

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

E-HEARING

SERVICE TAX APPEAL NO. 50321 OF 2017

[Arising out of the Order-in-Appeal No. 293/CE/DLH/2016 dated 26/12/2016 passed by The Commissioner of Central Excise (Appeals – I), New Delhi – 110 002.]

**M/s Voestalpine VAE VKN
India Pvt. Ltd.,**

Appellant

42, Milestone, G.T. Road, Vill. – Joshi Chauhan,
Bahalgarh, District Sonapat – 131 001 Haryana.

VERSUS

Commissioner of Central Excise (Appeals – I) Respondent

Room No. 134, Kendriya Rajaswa Bhavan,
Indraprasth Estate,
New Delhi – 110 002.

APPEARANCE

Shri Sanjiv Agarwal, Chartered Accountant – for the appellant.
Shri S.K. Meena, Authorized Representative (DR) – for the Department

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51641/2023

DATE OF HEARING : 30.11.2023

JUSTICE DILIP GUPTA

The appellant M/s Voestalpine VAE VKN India Pvt. Ltd.¹ has filed this appeal for setting aside the order dated 26.12.2016 passed by the Commissioner (Appeals). This order of the Commissioner (Appeals) sets aside the order dated 19.10.2015 passed by the Assistant Commissioner allowing the refund claim filed by the appellant.

1 the appellant

2. The appellant is engaged in the business of forgers, fabricators, manufacturers, importers, exporters of and dealers in industrial fasteners, machine tools, agricultural implements, railway track fittings and fasteners and other such products.

3. M/s Voestalpine VAE GMBH² had received an order from Delhi Metro Railway Corporation, New Delhi³ for supply of Gauge Turnouts (Railway Track items) on 'Delivery Duty Paid' basis for its Jaipur and Faridabad metro projects.

4. The appellant is a subsidiary of V.V.G. In order to execute the contract with Delhi Metro, V.V.G. awarded the contract to the appellant for machining of rails/crossing so that the same could be supplied and used for laying the railway track. Initially the appellant had paid service tax amounting to Rs. 3,24,326/-, but when it realised that payment of service tax was exempted by a Notification No. 25/2012-ST dated 20.06.2012⁴ under Entry No. 14, it filed a refund claim in Form – R under section 11B of the Central Excise, Act, 1944 read with section 83 of the Finance Act, 1994 on 10.04.2013. The details of the related invoices and the amount of service tax paid are as follows :-

S. No.	Invoice No. and Date	Service Tax Paid @ 12.36 %
1.	400 dated 08.10.2012	Rs. 60,811.00
2.	428 dated 22.10.2012	Rs. 70,947.00
3.	463 dated 01.11.2012	Rs. 1,11,487.00
4.	498 dated 24.11.2012	Rs. 81,081.00
	Total	Rs. 3,24,326.00

2 V.V.G.

3 Delhi Metro

4 the exemption notification

5. The relevant portion of the exemption notification containing Entry No. 14 is as follows :-

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/20212-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act.

14 (a) Services by way of construction, erection, commissioning, or installation of original works pertaining to, -

an airport, port or railways, including monorail or metro".

6. The Assistant Commissioner, after examining the verification report submitted by the Range Officer which stated that the appellant had not taken any CENVAT credit in relation to the relevant invoices and that the appellant had also submitted a Certificate from a Chartered Accountant that the foreign company had not paid any service tax to the appellant, and after examining Entry No. 14 of the notification granted refund by the order dated 19.10.2015 holding that :

"On perusal of the documents available with the refund application, the following has been observed that :-

- (i) The refund application filed is within time in terms of section 11B of the Central Excise Act, 1994 ;
- (ii) Declaration that the Cenvat credit of service tax of Rs. 3,24,326/- has not been taken by them in RG-23A Pt. II
- (iii) The challans showing payment of service tax appears to be genuine as the same have been verified by the range office.

The Range office vide his verification report dated 27.08.2015 submitted that the refund claim of Rs. 3,24,326/- may be considered for sanction. The range officer also submitted that the party have not taken any Cenvat credit in relation to the relevant invoices of service

tax on which refund is being claimed and further the party has submitted the C.A. certificate, wherein certifying that the M/s Voestalpine VAE GMBH have not paid any amount of service tax to the party and in this regard debit note has also been raised by M/s VAE GMBH. The range office also verified the genuineness of above said GAR-7 challans.

M/s Voestalpine VAE GmbH certified that they have not availed service tax credit due to non availability of service tax on the said invoices amounting to Rs. 3,24,326/-.

The party supplied the service on payment of service tax amounting to Rs. 3,24,326/- which was exempted vide Notification No. 25/2012-Service Tax dated 20.06.2012 and the party has not taken Cenvat credit of the same. Therefore, the refund claim of service tax amounting to Rs. 3,24,326/- is admissible.

In view of the above, I pass the following order :-

In view of the above facts and circumstances of the case, I allow refund claim of **Rs. 3,24,326/- (Rupees Three Lacs Twenty Four Thousand Three Hundred Twenty Six only)** to be paid through account payee cheque No. 749883 dated 19.10.2015 to the party”.

7. Feeling aggrieved, the department filed an appeal before the Commissioner (Appeals) who, as noticed above, by the order dated 26.12.2016 set aside the order passed by the Assistant Commissioner and allowed the appeal. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below :-

11. The respondents had provided "Machining of rails" services to M/s Voestalpine VAE GMBH, Sonapat and charged service tax from them on their invoices. It seen that as per S. No. (14) of the Notification No. 25/2012-ST dated 20.06.2012, services provided by way of commissioning or installation of original work pertaining to Railway including monorail or Metro are exempted. In the instant case the respondents have not provided such services to Delhi Metro Corporation Limited (DMRC) directly but to M/s Voestalpine VAE GMBH.

12. The respondents have laid emphasis on the words "pertaining to" in serial no. 14 of the list of exempted services. They have also referred to serial no. 12 of the said list which specifically gives exemption to service provided to the Government, local authority etc. by way of construction, erection etc. of civil structure. Reading serial no. 12 & 14 together makes it clear that exemption under serial no. 14 does not restrict benefit only if service is provided to airport, railway or metro. The benefit is available if service pertains to metro which is the case here. However, the service has to be by way of construction, erection, commissioning or installation of original work. The laying of rails was an original work. M/s Voestalpine VAE GMBH had received order from Delhi Metro Railway Corporation (DMRC) for supply of Gauge Turnouts (Railway Track items). They imported materials & parts such as rail, rail fittings, crossings & other material and sent some of them to respondents for machining & grinding etc. after which these were supplied to DMRC for erection & installation of railway tracks. The services were thus part of commission & installation of original work pertaining to metro. These were not services of commissioning or installation per se but a part of it.

13. As mentioned above, it is not essential that service is provided directly to DMRC but it should pertain to 'metro'. However,

the service is only part of installation & commissioning activity undertaken by M/s Voestalpine VAE GMBH but not the service of installation & commissioning undertaken by respondents. In a way service of "machining of rails" provided by respondents to M/s Voestalpine VAE GMBH is an input service for the service they (M/s Voestalpine VAE GMBH) would provide to DMRC which (services) are exempt under serial no. 14 of Notification 25/2012. Respondents have not provided any service by way of commissioning or installation. Can 'machining of rails' be treated as providing service by way of commissioning or installation of original works pertaining to metro? The service of 'machining of rails' is not service by way of commissioning or installation".

8. Shri Sanjiv Agarwal, learned Chartered Accountant appearing for the appellant submitted that the Commissioner (Appeals) committed an error while interpreting Entry No. 14 of the exemption notification. Entry No. 14, according to the learned counsel specifically exempts services by way of construction erection, commissioning, or installation of original works pertaining to metro and the machining of rails/crossing the same would amount to commissioning or installation of original work pertaining to Metro. Learned counsel also submitted that even if the services was provided by the appellant to the V.V.G., which had in turn provided service to Delhi Metro, the service provided by the appellant would be exempted from service tax so long as they pertain to construction or commissioning or installation of Delhi Metro and the finding recorded by the Commissioner

(Appeals) to the contrary that the services of machining of rails is not a service of commissioning or installation is incorrect.

9. Shri S.K. Meena, learned authorized representative appearing for the department has, however, supported the order passed by the Commissioner (Appeals).

10. The submissions advanced by learned Chartered Accountant appearing for the appellant and the learned authorized representative appearing for the department have been considered.

11. As noticed above, V.V.S. had received an order from Delhi Metro for supply of Gauge Turnouts (Railway Track items) for its Jaipur and Faridabad Metro projects. The foreign company has a project office in India. The project office in India imported rail, rail fittings, crossing and other materials and sent some of it to the appellant for fabrication purpose (machining/grinding) after which the same was supplied to Delhi Metro. The work that was entrusted to the appellant was machining of rails/crossing which is important aspect without which the railway tracks cannot be supplied as per the specification. The Assistant Commissioner, after a careful analysis had come to a conclusion that the appellant would be exempted from payment of service tax under Entry No. 14 of the exemption notification. It is for this reason that the Assistant Commissioner directed for refund of service tax.

12. The Commissioner (Appeals), however, has denied the refund for the reason that the appellant had not provided services to Delhi Metro directly but to a foreign company namely V.V.S. The Commissioner (Appeals) also concluded that the services provided by the appellant were only for "part of" commissioning, installation of original work pertaining to Metro. The Commissioner (Appeals) further held that machining of rails cannot be treated as providing services by way of commissioning or installation of original work pertaining to Metro.

13. A perusal of Entry No. 14 of the exemption notification leaves no manner of doubt that services by way of construction, erection, commissioning or installation of original works pertaining to Metro are exempted. Thus, even if the appellant was not providing such services directly to Delhi Metro, but to its foreign entity, it would not mean that the appellant had not provided services to Delhi Metro. The Commissioner (Appeals) also committed an error in concluding that since the services provided by the appellant were only for 'part of' service of commissioning or installation, the appellant would not be entitled to exemption under the exemption notification as it is not material whether all of the commissioning or installation was done by the appellant or only part of it.

14. The Commissioner (Appeals) also proceeded to hold that machining of rails cannot be treated as providing service by way of commissioning or installation of original works pertaining to

metro. It is not possible to accept this finding. The Project Office of V.V.S. had imported rail, rail fittings, crossing and other material which were supplied to the appellant for machining and grinding after which they were sent to the Delhi Metro for laying of railway tracks. Such services would clearly fall under commissioning or installation of original works. Commissioning would mean to bring something newly produced such as a factory or machine into working condition. This is what was carried out by the appellant. The work carried out by the appellant was also necessary without which the railway tracks could not have been supplied as per the technical specifications.

15. Thus, for the reasons stated above, the appellant was clearly exempted from payment of service tax under Entry No. 14 of the exemption notification. The adjudicating authority was justified in granting refund.

16. The order dated 26.12.2016 passed by the Commissioner (Appeals), therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)