

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 20490 of 2021

[Arising out of Order-in-Appeal No. CAL-CHN-EXCUS-000-APP-407-2021 dated 05/04/2021 passed by the Commissioner of Central Tax, Central Excise & Customs, Cochin (Appeals)]

Metrolite Roofing Pvt. Ltd.

Plot 40(1), KINFRA, Kanjikode,
Palakkad – 678 621

....Appellant

VERSUS

**Commissioner of Central Tax &
Central Excise, Calicut**

C.R. Buildings, Mananchira,
Calicut – 673 001
Kerala

....Respondent

WITH

(i) Service Tax Appeal No. 20496 of 2021 (Kapstone Industries Pvt. Ltd.); (ii) Service Tax Appeal No. 20497 of 2021 (Kunnath Chemicals Pvt. Ltd.) (iii) Service Tax Appeal No. 20498 of 2021 (Great Effects); (iv) Service Tax Appeal No. 20499 of 2021 (Deeluxe Bottles (India) Pvt. Ltd.); (v) Service Tax Appeal No. 20500 of 2021 (Excel Food Products) & (vi) Service Tax Appeal No. 20026 of 2022 (AKS Cold Storage Ltd.)

[Arising out of Orders-in-Appeal No. CAL-CHN-EXCUS-000-APP-410-2021 dated 05/04/2021 passed by the Commissioner of Central Tax, Central Excise & Customs, Cochin (Appeals)]

[Arising out of Orders-in-Appeal No. CAL-CHN-EXCUS-000-APP-408-2021 dated 05/04/2021 passed by the Commissioner of Central Tax, Central Excise & Customs, Cochin (Appeals)]

[Arising out of Orders-in-Appeal No. CAL-CHN-EXCUS-000-APP-411-2021 dated 05/04/2021 passed by the Commissioner of Central Tax, Central Excise & Customs, Cochin (Appeals)]

[Arising out of Orders-in-Appeal No. CAL-CHN-EXCUS-000-APP-409-2021 dated 05/04/2021 passed by the Commissioner of Central Tax, Central Excise & Customs, Cochin (Appeals)]

[Arising out of Orders-in-Appeal No. CAL-CHN-EXCUS-000-APP-406-2021 dated 05/04/2021 passed by the Commissioner of Central Tax, Central Excise & Customs, Cochin (Appeals)]

[Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP-175-2020 dated 13/07/2020 passed by the Commissioner of Central Tax, Central Excise & Customs, Cochin (Appeals)]

Appearance:

Shri Padmanathan K.V., CA for the Appellant

Shri K.B. Nanaiah, Assistant Commissioner (AR) for the Respondent

CORAM:

HON'BLE SHRI P. DINESHA, JUDICIAL MEMBER

Final Order Nos. 20160 - 20166 /2022

Date of Hearing: 25/03/2022

Date of Decision: 01/04 /2022

Per : P. DINESHA

All these appeals are filed against the impugned common Orders-in-Appeal No. CAL-CHN-EXCUS-000-APP-406 to 411-2021 dated 05/04/2021 and CAL-EXCUS-000-APP-175-202 dated 13/07/2020 passed by the Commissioner of Central Tax, Central Excise & Customs, Cochin (Appeals). The appellant had taken industrial lands on long term lease from Kerala Industrial Infrastructure Development Corporation (KINFRA for short) by

paying an upfront amount on long term lease, along with service tax. Thereafter, with the insertion of Section 104 into Chapter V of the Finance Act, 1994 with retrospective effect, the appellants requested for refund of the service tax paid by them on the upfront amount on long term lease of industrial lands. The above request, on adjudication came to be rejected, which rejection having upheld vide impugned Orders-in-Appeal, present appeals have been filed before this forum.

2. Heard Shri Padmanathan K.V., learned CA for the appellants and Shri K.B. Nanaiah, learned DR for the Revenue.

3. Both the parties agreed that the issue involved has been answered in favour of the taxpayer by this Bench in the case of ***Comfort Night Linen Products vide Final Order Nos. 20652-20653/2021 dated 03/08/2021***. Ongoing through the said order of this Bench, I find that this Bench has addressed similar issue and has held as under:

“6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellants filed refund claims which arose as a consequence of introduction of Section 104 of the Finance Act w.e.f. 31.03.2017. Further, I find that Notification No.41/2016 dated 22.09.2016 has exempted taxable service provided by the State Government Industrial Development Corporation/Undertakings to industrial units by

way of granting long term lease on industrial plot from so much of service tax leviable thereon under Section 66B of the said Act, as is leviable on the one-time upfront amount payable for such lease. Vide Section 104 (1), exemption was provided from said services for the period from 01.06.2007 to 21.09.2016 and it was provided that the refund claim ST/20413-20414/2020 5 should be filed within a period of six months from the date from which Finance Act, 2017 is promulgated and come into force. Further, I find that in the present case, the appellants filed the refund claims within time and the only ground for which the refunds were rejected by the Original Authority and upheld by the Appellate Authority is that the appellants did not produce sufficient documents in the form of invoices/bills showing that they have paid the service tax to KINFRA. During the pendency of the appeals, the appellants filed various invoices/bills issued by KINFRA showing the payment of service tax by the appellant for which the refund claims have been filed by the appellant. Further, I find that KINFRA has also issued a certificate dated 02.02.2021 certifying that they have not availed any CENVAT credit on the service tax paid by the appellants. Further, I find that these bills/invoices issued by KINFRA clearly show the payment of service tax by the appellant to KINFRA and KINFRA in turn has paid the same to the Government. Though these invoices/bills were not produced before the Original Authority but various Challans issued by KINFRA were produced along with worksheets showing the payment of service tax to KINFRA by the appellants.

7. In view of the facts that now the appellants have produced sufficient documents to prove the payment of service tax, I do not find any justification for

rejection of the refund claims and hence, I set aside the impugned orders by allowing the appeals of the appellant.”

Thus,I find that the assertions of both the parties are correct, inasmuch, as the issue involved in these appeals has been answered by the above ruling of this Bench for which reason, the impugned orders cannot be sustained and hence, the same are set aside.

4. In the result, appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in the Open Court on 01/04/2022)

(P. DINESHA)
JUDICIAL MEMBER

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