  
Presented by Bhai Kumar Pandey, Chairman, Bhawanji Bhawanji, Delhi

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ORIGINAL APPEAL

M/s. Ahmed Overseas, Shop No. 14, Cop. Police Station, Buchnath Chook, Junagadh - 365 001 (hereinafter referred to as 'the appellant') has been present appeal against Order in Original No. 2/15/2017 dated 15.06.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as 'the sanctioning authority');

2. The facts of the case are that the appellant filed refund claim of Rs. 2,50,926/- on 4.4.2017 under Notification No.41/2012-30 dated 29.05.2012, in respect of service tax paid to various service providers for rendering export services in relation to export of goods for the period from April, 2015 to June, 2016. SCN No. W18-C1:ST/DIV/17-10/Ref. dated 8.6.2017 was issued to appellant proposing rejection of refund claim on account of non-submission of legible Export Declaration Copy of Shipping Bills No. 1202226, 0141479 and 5223808; non-submission of Certificate as per sub-clause (B) of Clause (h) read with Clause (i) of Condition No. 5 of the said Notification; non-submission of certificate of Chartered Accountant in respect of few shipping bills in view of Para 3(i) of the said Notification; non-submission of Invoice No. 24A issued by Transworld Terminals Pvt. Ltd. for Shipping Bill No. 7026295; that Bank advice amount differed with shipping bill amount for few shipping bills and that appellant claimed refund of service tax on the basis of Bank advice two or more times. A query letter dated 16.5.2017 was also issued to appellant to clarify whether service tax paid by them to service providers has been paid by service providers to the Government Exchequer. The sanctioning authority vide impugned order rejected refund of Rs. 2,50,926/- on the grounds that appellant has not submitted Invoice No. 24A issued by M/s. Trans World Terminals Pvt. Ltd., non-match of Bank Advice amount with those mentioned in Shipping Bills and that appellant has not clarified as to whether the service providers to whom they paid service tax actually deposited service tax in Government

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amount

5. Being aggrieved with the impugned order, appellant preferred present appeal, inter alia, on the following grounds:

(i) Regarding Invoice No. 24A, appellant submitted that M/s. Trans World Terminals Pvt. Ltd. provided Cargo Handling Service to M/s. Unique Spec torer Pvt. Ltd., who charged service tax from the appellant vide Invoice No. EXP-MUN-770-A dated 5.7.2011; that they have submitted original invoice issued by M/s. Unique Spec torer Pvt. Ltd. and copy of invoice issued by M/s. Trans World Terminals Pvt. Ltd. as supporting invoice; that they have also submitted copy of both these invoices along with this appeal Memorandum.

(ii) As regard to mis-match of Bank Advice amount, the appellant submitted that their foreign customers had made payment in December and therefore, the Bank advice amount and Service Bill amount differed; that the submissions were made before the sanctioning authority along with ledger of their foreign customers but the sanctioning authority has erred the fact by rejecting service tax refund of Rs. 40,270/- on this account that they received sale proceeds as per Sr.No. 4 of Realization No. 412012-ST dated 29.6.2012, therefore rejection of service tax refund of Rs. 40,270/- is not in law.

(iii) In respect of payment of service tax by service providers to the Government Exchequer, appellant submitted that they have complied all conditions of Notification No. 412012-ST and also submitted Ledger and Bank Statement to prove that they have paid service tax to the service providers and submitted Bank Realization Certificate confirming that sale proceeds in respect of goods exported were received; that contention of the sanctioning authority is baseless as it is not practical to gather documentary proof for service tax paid by them to the service providers had actually been sent to the Government or not in each transaction of service tax, that there is no such condition in the Notification to provide evidence

for service tax paid by service providers to the Government therefore rejection of refund claim is based on fact that they relied on decision of the Hon'ble Supreme Court in the case of M. Anbalal & Co reported as 2010 TQI 111 SC 616 to submit that Notification which confers beneficial exemptions and issued for the purpose of encouragement or promotion of certain activities should be interpreted liberally. But they also rely on decision of the Hon'ble Supreme Court in the case of The An Tobacco Association reported as 2005 (73) RLT 201 (SC) to submit that exemption notification must be interpreted in its meaning so that the purpose can be achieved for which the Notification has issued. But in the case of Balwant Singh reported as 2011 (458) ITR 50 (SC) the Hon'ble Supreme Court has held that while interpreting any provision intention of law maker is to be kept in mind.

4. Person appearing in the matter was attended to by Shri Chetan Dabhiyani, Chartered Accountant, who reiterated grounds of Appeal and submitted written submission to say that they have already submitted Bank Realization Certificates certifying that amounts covered under Shipping Bills have been received by them that they have taken services of M/s. Unique and original copies of 9/8 Unique already submitted. M/s. Unique has taken service from M/s. Trans World and hence they have copy of invoice; that there is no doubt that services have been availed. That submission of documentary evidences of their service provider has deposited service tax to the Government Exchequer and no request to be admitted as per Notification No. 4/2012-S.T.; that they can't have those evidences, in fact, and hence if required department is to verify as they have paid entire amount of service tax to them; that there is no just and reasonable ground to grant refund to them, their appeal may be allowed in the interest of justice as the same original authorities are giving refund to the applicant but this reviewing authority did not give refund to his firm for a justified reasons.

