IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.40140 of 2014

(Arising out of Order-in-Appeal No. 168/2013 dated 20.11.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Sundaram Industries Ltd. **Appellant**
Rubber Factory, Post Box No. 6
Usilampatti Road, Kochadai
Madurai – 625 016.

Vs.

Commissioner of GST & Central Excise **Respondent**
Lal Bahadur Shastri Marg
C.R. Buildings, Bibikulam
Madurai – 625 002.

APPEARANCE:

Ms. Manne Veera Niveditha, Advocate for the Appellant
Shri M. Ambe, DC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40428/2023

Date of Hearing : 13.06.2023
Date of Decision: 13.06.2023

Per Ms. Sulekha Beevi C. S.,

Brief facts are that the appellant is engaged in manufacture of moulded rubber products and other rubber articles and are also registered with the Service Tax Department for the payment of service tax on various categories of service. The appellant received services under the category of clearing and forwarding agency service from M/s. Project Management Inc. USA and paid service tax under reverse charge mechanism under the provisions of Section 66A of Finance Ac, 1994 read with Rule 2(1)(d)(iv) of Service Tax Rules on the taxable value upto the month of June 2008. From July 2008 onwards, the

appellant stopped paying service tax and contended that as per Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules 2006, they have no liability to pay service tax on the transaction as the services are completely performed outside India. Show Cause Notices were issued for the period July 2008 to March 2009, April 2009 to March 2010, April 2010 to March 2011 and from April 2011 to September 2011 proposing to demand the service tax along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand along with interest and imposing penalty. On appeal, Commissioner (Appeals) upheld the order. Hence this appeal.

2. The learned counsel Ms. Manne Veera Niveditha appeared and argued for the appellant. It is submitted by her that the appellant has paid charges for clearing and forwarding agency services provided by M/s. Project Management Inc. USA for the goods manufactured and exported by them. Section 66A of the Finance Act, 1994 when read along with the Taxation of Services (Provided from Outside India and Received in India) Rules 2006, the appellant is not liable to pay service tax as the services have been provided outside India. It is submitted by the learned counsel that the issue stands decided in their favour in the appellant's own case reported in 2018 (11) TMI 1151 CESTAT Chennai.

3. The learned AR Shri M. Ambe supported the findings in the impugned order.

4. The demand has been raised alleging that the appellant is liable to pay service tax by reverse charge mechanism under the category of 'Clearing and Forwarding Agency service'. It is not disputed that the

services were provided as well as consumed outside India. Section 66A reads as under:-

> 66A. (1) Where any service specified in clause (*105*) of section 65 is,–
>
> (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and
>
> (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be the taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

5. The above Section has to be read along with the Taxation of Services (Provided from Outside India and Received in India) Rules 2006. Rule 17 reads as under:-

> Rule 3 Taxable services provided from outside Indian and received in India, "Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services,-
>
> (i) …….
>
> (ii) Specified in sub-clauses (a), (f), (h), (i), (j), (l), (m), (n), (o), (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zf), (zu), (zv), (zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzl), (zzm),, (zzn), (zzo), (zzp), (zzs), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzp), (zzzzg), (zzzzh), (zzzzi), (zzzzk) and (zzzzl) of clause (105) of section 65 of the Act, be such services as are performed in India:
>
> Provided that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67 of the Act and the rules made thereunder;
>
> Provided further …….

6. From the above, it is seen that clearing and forwarding agency service that falls under sec. 65(105)(zj) is covered under sub-rule (ii) of the above Rule 3. It is clear that these category of services specified

under sub-rule (ii) shall be totally excluded when the services are wholly provided / performed outside India. The adjudicating authority has held that the said Rule would not be applicable to the appellant on the ground that the same would be applicable only when part of the services are performed in India. On reading of the Rule, it is clear that if the services which are mentioned therein are performed outside India, there is no liability to pay service tax.

7. The very same issue was considered by the Tribunal in the appellant's own case as reported in 2018 (11) TMI 1151 CESTAT, Chennai and observed as under:-

> *"5. From the facts narrated above, it is seen that the appellants have provided clearing and forwarding services to the service recipient who is situated outside India. The Tribunal in the case of Bnazrum Agro Export Pvt. Ltd. (supra), had occasion to analyse the very same issue and it was held that the said activities having been performed outside India will not be exigible to service tax. The Tribunal had relied upon various decisions to reach such conclusion. Following the same, we are of the view that the demand cannot sustain. The impugned order is set aside and the appeal is allowed with consequential relief, if any."*

8. In the case of the appellant, for a different period, the Tribunal as reported in 2018 (12) TMI 947 has held as under:-

> *"7. There is no dispute that the service is provided outside the territory of India, but the Revenue wants to tax the assessee since it collects sale proceeds in India. But the legislature in its wisdom, has framed Rule 3(ii) to encourage exports and in turn foreign exchange remittances. We find force in the contention of the Ld. Advocate that the activity of the appellant being wholly performed outside India, is excluded from service tax liability as per Rule 3(ii) of the Taxation of Services (provided from outside India and received in India) Rules, 2006. Further, we note that on an identical set of facts this very Bench of the Tribunal in the case of M/s. Bnazrum Agro Export Pvt. Ltd. (supra) has held that such activity would not be exigible to service tax by virtue of Rule 3(ii) of the Rules. The relevant portion of the judgement is extracted below for the sake of convenience:*
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> *"5. We find that the Ld. Advocate is correct in his assertion that since services have been wholly performed outside India, the activity will not be exigible to service tax by virtue of Rule 3 (ii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. We find that the case laws relied upon fully support his*

assertion. Following the ratio already laid down, we find that the impugned order cannot sustain and will have to be 5 set aside, which we hereby do. Appeal is allowed with consequential relief, if any, as per law."

(Emphasis supplied)

9. The learned AR has relied on the decision in the case of Paramount Communications Ltd. Vs. CCE, Delhi – 2019 (29) GSTL 322 (Tri. Del.). On going through the said decision, it is seen that the demand has been upheld by the Tribunal observing that part of the services were provided within India. The said decision being distinguishable on facts, it is not applicable.

10. After appreciating the facts, evidence and following the decisions in the appellant's own case, we are of the considered view that the demand cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(**M. AJIT KUMAR**)
Member (Technical)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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