FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 10/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. ST/A/70119-70126/2018-CU[DB] dated 03/01/2018</u>

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| 1 | ST/1460/2011 | **ETHNIC INDIA.**<br>C-65, HOSIERY COMPLEX,<br>PHASE-II, NOIDA. |
| 2 | ST/1461/2011 | **ETHNIC INDIA.**<br>C-65, HOSIERY COMPLEX,<br>PHASE-II, NOIDA. |
| 3 | ST/1462/2011 | **ETHNIC INDIA.**<br>C-65, HOSIERY COMPLEX,<br>PHASE-II, NOIDA. |
| 4 | ST/1463/2011 | **ETHNIC INDIA.**<br>C-65, HOSIERY COMPLEX,<br>PHASE-II, NOIDA. |
| 5 | ST/1464/2011 | **ETHNIC INDIA.**<br>C-65, HOSIERY COMPLEX,<br>PHASE-II, NOIDA. |
| 6 | ST/1465/2011 | **Ethnic India**<br>C-65,hosiery Complex,phase-ii<br>NOIDA<br>UP |
| 7 | ST/1466/2011 | **ETHNIC INDIA.**<br>C-65, HOSIERY COMPLEX,<br>PHASE-II, NOIDA. |
| 8 | ST/1467/2011 | **ETHNIC INDIA.**<br>C-65, HOSIERY COMPLEX,<br>PHASE-II, NOIDA. |
| | | Name and Address of Respondent |
| 9 | | -C.C.E. NOIDA<br>C-56/42, Sector-62, Noida-201307 |
| 10 | | -C.C.E. NOIDA<br>C-56/42, Sector-62, Noida-201307 |
| 11 | | -C.C.E. NOIDA<br>C-56/42, Sector-62, Noida-201307 |

12 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-
201307

13 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-
201307

14 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-
201307

15 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-
201307

16 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

Other Appellants and Respondents as per Annexure

Copy To

17 Advocate(s) / Consultant(s):

**S. P. Singh Rathore,Adv**
**418 NEW LAWYER CHAMBER,**
**SUPREME COURT OF INDIA,**
**NEW DELHI,**
**DELHI**

18 Bar Association, CESTAT, Allahabad

19 Director Publications, Customs, Excise, I.P. Estate, Delhi

20 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

21 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

22 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

23 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

24 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

25 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

26 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

27 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

28 C.D.R.    29 Office Copy    30 Second Folder Copy    31 Guard File

**Asstt. Registrar**

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/1460-1467/2011-CU[DB]

(Arising out of Order-in-Appeal No. 117-124-ST/APPL/NOIDA/2011 dated 14/06/2011 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

**M/s Ethnic India** **Appellant**

Vs.

**Commissioner of Central Excise, Noida** **Respondent**

Appearance:

Absent On Call, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing & Date of Decision : 03/01/2018

FINAL ORDER NO. 70119 - 70126/2018

**Per: Archana Wadhwa**

All the appeals are being disposed of by a common order, as the issue involved in all of them is identical.

2. The disputes relates to the refund of Service Tax paid on various services utilized by the appellant in the port area, for the export of their product, in terms of Notification Nos. 40/2007 dated 17/09/2007, 41/2007 dated 06/10/2007 & 17/2009 dated 07/07/2009. The said notifications provide for refund of Service Tax paid on various taxable services utilized by exporter, for the export of their final product. The reasons adopted by the Commissioner (Appeals) for denial of

the said refund claim are being reproduced below for better appreciation:

> *6.2 There is no dispute as to the observance of the above provisions of the notification. The notification further stipulates that that refund shall be subject to the conditions specified in the corresponding entry in column (4) of the Schedule to the notification. The dispute mainly relates to the authorization of service provider by the port any person authorized by the port in respect of the export of the said goods. I find that the taxable service under clause (105) of the Section 65(zn) of the Act means "Services provided by a port or any person authorized by the port in respect of the export of said goods".*
>
> *A perusal of above provisions clearly reveal that in order to become the taxable service in respect of Port Services, the authorization of such service provider by the port or any person authorized by the port is a mandatory provision. In the absence of such authorization the services provided cannot be treated as taxable services.*
>
> *6.3 In the instant case, I find that on scrutiny of claims, it was found that the assessee has received services from various service provides and on the basis of their invoices, he has claimed the exemption by way of refund but no document with regard to authorization of such service provider by the port or any person authorized by the port were produced by him. I further find that the*

*assessee was specifically asked to produce supporting evidence that the service providers were being authorized by the respective port to provide such services. The assessee failed to submit any evidence regarding authorization by the port in respect of such service providers. The registration certificates in respect of few service providers were provided by the assessee but it was revealed that they were not registered with the service tax under the category under which the claim was filed by them. The appellant has failed to submit such certificate even before this authority. Therefore, in the absence of such certificate, the exemption from payment of service tax by way of refund has rightly been denied by the Adjudicating Authority. Thus, I do not find any ground to interfere in the impugned orders.*

3. As is seen from above, the only reasons adopted by the Lower Authorities for denial of the refund claim is that the appellant has not produced any evidence to show that the Port Service Providers were authorized by the Port to provide such services, as also on the ground that in some of the cases the service categories were shown to be in than the invoices.

4. We find that both the above issues stands covered by the Tribunal's decision in the case of SRF Ltd. *Versus* Commissioner of Central Excise, Jaipur-I reported at 2015 (40) S.T.R. 980 (Tri. – Delhi) wherein it stands held that description of Port Service given in the Notification No.

41/2007 being different from the description of "Port Service" defined in Section 65 of the Finance Act, 1994, cannot be adopted as a ground for denial of refund. Further the assessee cannot be burdened unduly with the condition to establish that service provider was registered under "Port Services" and were authorized by the port. As such, by referring to precedent decisions as also to Board Circulars, Tribunal held in favour of the assessee.

5. In as much as, the said judgment covers both the issues in question, we set aside the impugned order and allow all the appeals with consequential relief to the appellant.

(Dictated in Court)

Sd/-
**Anil.G. Shakkarwar**
**Member(Technical)**

Sd/-
**(Archana Wadhawa)**
**Member (Judicial)**

*Ansari*

प्रमाणित प्रति/Certified True Copy

12/02/18