

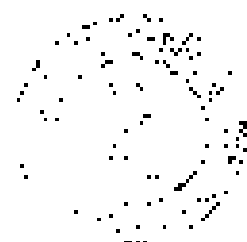
ORIGINAL APPEAL :

M/s. Joy Enterprise, Thangadh-Chofa Road, Navagam Chutva, District Surendranagar - 362320 (hereinafter referred to as 'the appellant') files present appeal against Order-In-Original No. FJ/13/2017 dated 17.05.2017 (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 appellant had filed refund claim of Rs. 6,86,216/- on 10.2.2017 under Notification No. 41/2012-51 dated 29.05.2012 in respect of service tax paid in various service providers for rendering taxable services in relation to export of goods for the period from April, 2015 to June, 2016. A query letter dated 16.5.2017 issued to the appellant to clarify whether service tax paid by them to service providers had actually been paid by service providers to the Government Exchequer. The sanctioning authority vide impugned order rejected refund of Rs. 6,86,216/- on the grounds that appellant failed to submit proper satisfactory reply to the query raised as to whether the service providers to whom they paid service tax have deposited service tax into Government account.

3. Being aggrieved with the impugned order appellant has preferred present appeal, *inter alia*, on the grounds that they have observed all conditions of Notification No. 41/2012-51 dated 29.5.2012 and have also produced ledger and bank statement to prove that they have paid service tax to the service providers and submitted Bank Realization Certificate confirming that the sale proceeds in respect of goods exported were received; that the conclusion of the sanctioning authority is baseless as it is not practice to gather documentary proof for service tax paid by them to service providers whether paid by the service providers to the Government account or not through the deduction of service tax. There is no such condition in the Notification to provide evidence for service tax paid by the service providers to the Government; and therefore, rejection of refund claim is bad in law, that they relied on a decision of the Hon'ble Supreme Court in the case of M. Ansoyal & Co. reported as 2015-1102-17-50-CUS to submit that Notification which contains beneficial exemptions are issued for the purpose of encouragement or promotion of certain activities should be interpreted liberally.

APPEALANT



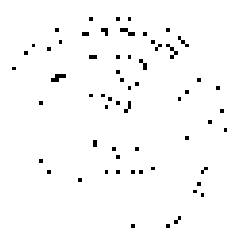
4. At they also relied on decision of the Hon'ble Supreme Court in the case of Indian Tobacco Association reported as 2005 (70) ITR 201 (50) to submit that exemption notification must be interpreted in its meaning so that the purpose can be achieved for which the Notification has issued; that in the case of Palawan Singh reported as 2010 (262) ITR 50 (11), wherein the Supreme Court has held that while interpreting any provision intention of law makers is to be kept in mind.

4. Personal hearing in the matter was attended to by Shri Chelam Perhariya Chartered Accountant, who represented Group of Appeal and submitted written submission to say that all the conditions of the Notification have been followed by them, that they have no control on their service providers to ask them to deposit service tax to the Government exchequer and if required, the Government is required to ascertain their credit history paid to the Government Exchequer and that the sanctioning authority having given them a refund for the subsequent period even when they had not submitted such evidences but given it in this case without any justified reasons appeal should be allowed as per case laws cited by them.

FINDINGS:

5. I have carefully gone through the terms of the impugned order, the grounds of appeal and written as well as oral submissions made by the appellant including at the time of personal hearing. The issue to be decided in the present case is as to whether the impugned order rejecting the refund of service tax paid under Notification No. 4/2012-SE dated 28.05.2012 is proper or otherwise.

6. The sanctioning authority rejected refund of Rs. 6,55,218/- on the ground that appellant could not furnish evidences/documents certifying that the service tax paid by the appellant has actually been deposited to the Government account whereas the appellant has submitted that it is not practical to gather documentary proof for service tax paid by them to service providers had been paid by the service providers to the Government bank of India in transaction of service tax and that there is no such condition in the Notification. I find substantial force in the contention of the appellant. The order of the Appellate No. 4/2012 SE dated 28.05.2012 allows refund of service tax paid by the exporters in respect of the services availed for export of goods. The order is legal and correct that availability 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 the appellant under Notification No. 41/2012-ST dated 28.9.2012 cannot be denied. The intent and object of the legislation is very clear to promote exportation of goods and not to export taxes along with the goods. I find that there is no exemption 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 separate provisions under the Finance Act, 1964 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 legislation cannot be denied to appellant by the department beyond the provision of law as has been done by the sanctioning authority in this case. Hence, I find that rejection of refund claim is not correct, legal and proper at all and the sanctioning authority has acted against rule of law.


7. In view of above, I set aside the impugned order and allow appeal filed by the appellant with consequential relief.

8. બંધો પૂર્ણ કરવામાં આવે તે સુધી અર્જીયા નિબંધન વાસેના તરફથી તે ચેકન કરાશે.

9. The appeal filed by the appellant stands disposed off in above terms.

સહી/સ્ટેમ્પ:


અધિકારી (સહી)


અધિકારી (સહી)
અધિકારી (સહી)

By Speed Post

To

M/s. Jolly Enterprises
Thangad-Chotila Road,
Navagam-Gadhla
District-Surendranagar - 363020

ઉ. સં. જી. એ. એ. એ. એ.
થાંગાદ-ચોટલા રોડ
નાવગામ-ગઢલા,
જિલ્લો-સુરેન્દ્રનગર - ૩૬૩૦૨૦

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise, Division, Surendranagar.
- 4) Guard File.

સહી/સ્ટેમ્પ


અધિકારી (સહી)