

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10609 of 2014- DB

(Arising out of OIA-DMN-EXCUS-000-APP-193-13-14 dated 24/10/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-DAMAN)

Khushi Enterprise

A/2201, Third Phase,
Gidc,
Vapi, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Daman

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

.....Respondent

APPEARANCE:

Shri, D. K. Trivedi, Advocate for the Appellant
Shri, R.K. Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. A/11403/2023

DATE OF HEARING: 01.06.2023
DATE OF DECISION: 28.06.2023

RAMESH NAIR

In the present appeal the following issues are involved:

- (i) In the fact that the service tax payment invoice issued by the service provider in favor of CHA bearing the name of the appellant and subsequently invoiced by CHA to the appellant are valid document for refund of service tax against the export of goods in terms of notification No 41/2012-ST dated 29-06-2012.
- (ii) Whether, pre-shipment inspection is an input services and liable for service tax paid thereon is liable to be refunded under notification No. 41/2012 ST

2. Shri, Devashish K. Trivedi, Learned Counsel appearing on behalf of the appellant at the outset submits that as regard the first issue that whether the invoices are proper or otherwise, though the invoice was issued by the service provider to the CHA, but the same invoice also bears the name of the appellant which clearly co-relates the service, Service provider and service recipient. There is no dispute about the payment of service tax on the receipt of service by the appellant which is further reinforced on the basis of the invoice raised by the CHA to the appellant showing the same value as shown in the service provider's invoice, therefore, proper co-relation is established, accordingly even though the invoice was not directly in the name of the appellant, refund cannot be rejected only on this count.

2.1 As regard the issue that whether pre-shipment inspection is an eligible service for refund, it is the submission that there is no dispute that the pre-shipment inspection is conducted only in respect of the export goods of the appellant therefore use of said service for export of goods is not under dispute accordingly the appellant is entitled for the refund on the pre-shipment inspection service in support of his above submission.

2.3 He placed reliance on the following Judgments:

- Nupur Viniyog Pvt. LTD. Vs. Commissioner of CGST & CX, Kolkata South Commissionerate 2022(56) G.S.T.L 17 (Tri.- Kolkata)
- 20 Microns LTD. VS. Commissioner Of C.EX. & S.T. Vadodara 2017 (47) S.T.R. 257(Tri.- Ahmd.)
- Commr. Of C.Ex. Mysore Vs. Chamundi Textiles (Silk Mills) LTD. 2010 (20) S.T.R. 219 (Tri.- Bang.)
- Commissioner of Sales Tax U.P. Vs. Auriaya Chamber of Commerce, Allahabad 1986 (25) ELT 867 (SC)
- Meera Vs. CESTAT, Chennai 2010 (254) ELT 256 (Mad.)
- Parekh Plast (India) Pvt. Ltd. Vs. Commissioner of Central Excise, Vapi 2012 (25) STR 46 (Tri.-Ahmd.)

3. On the other hand Shri, R.K. Agarwal Learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by the both sides and perusal of record. We find that the lower authorities have rejected the refund claim under Notification No. 41/2012 on the ground that the invoice of service is not in the name of the appellant whereas the same is in the name of CHA. we find that the CHA was appointed by the appellant as their Custom House agent who acts on behalf of the appellant, therefore as authorized person of the appellant, when CHA arranges the service provider for and on behalf of the appellant it cannot be said that the service is not received by the appellant. It is obvious that when the CHA deals with the other service providers whose services are used exclusively for the exporter, in the present case appellant, the invoices of such service providers at times are issued in favor of the CHA subsequently the CHA though bear the service charges but collect the reimbursement from the appellant.

4.1 In such case the situation is as good as the service provider has provided the services to the appellant which is not under dispute as all the services were used in relation to export of goods made by the appellant. The sample invoice of service provider issued in the name of CHA is scanned below:

S.No. 21
Indev Logistics Pvt Ltd

Handwritten: H Maxwe - G 42

Plot No. 10, Somathane Village, Kone-Savla Rasayani Road, Parvel, Dist. Raigad

Export Invoice

Date/Time :28/11/2012 10:11
(All Amounts Are in INR.)

Invoice No :EXP/001390/12-13 Invoice Date :27/11/2012 Status :
 Paid By :FOURSTAR ENTERPRISES
 Payer Address :196/198 SAMUEL ST. , MUMBAI 400009
 Ground Rent Till Date :27/11/2012 00:00
 Amount :10674.000 (Rupees : Rupees Ten Thousand Six Hundred Seventy Four Only)

Towards Realisation of Following Container/Cargo Related Export Charges:

Sr No	Activity Details	Amount	Service Tax
1	Export Handling & Transportation Charges	9500.00	1174.20
	Gross Amount	9500.000	
	SERVICE TAX@12%	1140.000	
	EDUCATION CESS@2%	22.800	
	SECONDARY HIGHER EDUCATION CESS@1%	11.400	
	TDS	0.000	
	Net Amount	10674.200	
	Rounded Amount	10674.000	

CHA Code / Name :331/FOURSTAR ENTERPRISES
 Consolcator Code /115250/FOURSTAR
 Name :ENTERPRISES
 Shipping Line :NYK LINE (I) LTD.

