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

Dated: 07/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70529-70530/2017-SM[BR] dated 12/05/2017

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/644/2010	**VACMET INDIA LIMITED (UNIT-II)** (Formerly Known as M/s. Vacmet Packagings (India) Pvt. Ltd. (Unit-II), A-4/1, UPSIDC Industrial Area, Kotwan, Kosikalan, Distt. Mathura.
2	ST/645/2010	**Vacmet India Limited Unit Iii** (formerly Known As M/s. Vacmet Packagings (india) Pvt. Ltd. (unit-ii), A-5 & C-7, Upsidc Industrial Area, Kotwan, Kosikalan 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. LUCKNOW 7-A, Ashok Marg, Lucknow.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Ms. Surabhi Sinha, Advocate
A-103, DEFENCE COLONY,
NEW DELHI,
DELHI
110024

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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. ST/644 & 645/2010-ST[SM]

(Arising out of Order-in-Appeal No. 201-202-ST/Lko/2009 dated 17/11/2009 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Vacmet India Limited (Unit – II & III) **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow Respondent

Appearance:

Ms. Surabhi Sinha, Advocate, for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 12/05/2017

FINAL ORDER NO. 70529-70530/2017

Per: Anil Choudhary

The issue in this appeal is, whether the claim of refund of Service Tax paid on services received by the appellant-assessee, a manufacturer cum exporter, in the course of export of their products, post clearance from the factory, whether the refund has been rightly rejected.

2. The appellant filed refund claim of Service Tax amounting to Rs.6,809.86/- on 01/12/2008 paid on services received for use in export of goods for their unit i.e. M/s Vacmet India Limited (Unit – II) for the period July, 2008 to September, 2008. Another refund claim of Service Tax was

filed for Rs.29,447.59/- for the period July, 2008 to September, 2008 for their other unit i.e. M/s Vacmet India Limited (Unit – III). As per the facts on record, refund claims are compared with Export Invoice, Shipping Bill, Bill of Lading, Bill of M/s Container Corporation of India for transport of container from ICD to the Gateway Port, invoice of M/s DHL Lemuir Logistics Pvt. Ltd, invoice of M/s EMU Lines Pvt. Ltd. The said refund claims were adjudicated vide separate Orders-in-Original rejecting the refund claim for Rs.29,447.59/- observing that the refund claim have been filed in the wrong jurisdiction. So far refund of port services are concerned, the said port services provided by M/s Eagle Maritime Pvt. Ltd, M/s Oceanid Logistics Pvt. Ltd, M/s DHL Lemuir Logistics Pvt. Ltd, such port services can only be provided by any other person on the permission of such port or other port.

3. Being aggrieved the appellant preferred appeals before ld. Commissioner (Appeals) who vide the common impugned order was pleased to reject the appeal.

4. The ld. counsel for the appellant urges that the issue is no longer *res-integra* in view of the substituted Notification No. 17 of 2009-ST read with clarificatory Circular No. 112/06/09-ST dated 12/03/2009, wherein CBEC clarified that Notification No. 41/2007-ST dated 06/10/2007 does not require verification of the registration certificate of the supplier of services. Further CBEC vide Circular No.

106/09/2008-ST dated 11/10/2008, further clarified that it is not incumbent upon the exporter to give proof that the service provider has actually paid service tax to the Government and to that extent, the rejection of refund claim on transport services on the ground that the proof of payment of Service Tax has not been submitted is untenable. It is further urged that this Tribunal placed reliance in the case of Suncity Art Exporters & Others *Versus*, Commissioner of Central Excise & Service Tax, Jaipur reported at 2014-TIOL-2319-CESTAT-Delhi, held that refund of service tax paid on THC charges, REPO Charges, PL Charges, DDC Charges & Holding Charges, etc. is admissible, inasmuch as the same are the port services. The ld. counsel further urges that this Tribunal placed reliance in the case of SRF Ltd. *Versus* Commissioner of Central Excise, Jaipur reported at 2015-TIOL-2241-CESTAT-Delhi held that if the documents provide the necessary particulars as required under Rule 4A of Service Tax Rules, 1994, merely because the documents are debit notes, the refund cannot be denied at the end of the service recipient. Provider of services at port of export paying tax under Business Auxiliary Service (BAS) is no ground to deny refund by insisting that services ought to have been rendered under the head 'port services.'

5. It is further urged that so far port services are concerned, in the case of SRF Ltd. *Versus* Commissioner of Central Excise, Jaipur (supra), this tribunal observed that the

phrase 'any person authorized by port/airport', which is used in the definition - as there is no procedure of specifically authorizing a service provider to undertake a particular activity while there may be restriction on entry into such areas and the authorities often issue entry passes or identity cards, airport/port authorities seldom issue authority/permission letters to a service provider authorizing him to undertake a particular task. Thus, all services provided entirely within the port/airport premises would fall under port services. Specific direction from the port or airport authority is not a precondition for the levy. The ld. counsel further urged that the Board, in its Circular dated 12/03/2009, has clarified that granting refund does not require the verification of registration of service provider and refund can be granted if otherwise in order. The learned counsel further states that there is no dispute with regard to receipt of the concerned services in the course of export of their products. None of the documents produced before the authorities below have been found to be wrong or untrue. In this view of the matter, she prays for allowing the appeal with consequential benefits.

6. Heard the ld. A. R. for Revenue, who relied on the impugned order.

7. Having considered the rival contentions and on perusal of the facts on record, I find that the reasons for refusing refund are not tenable. In view of the law, as it is described

and/or clarified by the Board's Circular in the course of time, as hereinabove discussed and or placed by the ld. counsel for the appellants. In this view of the matter, I allow the appeals and set aside the impugned orders. Further, I direct the Adjudicating Authority to disburse the refund with interest as per rules, within a period of 60 days from the date of receipt of a copy of this order.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
14/06/2017
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