CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 88002 of 2018

(Arising out of Order-in-Appeal No. MKK/04-06/RGD/APP/2018-19 dated 10/04/2018 passed by the Commissioner(Appeals) of Central Tax, Central Excise & Service Tax, Raigarh.)

M/s State Street Syntel Services Pvt Ltd .....Appellant
4th-5th Floor Building No. 4 Mindspace
Tahne Belapur Road Airoli
Navi Mumbai
Maharashtra
400708

VERSUS

Commissioner of CGST, ...Respondent
Navi Mumbai
10th Floor, Satra Plaza, Palm Beach Raod, Sector 19
D. Vahi, Navi Mumabi

WITH

Service Tax Appeal No. 88003 of 2018

(Arising out of Order-in-Appeal No. MKK/04-06/RGD/APP/2018-19 dated 10/04/2018 passed by the Commissioner(Appeals) of Central Tax, Central Excise & Service Tax, Raigarh.)

M/s State Street Syntel Services Pvt Ltd .....Appellant
4th-5th Floor Building No. 4 Mindspace
Tahne Belapur Road Airoli
Navi Mumbai
Maharashtra
400708

VERSUS

Commissioner of CGST, ...Respondent
Navi Mumbai
10th Floor, Satra Plaza, Palm Beach Raod, Sector 19
D. Vahi, Navi Mumabi

WITH

Service Tax Appeal No. 88012 of 2018

(Arising out of Order-in-Appeal No. MKK/04-06/RGD/APP/2018-19 dated 10/04/2018 passed by the Commissioner(Appeals) of Central Tax, Central Excise & Service Tax, Raigarh.)

M/s State Street Syntel Services Pvt Ltd .....Appellant
4th-5th Floor Building No. 4 Mindspace
Tahne Belapur Road Airoli
Navi Mumbai
Maharashtra
400708

VERSUS

Commissioner of CGST, ...Respondent
Navi Mumbai
10th Floor, Satra Plaza, Palm Beach Raod, Sector 19
D. Vahi, Navi Mumabi

APPERANCE:

Shri Mahesh G Raichandani, Advocate for the Appellant
Shri S.B. Mane, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86100-86102/2019

Date of Hearing: 07/03/2019
Date of Decision: 14/06/2019

PER: AJAY SHARMA

These Appeals are arising out of the impugned order dated 10/04/2018 passed by the Commissioner(Appeals) of Central Tax, Central Excise & Service Tax, Raigarh in Order-in-Appeal No. MKK/04-06/RGD/APP/2018-19. Since these three appeals have been

disposed of by the learned commissioner by way of common impugned order, therefore I am also deciding these appeals by this common order.

2. The common issue involved in these appeal is whether the appellant is entitled for refund of Swatchh Bharat Cess (SBC) paid on the input services used for providing export service? Refund claims of the said Cess was rejected by the Adjudicating Authority on the ground that there is no provision for refund of Swatchh Bharat Cess paid on the input services used for providing export service. The learned Commission vide impugned order dated 10/04/2018, rejected the Appeals filed by the Appellant holding that refund of Swatch Bharat Cess paid on the input services used for providing export service is not admissible to the Appellant in the absence of any Notification granting refund of Swatchh Bharat Cess.

3. I have heard learned counsel for the Appellant and learned Authorised Representative for the Revenue and perused the records of the case. The issue involved in these appeals is no more *res integra* as it stood covered in favour of the Appellants in view of a recent decision of the Tribunal in *Appeal No ST/88272/2018* in the matter of *State Street Syntel Services Pvt Ltd* vs. *Commissioner of Central GST & Central Excise, Mumbai* in which the Tribunal *vide* order dated 09.05.2019 allowed the Appeal filed by the assessee therein. The relevant extract of the aforesaid decision is as under:-

" xxx xxx xxx xxx

5. In order to appreciate the issue involved, its better to have a look at Section 119 of the Finance Act, 2015 which is extracted as under:-

Section 119 of the Finance Act, 2015

"119. (1) This Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the ***Swachh Bharat Cess***, as service tax on all or any of the taxable services at the rate of two per cent on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

(3) The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994 (32 of 1994), or under any other law for the time being in force.

(4) The proceeds of the Swachh Bharat Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Swachh Bharat Cess for such purposes specified in sub-section (2), as it may consider necessary.

(5) The provisions of Chapter V of the Finance Act, 1994 and the rules made there under, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made there under, as the case may be."

