FAX : 0532-2400149

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

Dated: 30/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/71185-71186/2016-CU[DB]** dated **28/11/2016**

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/182/2010	**VACEMET INDIA LTD UNIT II** FORMERLY KNOWN AS VACEMET PACKAGING INDIA LTD UNIT II, A-4/1 UPSIDC INDUSTRIAL AREA, KOTWAN, KOSHEEKALAN MATHURA,UP
2	ST/183/2010	**Vacemet India Ltd Unit Iii** FORMERLY KNOWN AS VACEMET PACKAGING INDIA LTD UNIT II, A-5,C-7, UPSIDC INDUSTRIAL AREA, KOTWAN, KOSHIKALAN MATHURA,UP

	Name and Address of Respondent
3	C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
4	C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

ANIL SINGH SISODIA, ADVOCATE,
B-35, PRATAP NAGAR,
AGRA,UTTAR PRADESH
282010

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

COURT-I

Appeal Nos. ST/182 & 183/2010-CU[DB]

Arising out of Order-in-Appeal No. 172-175-ST/LKO/2009 dated 30.10.2009 passed by Commissioner (Appeals), Central Excise, Lucknow.

i) Vacemet India Ltd. Unit II.
ii) Vacement India Ltd. Unit III.

...APPELLANTS

VERSUS

C.C.E., Lucknow ...RESPONDENT

APPEARANCE

Ms. Surabhi Sinha, Advocate for the Appellants.
Shri T.K. Sikdar, Asstt. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. JUSTICE (Dr.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 28. 11. 2016
DATE OF PRONOUNCEMENT : 29.11.2016
FINAL ORDER NO. 71185-71186/2016

Per Anil G. Shakkarwar :

The above stated two appeals are arising out of a common Order-in-Appeal No. 172-175-ST/LKO/2009 dated 30.10.2009 and therefore they are taken up together for decision.

2. The brief facts of the case are that the appellants are manufactures of Metalised Polyester Film, Lacquered Polyester Film and Coated Metalised Paper and they availed Cenvat credit facility. The appellants filed four refund claims for amounts of Rs.35,771/-, 41,991/-, 9,578/- and 10,054/- under Notification No. 41/2007-ST dated 06.10.2007. The refund claimed was in respect of service tax paid on services used for export of goods. The services used were transport of goods in containers by Rail and port services. The appellants were issued with various show cause notices such as show cause notices dated 04.11.2008, 19.11.2008 and 03.11.2008. The allegations in the said show cause notice included that the port services were claimed to have been provided by persons other than the port or other port and the authority to render such services by such persons was not placed on record. It was further alleged that the appellants did not submit documents to establish that the exporter has actually paid the service tax and that they did not avail Cenvat credit. The above stated show cause notices were adjudicated through Order-in-Original Nos. 139/2008 dated 30.12.2008, 140/2008 dated 30.12.2008, 143/2008 dated 31.12.2008 and 144/2008 dated 31.12.2008. The Original Authority through the above stated Orders-in-Original rejected the refund claims. The Original Authority has held that the services provided by M/s. Eagle Maritime (P) Ltd., New Delhi, M/s. Oceanid Logistics (P) Ltd, New Delhi and M/s. DHL Lemier and Logistics (P) Ltd., New Delhi did not qualify to be treated as port services under the definition of port service provided under Section 65(82) of Finance Act, 1994. Aggrieved by the said Order-in-Original,

the appellant preferred appeals before Commissioner (Appeals). The said appeals were decided through Order-in-Appeal No. 172-175-ST/LKO/2009 dated 30.10.2009. The learned Commissioner (Appeals) had held that the appellant did not place any evidence on record that the services provided by service provider were authorized to act as port service provider and also various conditions of the Notification No. 41/2007-ST were not fulfilled by the appellants. Therefore, Commissioner (Appeals) rejected the appeals filed before him. Aggrieved by the said Orders-in-Appeals, the appellant is before this Tribunal.

3. Heard the learned counsel for the appellants, who has submitted that the refund claims filed by them ~~was~~ were as per procedure under Notification No. 41/2007-ST dated 06.10.2007 and that documentary evidences produced by them were substantive compliance on the part of them. She further contended that Notification No. 41/2007 was amended to increased time limit from 60 days to 06 months for filing refund. She further submitted case laws regarding extension of time limit for refund. She submitted a copy of case law in the case of ***Sony India Pvt. Ltd. vs Commissioner of Customs, New Delhi*** reported at ***2014(304) ELT 660 (Del.).***

4. Learned D.R. has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records we find that the appellant has not submitted sufficient proof to establish that refund of service tax claimed for port services was actually the service tax paid by port service providers. Since records reveals that the claim of the appellant that the services provided by

the service providers stated earlier were not authorized to provide port services and the evidences called for in the impugned notices such as documents to establish that the Cenvat credit was not availed not forthcoming from the records of the case, we do not find any merits in the appeals filed by the appellant. Therefore, we reject both the appeals filed by the appellant.

(Order pronounced on 29/12/2016.)

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

-Sd-
(Justice Dr. Satish Chandra)
President

प्रमाणित प्रति / Certified True Copy
6.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Patel/-