

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

REGISTERED / AD

Dated: 30/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70917/2016-SM(BR) dated 19/09/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 81(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	SI/56446/2013	RAHMAN INDUSTRIES LTD 184/167, WAJIDPUR, JAJMAU KANPUR U.P

	Name and Address of Respondent
2	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Copy To

3 Advocate(s) / Consultant(s):

VISHWNATH SHUKLA, ADV
BMG LEGAL SOLUTIONS
UM A105 ANSAL PLAZA
VAISHALI, GHAZIABAD-201010

4. Bar Association, CESTAT, Allahabad

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

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

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

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohini Road, New Delhi-110005

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 58

12 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad-500082

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

14 C.D.R. 45 Office Copy 16 Guard File

Asstt. Registrar

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH: ALLAHABAD**

SINGLE MEMBER BENCH

Appeal No. ST/56446/2013(SM)

Dated of Hearing/decision: 19/9/2016

[Arising out of Order-in-Appeal No. 313-ST/APPL/KNP/2012 dated 13.12.2012 passed by Commissioner (Appeals), Central Excise, Customs & Service Tax, Kanpur]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Rahman Industries Ltd.

Appellant

Vs.

C.C.E. & S.T., Kanpur

Respondent

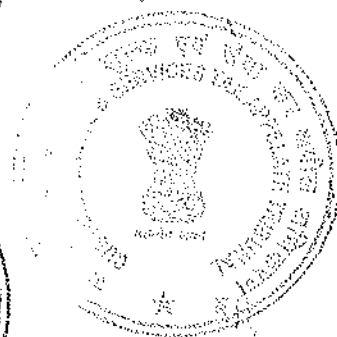
Appearance:

Present for the Appellant: Shri Vishwanath Shukla, Advocate

Present for the Respondent: Shri Pawan Kumar Singh, Superintendent, AR

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)

Final Order No. 70917/2016



Per: Anil Choudhary

The issue in this appeal filed by the appellant - manufacturer and exporter of shoe uppers and leather shoes is that whether the Commissioner (Appeals) is correct in refusing refund of input service availed by the appellant and not utilised due to export, under provisions of Notification number 17/2009-ST on the ground that the service providers have mentioned improper service head/classification, instead of the correct classification etc..

2. The brief facts are that the appellant preferred refund claim for the period January 2011 to March 2011 for Rs. 3,70,720/- but the same was rejected vide Order-in-Original dated 19/6/12. Being aggrieved the appellant preferred appeal before Id. Commissioner (Appeals) who have been pleased to allow part of the claim and thereafter as per the direction, the Adjudicating Authority have calculated the refund allowable at Rs.51,395/-. Thus the Commissioner (Appeals) have rejected the balance refund of Rs.3,19,325/- and being aggrieved the appellant is in appeal before this Tribunal.

3. The Id. Counsel for the appellant urges that so far the service tax paid on the bill of the CHA, the Id. Commissioner (Appeals) allowing in part observed - where only CHA service is received, refund is allowable but in respect of charges in the same invoice like bill of lading charges, documentation charges received under BAS category, was not allowed also terminal handling charges (THC) was also not allowed shown under BAS. Similarly in the case of invoice for transportation of loaded containers

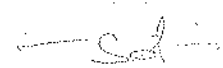


(factory stuffed) to the ICD have also been allowed, observing handling and freight charges were not allowable and only service tax on transportation expenses were allowed. Similarly the invoices for C&F charges and THC charges were also not allowed observing that these show B/L charges, documentation charges, agency charges, customs clearing charges, administrative fee etc. The Id. Counsel further urges that CBEC vide the Circulars Number 112/6/2009-ST have clarified that where service provider providing services to the exporter provides various services, but he has registration of only one service, the refund is being denied on the ground that the taxable services that are not covered under registration, are not eligible. By way of clarification the board has said that Notification No. 41/2007-ST or its successor Notification No. 17/2009-ST provides exemption by way of refund from specified taxable services used for export of goods. Granting refund to exporters on taxable services that he receives and uses for export, do not require verification of registration certificate of the supplier of service. Therefore, refund should be granted in such cases, if otherwise in order. The procedural violations by the service provider need to be dealt with separately, independent of the process of refund. The Id. Counsel further urges that following the said Circular, co-ordinate Bench of this Tribunal in the case of Sopariwala Exports versus Commissioner of Service Tax [2015 (39) S.T.R. 884] have allowed refund for Terminal Handling Service, C&F service, CHA service, GTA service etc. and accordingly the facts being squarely covered, the appeal may be allowed with consequential benefits.

4. The Id. A.R. for revenue relies on the impugned orders

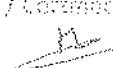
5. Having considered the rival contentions I find that refund have been allowed in part only on procedural grounds and/ or some classification error in the invoice raised by the service provider. On perusal of documents produced in the course of hearing reveals that all the documents in question bear shipping bill number, bill of lading number, invoice number etc. and there is no iota of doubt that the appellant have received the services in the course of export of their products. Accordingly I allow the appeal and direct the Adjudicating Authority to grant the balance amount of refund Rs. 3,19,325/- within a period of 45 (Forty five)days from the date of receipt of a copy of this order along with interest as per rules. The impugned order is set aside to the extent it have rejected the claim of refund.

(Dictated and pronounced in the open Court)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित नकल / Certified True Copy


25.10.16
अधीक्षक / Asst. Registrar
विभागीय, उद्योगिक एवं वाणिज्य
अधीक्षक / (CE & I.A.T.)
38, वी. ए. रोड, इलाहाबाद-201001
38, W. A. ROAD, ALAHAABAD-201001

