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: 30/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/71770/2017-CU[DB] dated 10/11/2017

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/1386/2010	**Ms Moser Baer Solar Ltd** 66b, Udyog Vihar, Greater Noida.
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above
the Office Of Blue Dart/DHL
Courier, COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

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, Opp ICICI Bank of Defence Colony New Delhi-3

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

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak 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 – 38

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

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

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. ST/1386/2010-CU[DB]

(Arising out of Order-in-Appeal No. 185/ST/Appeal/Noida/2010 dated 30/06/2010 passed by Commissioner (Appeals), Customs & Central Excise, Noida)

M/s Moser Baer Solar Ltd.

(Formerly P. V. Technologies India Ltd.) **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Noida **Respondent**

Appearance:

Ms Natasha Sarkar (Advocate) for Appellant
Shri Mohammad Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 10/11/2017
Date of Decision : 10/11/2017

FINAL ORDER NO.—71770/2017........

Per: Anil Choudhar

The issue in this appeal is whether the services received by SEZ after the date of Notification No.09/2009 dated 03/03/2009 but before the application filed on 27/03/2009 were eligible for exemption from Service Tax and consequently entail refund. Whether the services received by SEZ and fully utilized only within the SEZ were eligible for exemption and entail refund of Service Tax.

2. The brief facts are as follows:-

Date	Relevant Events
	The Appellant are SEZ unit engaged in manufacturing of solar cells, modules, part thereof and solar power systems which was ' authorized operations' duly approved by the development Commissioner of Noida Special Economic Zone.
03.03.2009	Notification No.09/2009-ST dated 03.03.2009 issued granting exemption from Service Tax on services which were used for authorized operation undertaken by SEZ.
27.03.2009	The Appellant applied to the development Commissioner for approval of various services used for authorized operations.
11.05.2009	Approval by the approval committee was conveyed by the Assistant Development Commissioner
20.05.2009	Notification No.15/2009-ST issued to amend the Notification No.09/2009-ST dated 03.03.2009 referred above to state that the refund will not be granted in respect of services consumed wholly within SEZ
18.08.2009	The Appellant filed the refund claim for INR.22,21,983/- for the period March, 2009 to June, 2009.
29.10.2009	A Circular was issued by the Assistant Development Commissioner, Noida SEZ to clarify that the approval committee was of the view that Service Tax refund under Notification No.09/2009-ST dated 03.03.2009 shall be granted from the date of issue of said Notification.
15.02.2010	The Deputy Commissioner vide Order-in-Original No.22/R/N-III/2010 sanctioned the part refund of INR.10,18,819/- and rejected the balance of INR.12,03,164/-

3. The Deputy Commissioner vide Order-in-Original dated 15th February, 2010 sanctioned the part of refund and

rejected the balance of Rs.12,03,164/-. The ground of rejection being –

I- Some of the services received by the Appellant involving amount of Rs.4,18,555/- have been availed/paid before 27th March, 2009, that is before the date of application for approval by the Competent Authority.

II- Some of the services received by Appellant on or after 20th May, 2009 the date on which Notification No.15/2009-ST was issued to amend earlier Notification No.09/2009-ST limiting refund for services used partly or wholly outside residence on which Service Tax of Rs.7,81,880/-.

III- Invoice of banking and other services cannot be treated as valid document in absence of requisite details as per the Rule 4A of S.T.R. 1994 for amount of Rs.2,729/-.

4. Being aggrieved the Appellant preferred appeal before Commissioner (Appeals) of this Tribunal who vide the impugned order was please to uphold the rejection but was please to save and accept allowed further refund of Rs.2,729/-.

5. Being aggrieved the Appellant is before this Tribunal. Learned Counsel for Appellant states that the issue is no longer res integra and the same have been decided in favour of the assessee by Division Bench of this Tribunal in M/s Tata Consultancy Services Ltd. Vs CCE &

ST (LTU), 2013 (29) S.T.R. 393 (Tri.-Mumbai) also in M/s Intas Pharma Ltd. Vs C.S.T. 2013 (32) S.T.R. 543 (Tri.-Ahmd.). Accordingly, prays for allowing the appeal.

6. Heard the Learned A.R. who supports the impugned order.

7. Having considered the rival contentions, we find that the issue herein is squarely covered in favour of appellant in the precedent rulings of this Tribunal in M/s Tata Consultancy Services Ltd. (Supra) and M/s Intas Pharma Ltd. (Supra).

8. Accordingly, this appeal is allowed with consequential benefits. The Adjudicating Authority is directed to grant the balance refund of Rs.12,00,435/- with interest as per Rules.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

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

Lks

प्रमाणित प्रति/Certified True Copy
01/01/18
सहायक पंजीकार/Asstt. Registrar