**FINDINGS:**

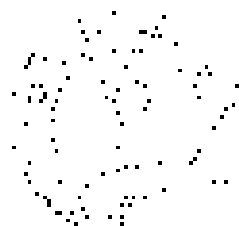
5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and all relevant and material submissions made by the appellant including at the time of personal hearing. The issue at the crux of the present case is as to whether the impugned order rejecting the refund of service tax [Ex-Imper Notification No. 41/2012-ST dated 29.05.2012] is correct or otherwise.

6. Appellant submitted that they availed Cargo Handling Service provided by M/s. Unique Speditioner Pvt. Ltd. who charged and collected Service Tax from the appellant. The said service provider had availed the services of M/s. Trans World Terminals Pvt. Ltd. Appellant has produced invoice issued by M/s. Unique Speditioner Pvt. Ltd. to them and a consolidated copy of invoice issued by M/s. Trans World Terminals Pvt. Ltd. in the name of their service provider and both were submitted to the sanctioning authority as well as submitted with this Appeal Memorandum. I find that Eximex No. 145006 dated 8.5.2010 issued by M/s. Trans World Terminals Pvt. Ltd. described details such as Excess or name, Shipping Bill No., Nature of service, taxable value of service, service tax, etc. It is a general trade practice that exporters are receiving services from one service provider who may also avail services from other service providers. I find that details mentioned in invoice are correlated with acquisition of goods. Hence, refund is admissible to the appellant. Hence, I find that refund claim of 3,490/- is incorrectly rejected by the sanctioning authority on this count.

7. The rejection of refund of Rs. 28,770/- is an account of mis-match of Bank advice amount with Shipping Bill amount and appellant submitted that such mis-match is due to expenses made by their foreign buyers in piecemeal and on instalment basis. The appellant also submitted that they had submitted their contention before the sanctioning authority but he discarded the submissions

stating that this reason was not satisfactory. I find that it is not the case of the department that goods were not shipped or short shipped further, use of taxable services for export of goods, payment of service tax by the appellant to the service providers and exportation of goods are not under dispute. The reasons for this match of amount stated by the appellant appear genuine and satisfactory. Therefore, refund of service tax paid on the taxable services used for export of goods cannot be denied for the above stated reason. It is settled position of law that refund of service tax is an incentive granted by the Central Government to promote export of goods. Hence, I hold that appellant is entitled for refund of Rs. 46,276/-.

3. The assessing authority rejected entire refund of Rs. 2,50,826/- also on the ground that appellant could not furnish declaration/other documents certifying that the service tax paid by the appellant has been deposited to the Government account against which appellant submitted that it is not possible to gather documentary proof for service tax paid by them to service providers had been paid by the service providers to the Government or not in each transaction of service tax and that there is no such condition in the Notification. I find substantial basis in this contention of the appellant. I find that Notification No. 41/2012-ST dated 29.09.2012 allows refund of service tax paid by exporter in respect of services rendered for export of goods. It is settled legal position that on availment of services for export of goods, payment of service tax to the service providers and exportation of goods are not disputed. Refund of service tax filed by appellant under Notification No. 41/2012-ST dated 29.9.2012 cannot be denied. The intent and object of the legislation is very clear to provide exportation of goods and not to export taxes along with the goods. I find that there is no provision in the said Notification under which appellant exporter is required to produce documentary proof to establish that service tax paid by them to the service providers had been deposited by those service providers into the Government account. There were no



separate provisions under the Finance Act, 1994 for recovery of service tax from the person who had charged and collected service tax but not deposited the same to the Government account. Therefore, substantial benefit provided by the regulation cannot be denied to appellant by the department beyond the provision of law. Hence, I find that rejection of refund claim of Rs. 2,50,028/- is neither correct nor legal and proper.

8. In view of above, I set aside the impugned order and allow appeal filed by the appellant.

9. अतिरिक्त रूप से श्री पी.एन. शर्मा को निम्नलिखित शर्तों के अधीन जमाना है।

8.1 The appeal filed by the appellant stands dismissed on the above terms.

१३/०९/१९  
 (Signature)  
 (Date)

(Signature)  
 (Date)  
 (Place)

By Speed Post

M/s. Anico Overseas,  
 Shop No. 14 Old Police Station  
 Sukrath Chowk,  
 Jagdish - 352 001

श्री. एन. ए. शर्मा,  
 शॉप नं. १४, पुलिस स्टेशन के सामने,  
 सुक्राथ चौक,  
 जगदिश - ३५२००१

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Amritahat Zone, Amritahat for kind information.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise Division, Jagdish.

4) Case File