From the above it is clear that the Swachh Bharat Cess is levied and collected for the purpose of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto but in the nature of *Service Tax*. That Service tax in the form of cess shall be in addition to any cess or service tax leviable on the taxable services under Chapter V of the Finance Act, 1994. In the same way from time to time issues were raised qua *Education Cess, Secondary and Higher Education Cess and, Sugar Cess, Automobile Cess etc.* which have also been imposed under different statutes and from time to time, as to whether they are in the nature of cess or tax/duty and ultimately those issues were got settled in favour of assessee either Hon'ble Supreme Court or by the Hon'ble High Court and those were held to be tax/duty.

6. The Hon'ble Constitution Bench of the Supreme Court in the matter of *Hingir Rampur Coal Co. Ltd. Vs. State of Orissa;*

1961(2) SCR 537 laid down the difference between a tax, fee and cess.

7. The Hon'ble Supreme Court in the matter of *Barnagore Jute Factory Co. Vs. Inspector of Central Excise; 1992 (57) ELT 3 (SC)* has laid down that levy and collection of *Cess on jute manufacturer* should be considered as a duty of excise when the machinery provisions of Central Excise Act and Rules were made applicable for levy and collection of jute cess.

8. In the matter of *Shree Renuka Sugars Ltd. (supra)* the Hon'ble High Court of Karnataka, while relying upon the law laid down by the Hon'ble Supreme Court in the matters *Hingir Rampur Coal Co. Ltd. (supra)* and *Barnagore Jute Factory Co. (supra)* has held that the sugar cess is nothing but a duty of excise and as per Rule 3 of the Cenvat Credit Rules, 2004 credit of sugar cess would be available. Similarly in the matter of *TVS Motor Co. Ltd. (supra)* the Hon'ble High Court of Karnataka again following the aforesaid decisions of the Hon'ble Supreme Court has held that Automobile cess which was collected as a duty of excise in terms of the provisions of Central Excise Act, is refundable to the manufacturer. Thereafter a co-ordinate Bench of the Tribunal in the matter of *Ramco Cements Ltd. (supra)* while relying upon the decisions mentioned hereinabove held that the Cenvat Credit of *Clean Energy Cess* is admissible. The relevant portion of the said decision is as under:-

" *xxx* *xxx* *xxx*

> *6.2 After going through the decision in Sri Renuka Sugars Ltd. cited supra, I find that the Sugar Cess levied under Sugar Cess Act, 1982 is similar to Clean Energy Cess levied under Section 83 of the Finance Act, 2010 and therefore the ratio laid down by the Hon'ble High Court of Karnataka in the case of Sri Renuka Sugars Ltd. is squarely applicable in the facts and circumstances of the case, because the Clean Energy Cess has been levied and collected as duty of excise by virtue of Section 3(1) of Customs Tariff Act. Therefore by relying upon the ratio of the decision of Hon'ble High Court of Karnataka in the case of Sri Renuka Sugars Ltd., I am of the view that the impugned order denying the Cenvat credit of Clean Energy Cess is not sustainable in law and I set aside the same by allowing the appeals of the appellant with consequential reliefs, if any."*

9. A tax recovered by the government goes into the Consolidated Fund of India which is utilised for all public purposes and no money out of the Consolidated Fund of India shall be appropriated except in accordance with law and for the purposes and in the manner provided in the Constitution. Whereas a cess or fee does not become part of the Consolidated fund and are earmarked for the purpose of services for which it is levied. A Cess can never become part of the Consolidated Fund. It should be earmarked and set apart

> for the purpose for which it is levied. As per Section 119(4) ibid the proceeds of Swachh Bharat Cess shall first be credited to the Consolidated Fund of India. Swachh Bharat Cess may be considered as separate levies from the Service Tax but the same legal framework as applied for service tax are to be applied for levy and collection of Swachh Bharat Cess since the provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder are applicable to Swachh Bharat Cess. As per Section 119(5) of the Finance Act, 2015, rules notified under the Finance Act, 1994, which include Cenvat Credit Rules, 2004 also, shall be applicable for Swachh Bharat Cess as they apply to Service Tax. Therefore, Swachh Bharat Cess paid on input services has to be available as Cenvat Credit and the same can be discharged by utilising Cenvat Credit and the appellant is therefore entitle for the refund of it. So far as filing of two separate claims are concerned, it is only a procedural lapse and due to the same substantial benefit of refund cannot be denied to the Appellant.
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> 10. In view of the discussions made hereinabove the issue involved is decided in favour of the Appellant and accordingly the Appeal is allowed with consequential relief, if any.

4. Since the issue in the present appeals have been settled by the aforementioned decision (supra), therefore following the same and considering the totality of the facts and circumstances of the case, I hereby set aside the impugned order and allow the appeal.

5. In the result, the appeals filed by the assessee-appellants stands allowed with consequential relief, if any.

(Order pronounced in the court on 14/06/2019)

(AJAY SHARMA)
Member (Judicial)

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