Shipper Name :khushi enterprises

Branch Service Tax No :AABCC1756DSD019
 PAN No :AABCC1756D



Ter. & Conditions :
 1) Payment should be made by DD/Pay Order/Cheque or Telegraphic Transfer in favour of Indev Logistics Pvt Ltd.
 2) If this invoice is not paid within the payment terms, an interest at 15% p.a. at the sole discretion of the company will be charged.
 3) If payment is made by cheque, then the paying party agrees that cheque(s) can be deposited by the Company at its sole discretion with its bank at Mumbai or at the place of its business/ Issuance of the cheque and the paying party hereby waives his all rights/objections whatsoever against place of deposit of the cheque(s). If cheque is dishonored for any reason whatsoever, the Customer shall, within 3 (three) days of being notified of such dishonor, remit the payment by Demand Draft.
 4) Any discrepancy found in this document should be notified to Indev Logistics Pvt Ltd within three days of the receipt of this document.
 5) All other terms and conditions are subject to scale of rates, terms of business, standard operating procedures as applicable from time to time referred in our tariff as well as applicable contracts.

Handwritten: KE-160

4.2 The corresponding CHA invoice against the above invoice is reproduced scanned below:

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★★★★ *Surinder* C.H.A. 11/245 AAAFF 7386ACH001
FOURSTAR ENTERPRISES
 CLEARING, FORWARDING & SHIPPING AGENTS

196/198, SAMUEL STREET, NEW BHAGWAN BHUVAN, 2ND FLOOR, ROOM NO.25/26, MASJID BUNDER, MUMBAI-400 009. PH: 9122-40194333, FAX-9122-23444651. Web site : www.fourstar.in E Mail: info@fourstar.in

BILL NO. : 6540 M/s KHUSHI ENTERPRISES A/2201, 3RD PHASE, G.I.D.C. VAPI/GUJARAT	DATE : 03/12/2012 Job No. : EXP/08734/2012-2013 Ref. No. : 5464/2012-2013
No. of Pkgs : 434 BGS Vessel Name : HANJIN KINGSTON VOY.037 Gross Wt. : 26080.00 KGS Cont Nos : TCLU8250759/40HC	Containing : POLYESTER WASTE (POY) From : J.N.P.T. S/B/E No. : 2739439 To : Shanghai Dt. : 26/11/2012 FOB : RS. 1032137.82
AWB/BL No. :	Inv. No. : KE/EXP/160/12-13 Dt. : 25/11/2012

-Sr.	Particulars	Receipted / Reimbursement Expenses	Non-Receipted / Reimbursement Expenses
1	S/B PASSING		500.00
2	CMC CHARGES	90.00	
3	INDEV LOGISTICS PVT LTD RECEIPT	10,674.00	
4	EXPORT DOCUMENTATION CHARGES		500.00
5	CUSTOM EXAMINATION		4,000.00
6	AGENCY CHARGES		1,000.00
7	SERVICE TAX @ 12.0%		720.00
8	EDUCATION CESS @ 2%		14.00
9	SECONDARY & HIGHER EDU. CESS @ 1%		7.00

KE/160/12-13
POY WASTE
Net - 26015 kgs
Gross - 26080 kgs
CHIT

Rupees Seventeen Thousand Five Hundred Five Only	SUB TOTAL	10,764.00
For FOURSTAR ENTERPRISES	GRAND TOTAL	17,505.00
Partner / Accountant	LESS : ADV	
	BALANCE	17,505.00

N.B. If Payment is not received within 7 days from the Date, interest will be charged @ 9% per annum.
 SUBJECT TO MUMBAI JURISDICTION E. & O.E. PAN No. : AAAFF7386A S.T. Reg No. : AAAFF7386A ST001

4.3 From the above invoice it can be seen that, in the service provider's invoice that is issued by M/s Indev Logistics Pvt. Ltd. the name of appellant is appearing as shipper name and in the corresponding invoice of the 4 Star Enterprises which is the appellant's CHA is showing the exact amount of M/s Indev Logistics Pvt. Ltd. therefore the proper co-relation has been

established. Considering both the invoices it is established that the service provider M/s Indev Logistics Pvt. Ltd. has provided services to the appellant M/S Khushi Enterprise. In this fact the service tax paid in respect of the services received and used for export of goods is clearly refundable to the appellant.

4.4 This identical issue has been considered by this tribunal in the case of Chamundi Textiles limited wherein the tribunal has held that Cenvat credit cannot be denied to the assessee on the invoice even though raised on the agent of assessee who had discharged liability which would have otherwise being discharged by them. In the case of Chamundi Textiles Ltd. reported in 2011 (217) ELS 37 the tribunal held that even though a document is in the name of another entity but on account of assessee credit cannot be denied on such document. Considering this decision in the case of refund also even though the invoice was raised to the agent of the appellant the refund cannot be rejected as invoice raised to the agent is as good as invoice raised to the appellant being the principle.

4.5 In view of the above decision we are also of the view that even though the invoices issued in the name of the appellant's agent but the service was undisputedly received and used by the appellant for export of goods and the burden of service tax was born by the appellant the refund is eligible under notification No 41/2012 to the appellant.

4.6 As regard the denial of refund on pre-shipment inspection holding that the same is not input service, we find that all the services which are used for export of goods are input services for the purpose of refund under notification No. 41/2012-ST and there is no dispute that the pre-shipment inspection is indeed used in respect of the appellant's export goods. This view is supported by the judgment cited by the appellant therefore on this count also refund cannot be denied. As per our above discussion and

findings we are of the considered view that the appellant are entitled for the refund under notification No. 41/2012-ST.

5. Accordingly, the impugned order is set aside. Appeal is allowed, with consequential relief.

(Pronounced in the open court on 28.06.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha