

2013 (3) ECS (196) (Tri-Ahd)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

M/s Madhu Silica Pvt. Ltd.

Vs.

Commissioner of Central Excise & S.T. Bhavnagar

Appeal No. : ST/307 of 2012
Arising out of : OIA No. 9/2012 (BVR)/COMMR(A)/RBT/RAJ Dated
27.07.2011
Passed by : Commissioner (Appeals) of Central Excise & Customs,
Rajkot
Appellant : M/s Madhu Silica Pvt. Ltd.
Respondent : Commissioner of Central Excise & S.T. Bhavnagar

Represented by

For Appellant : Shri R.R. Dave Consultant
For Respondent : Shri Manoj Kutty (A.R)

CORAM

MR. JUSTICE G. RAGHURAM, HON'BLE MEMBER (JUDICIAL)

Date of Hearing / Decision: 20.06.2013

ORDER No. A/10793/WZB/AHD/2013 dated 20.06.2013

“On a true and fair construction of the provisions of Notification No. 17/2009, the conclusion is compelling that the several conditionalities enumerated therein are with regard to delineation of the taxable services in respect of which the

exemption is applicable, the circumstances in which and the persons who are entitled / disentitled to the claim for exemption and stage at which the exemption should be claimed; and the time frame within which the claim for exemption could be presented, are all mandatory requirements for presenting a claim for exemption.” (Para 5)

Per: G. Raghuram, J.:

1. The Adjudicating authority rejected and the Appellate Commissioner concurred, that the appellant herein is disentitled to refund of Rs. 26,416/-
2. The relevant facts may be noticed. The appellant is a manufacturer of exportable goods and for the purpose of such manufacture used specified services. Such services which were inputs in the manufacture suffered service tax, which was remitted by those services providers. The Central government, exercising the powers under Section 93 (1) of the Finance Act, 1994, issued Notification No. 17/2009 – ST dated 07.07.2009, exempting the taxable services enumerated in an appended table, received by exporters of goods and used for export of such goods, from the whole of service tax under Section 66 and 66 A of the Act, subject to the conditions specified in the corresponding entry in column (4) of the table. The Notification stipulates that the exemption is available subject to the conditions enjoined enacted. The proviso sets out four circumstances requisite for claiming exemption and sets out a raft of conditionalities spelling out the manner in which the exemption provided is to be given effect to . Paragraph 2 (f) of the Notification clearly enjoins that the claim for refund shall be filed within one year from the export of the goods. The explanation thereunder provides that for the purpose of this clause, the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962.
1. On the admitted factual scenario, recorded in the adjudication order and the appellate order as well, and the apparent factual matrix, not disputed by the learned counsel for the appellant herein, in respect of refund claim of Rs.1,71,765/-, for the period July 2010 to December 2010 the (initial claim), the claim was filed on 1.09.2011, beyond the period of one year, in respect of the exports pertaining to the quarter October 2010 to December 2010. Though the appellant initially claimed refund of Rs. 1,81,765/-, it later scaled down the claim to Rs. 1,22,842/-. The adjudicating authority however, sanctioned refund of Rs. 32,507/-; rejected the refund claim of Rs. 1,22,842/-; and the refund to the extent of Rs. 26,416/- was declared as time – barred, under provisions of Section 11 B

of the Central Excise Act, 1944 as made applicable under section 83 of the Act, to refund claims under the Act as well.

2. The appellate authority concurred by holding that since paragraph 2 (f) of Notification No. 17/2009 – ST dated 07.07.2009 requires the claim to be filed within one year from the date of export of goods, the claim filed beyond the said period disentitles grant of refund, to the extent the claim is beyond the period of one year.
3. Section 93 of the Act confers a broad power on the Government to grant exemption from provisions of the Act including by imposition of such conditions as are considered appropriate by the Government. On a true and fair construction of the provisions of Notification No. 17/2009, the conclusion is compelling that the several conditionalities enumerated therein are with regard to delineation of the taxable services in respect of which the exemption is applicable, the circumstances in which and the persons who are entitled / disentitled to the claim for exemption and stage at which the exemption should be claimed; and the time frame within which the claim for exemption could be presented, are all mandatory requirements for presenting a claim for exemption. This is what the adjudicating authority and the appellate authority have held and we find no reason to fault these concurrent conclusions.

On the aforesaid analysis, the appeal is without merits and it dismissed accordingly, but in the circumstances without costs.

(Dictated and pronounced in the Court)