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: 17/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70360-70361/2017-SM[BR] dated 30/03/2017

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/519/2010	**MERINO INDUSTRIES LTD.,** VILLAGE-ACHHEJA, HAPUR-DELHI ROAD, HAPUR, DISTT. GHAZIABAD (U.P.)
2	ST/766/2011	**MERINO INDUSTRIES LTD.** VILLAGE-ACHEJA, P.O. HAPUR, DISTT. GHAZIABAD.
		Name and Address of Respondent
3		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

S.SUNIL ADVOCATE
46, BANK ENCAVE, DELHI-110092

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

Appeal Nos. ST/519/2010 & 766/2011-ST[SM]

Arising out of Order-in-Appeal Nos. 424-ST/MRT-II/2009 dated 24.02.2009 & 10-ST/MRT-II/2011 dated 31.01.2011 both passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II.

I. Merino Industries Ltd. (ST/519/2010).
II. Merino Industries Ltd. (ST/766/2011).

...APPELLANTS

VERSUS

I. Commissioner of Central Excise, Meerut-II
II. Commissioner of Central Excise, Meerut-II

...RESPONDENTS

APPEARANCE

Shri S. Sunil, Advocate, for the appellants.
Shri Sandeep Kumar Singh, Dy. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 30. 03. 2017
FINAL ORDER NO.-70360-70361/2017

Per Mr. Anil Choudhary :

The issue in these appeals filed by the appellant-assessee a manufacturer of laminated sheets and also exports the same is, whether their refund claim under the provisions of Notification No. 41/2007–ST (as amended) with regard to consumption of services in the course of export mainly port services whether the same have been rightly rejected by the impugned Orders-in-Appeal, observing that the services in the nature of handling, stevedoring, loading, unloading, tug hire and labour arrangement etc., provided by the shipping line at the port of export are covered under the port services or not and whether after the let export order is granted at the ICD, with the further services received up to the loading of the goods at the Gateway port whether refund is allowable on the same ~~are~~ or not?

2. The learned counsel for the appellant urges that the issue is no longer *res-integra* and in their own case in ST Appeal No. 1287/2011-SM, a coordinate Bench of this Tribunal vide Final Order No. 55365/2013 dated 23rd January, 2013 have held as under :-

> *"Services covered by the show cause notice are handling, stevedoring, loading, unloading, tug hirë and labour arrangement services, which is squarely falling within the scope of port services. Therefore, that cannot go out of ambit of the said service to entertain the refund claim of the appellant on such count. Accordingly, appeal is allowed with direction to grant the refund."*

3. Now the only issue remains as to which is the date of export order or till which stage the services received by the appellant are allowable for the purpose of refund under the Notification No. 41/2007-ST (as amended). Learned Commissioner have held that the appellant has claimed exemption for Service Tax paid in respect of services and ~~the~~ part of which have been rejected on the ground of limitation. The contention of the appellant was that the claim is not barred, as the let export order which is ~~put~~ made at ICD, cannot be taken as the date of export because the goods under export have not yet reached the port of export or the gateway port. However, the learned

Commissioner relying of Clause (f) in Notification No. 17/2009-ST which reads as under :-

> *"The claim for refund shall be filed within one year from the date of export of said goods."*

Further for the purpose of this .... that the date of export shall be, deemed to have been exported on the date of 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.

4. Having considered the rival contentions I find that the **explanations** also states that the date of loading for exportation under Section 51 of the Customs Act, thus, I hold that all the services received till the goods reached the gateway, port or the port of export and/or loaded on the ship or aircraft for the purpose of export till such time, ... are allowable for exemption/refund under the provisions of Notification No. 41/2007-ST (as amended). Accordingly, these appeals are allowed and the impugned Orders-in-Appeal are set aside, further directing the Adjudicating Authority to grant the refund to the appellants within a period of 45 days from the date of receipt of copy of this order, alongwith interest as per Rules.

(Order was dictated in the open Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

patel/-

प्रमाणित प्रति / Certified True Copy
23/05/2017
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