

2011 (24) S.T.R. 553 (Tri. - Mumbai)
IN THE CESTAT, WEST ZONAL BENCH, MUMBAI
Shri S.K. Gaule, Member (T)

TEXPORT INDUSTRIES P. LTD.

Versus

COMMISSIONER OF SERVICE TAX, MUMBAI-IV

*Final Order Nos. A/328-329/2011-WZB/C-IV(SMB), dated 4-8-2011 in Appeal
Nos. ST/260-261/2010*

(In favour of Assessee)

CASES CITED

Commissioner v. Convergys India Pvt. Ltd. — 2009 (16) S.T.R. 198 (Tribunal) —

Relied on.....

Commissioner v. Mahaan Dairies — 2004 (166) E.L.T. 23 (S.C.) — **Inapplicable**.....

Eagle Flask Industries Ltd. v. Commissioner — 2004 (171) E.L.T. 296 (S.C.) —

Inapplicable.....

Hotel Leela Venture Ltd. v. Commissioner — 2009 (234) E.L.T. 389 (S.C.) —

Inapplicable.....

REPRESENTED BY : Shri S.S. Gupta, C.A., for the Appellant.

Shri A.K. Prabhakar, JDR, for the Respondent.

[Order]. - Heard both sides. The appellant filed these appeals against O-I-A No. SB/20 & 21/M-IV/10, dated 3-3-2010 whereby the Commissioner (Appeals) has upheld the lower adjudicating authority's order. The issue involved in both the appeals are common. They are taken up together, of for disposal.

2. Briefly stated facts of the case are that appellant filed a refund claim for the input services used in export of goods by claiming the benefit of Notification 41/07 as amended. The lower adjudicating authority rejected the refund claim for the service tax paid on technical testing and analysis service, on the ground that the condition of the Notification that there should be a written agreement between the exporter and the buyer requiring and testing and analysis for the said goods, was not fulfilled. The revenue challenged the same. Ld. Commissioner (Appeals) upheld the lower adjudicating authority's order. Hence these appeals.

3. The contention of the Id. CA, Shri S.S. Gupta, is that the Notification provides for refund of service tax paid on technical testing and analysis agency service to the condition that expert furnished a copy of written agreement entered with the buyer of the said goods requiring testing and analysis of the said goods requiring testing and analysis of the said goods. The Id. CA has taken me through the letter of credit opened between their buyer PIL SRL and the designated bank dated 14-5-2008 which provide for the original inspection certificate. The contention of the appellant is that the letter of credit is opened by the bank only on the instructions of the customers.

4. Ld. JDR submitted that for claiming the benefit of exemption Notification the condition prescribed have to be strictly followed. The appellant have failed to produce any written agreement therefore they are not eligible for the Notification. In support of this he placed reliance on Hon'ble Supreme Court's decision in the case of *Eagle Flask Industries Ltd. v. C.C.E.* - 2004 (171) E.L.T.

296 (S.C.) wherein it was held that non-observance of the condition of the Notification the benefit of exemption to be denied and also on Hon'ble Supreme Court's decision in the case of *C.C.E. v. Mahaan Dairies* - 2004 (166) E.L.T. 23 (S.C.) and *Hotel Leela Venture Ltd. v. C.C.E., Mumbai* - 2009 (234) E.L.T. 389 (S.C.) wherein similar view was held.

5. Id. CA in his rejoinder submitted that the **case law** submitted by the JDR relates to Central Excise duty and not to export. For export, a liberal view is to be taken in support of his contention he has placed reliance on the Tribunal's decision in the case of *CST, Delhi v. Convergys India P. Ltd.* - 2009 (16) S.T.R. 198 (T).

6. I have considered the submission and perused the records. Undisputedly the appellant have paid the service tax on technical testing and analysis and they have exported the goods. The Id. CA has took me through Sr. No. 46A of the letter of credit which categorically provide for the original inspection certificate issued by the Associated Merchandise Corporation. The lower authorities have denied the refund only on the ground that there is no written agreement between the exporter and his buyers. The Id. Commissioner (Appeals) did not accept it on the ground that this cannot be treated as agreement since it is between banks and not between concerned parties. I agree with the contention of the appellant that the letter of credit is opened by the bank only on the instructions of customers. I also agree with the contention of the Id. counsel that a liberal view has to be taken for the interpretation to reduce the cost of goods exported. I also agree with the contention of the Id. counsel that the **case law**s cited by the JDR does not relate to export. Hon'ble Tribunal in the case of *Convergys India* (supra) held that :

"The document based verification can be at a latter point of time. In this case, we are concerned only about rebate of credit on input services. The non-observation of procedural condition in this case is of a technical nature and cannot be used to deny the substantive concession. Further, in respect of export, liberal view requires to be taken. The non-fulfilment of the procedure cannot lead to denial of the benefit under the beneficial legislation providing for export benefits."

7. Further, it is also a settled principle that taxes cannot be exported.

8. In view of the above, I set aside the Id. Commissioner (Appeals)'s order and allow the appeals. Appeals are allowed.

(Dictated in Court)
