FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **15/12/2015**

To

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

Final Order No. **ST/A/53786/2015-CU[DB]** dated **20/11/2015**

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/582/2009	C.C.E, INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
		Name and Address of Respondent
2		NATIONAL STEEL & AGRO INDUSTRIES LTD Ghata Billod ,distt- Dhar(MP)

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

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-16, 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 C.D.R. **16** Office Copy **17** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066

Date of Hearing 20.11.2015

For Approval & Signature :

Hon'ble Mr. R.K. Singh, Member (Technical)
Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

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 Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.ST/582/2009-CU[DB]
[Arising out of Order-in-Appeal No.IND-I/110/2009, dated 22.04.2009 passed by the C.C.E.(Appeals), Indore]

C.C.E., Indore — Appellant

Vs.

M/s. National Steel and Agro Industries Ltd. — Respondent

Appearance
Mr. M.R. Sharma, DR
Mr. Ranjan Khanna, DR - for the appellant

Mr. Raschit Jain, Advocate - for the respondent

CORAM: Hon'ble Mr. R.K. Singh, Member (Technical)
Hon'ble Ms. Sulekha Beevi (B.S.), Member (Judicial)

Final Order No.53786/2015, Dated 20.11.2015

Per Mr. R.K. Singh :

Revenue is in appeal against Order-in-Appeal dated 13.04.2009, in terms of which refund of Rs.30,276/- was allowed to the respondent under the Notification No..41/2007-ST, dated 06.10.2007. Revenue has contended that the said refund was allowed illegally in-as-much-as the refund was filed by the respondent while the exports were made by the merchant exporter and therefore the refund should have been filed by the merchant exporter.

2. Ld. advocate for the respondent stated that the refund was admissible to it and cited the judgement of Hon'ble Supreme Court in the case of ***Gee Pee Agri Pvt. Ltd.Vs. CCE [2015 (38) STR 449 (SC)]*** in its support.

3. We have considered the contentions of both sides. It needs to be appreciated that the issue involved is whether the respondent was eligible for exemption of Notification No..41/2007-ST, dated 06.10.2007. There is no doubt that the service tax was paid on GTA service by the respondent

and the goods were transported directly from the factory to the port. In this case, there is a merchant exporter involved, but the merchant exporter cannot claim the refund of service tax that was not paid by him. Seen in the context the provisions of clause 2(b) of the Notification, which has to be read harmoniously with the provisions of clause 2(a), once it is settled that the respondent was eligible for the benefit of exemption Notification No.41/2007-ST the sanction of refund is only the operationalisation of the said exemption. In this regard, we find that the Hon'ble Supreme Court in the case of ***Gee Pee Agri Pvt. Ltd. Vs. CCE*** (supra) has held as under:-

> "***2.*** *We have heard learned counsel for the parties. On 13th January, 2015, we had requested the learned Additional Solicitor General to check up whether the refund of service tax can be made either to the petitioner or to the merchant exporter in the facts of this case.*
>
> ***3.*** *It is quite clear that refund of service tax is due either to the petitioner or to the merchant exporter. There is some dispute about who is entitled to the refund of service tax, but in any case, the respondents cannot hold the service tax since they are not entitled to do so.*
>
> ***4.*** *Having heard learned counsel, in our opinion, the service tax should be refunded to the petitioner within six weeks. In case, the merchant exporter has any issue in this regard with the petitioner, he can always take up the matter before an appropriate forum."*

4. In the light of the analysis above, we do not find any merit in the appeal of Revenue and the same is therefore dismissed.

(R.K. Singh)
Member (Technical)

(Sulekha Beevi CS)
Member (Judicial)

SSK