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

Dated: **19/01/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53881-53883/2015-CU[DB]** dated **26/11/2015**

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.**

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/2556/2012	**Makers Mart** F-204-205, Boranada Sez , Jodhpur (raj.)
2	ST/2557/2012	**Makers Mart** F-204-205, Boranada Sez , Jodhpur (raj.)
3	ST/2682/2012	**Prince Exports** F-74,76 7 F-93,95, Boranda Sez Jodhpur (raj)

	Name and Address of Respondent
4	C.C.E. & S.T.-Jaipur-ii N C R BUILDING,STATUE CIRCLE...C-SCHEME, JAIPUR,RAJASTHAN-302005
5	C.C.E. & S.T.-Jaipur-ii N C R BUILDING,STATUE CIRCLE...C-SCHEME, JAIPUR,RAJASTHAN-302005
6	C.C.E. & S.T.-Jaipur-ii N C R BUILDING,STATUE CIRCLE...C-SCHEME, JAIPUR,RAJASTHAN-302005

(P.T.O)

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

Om. P. Agarwal & co.
56, Section - 7, N.P.H Road,
Jodhpur,
Rajasthan

8 Additional Party's Name & Address :
9 Bar Association, CESTAT, Delhi
10 Director Publications, Customs, Excise. I.P. Estate, Delhi
11 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
12 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
13 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
14 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
16 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
18 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
19 C.D.R. 20 Office Copy 21 Guard File

19/01/16
Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 26.11.2015

Service Tax Appeal Nos.2556, 2557, 2682 of 2012

Arising out of the order in appeal No.69-79/AKJ/ST/JPR -II/2012 dated 14.5.2012 and No.48 - 68 AKJ/ST/JPR -II/2012 dated 30.4.2012 passed by the Commissioner (Appeals-II) , Customs & Central Excise, Jaipur.

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Markers Mart
Prince Exports .. Appellants

Vs.

C.C.E & S.Tax., Jaipur II .. Respondent

Appearance:

Present Shri O.P. Agarwal, C.A. for the appellants
Present Shri Rajeev Gupta, Commissioner(A.R.) for the respondent

Coram: Hon'ble Mr. Justice G.Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

Final Order No . 53881 - 53883/2015

Per R.K. Singh:

These appeals are filed against rejection of refund claims of Rs.51,298/- and Rs.45,052/- in case of Makers Mart and Rs.62,109/- in case of Prince Exports. The refund~~s~~ claims were filed in terms of Notification No. 9/2009 – ST, dated 03.03.2009.

2. Rejection of the refund of Rs.51,298/- was upheld on the ground that list of specified services required in relation to the authorised operation in the Special Economic Zone (SEZ) as approved by the Approval Committee is primary and foremost condition for sanction of refund claim for the want of which the primary adjudicating authority rightly rejected the refund claim in terms of Notification No. 9/2009 – ST. The refund of Rs. 45,052/- was rejected by the appellate authority on the ground (i) part of the refund Rs.3,584/- was time-barred as the refund claim was filed after expiry of six months from the date of making actual payment of service tax and (ii) list of specified services required in relation to the authorised operations in SEZ as approved by the approval committee is required to be submitted with the application for refund in terms of para 2 (g) (i) of Notification No. 9/2009–ST which was not submitted. As regards the refund of Rs. 62,109/-, it was rejected on the ground of non-submission of list of specified services required in relation to the authorised operations in SEZ as approved by the Approval Committee which ~~were~~ was required to be submitted along with the application for refund in terms of para 2 (g) (i) of Notification No. 9/2009 – ST and part of the claim (Rs.37,168/-) was also rejected on the ground that the refund claim was filed more than 6 months after the date of making payment of service tax and the proof of payment of service tax was not given.

3. The appellant has contended that the ground of rejection namely non-submission of list of authorised operations was considered by CESTAT in the case of Intas Pharma Ltd vs. C.S.T. - 2013 (32) STR 543 (Tri – Ahmedabad)

and was found to be untenable. As regards the time-bar, the appellant stated that Commissioner (Appeals) was fully empowered to condone the delay in filing claims which in these cases should have been condoned.

4. We have considered the contentions of the appellant. As regards the ground of non-submission of the approved list of authorised operations which is a condition in notification No. 9/2009 – ST , we find that the issue has been discussed and analysed and settled in favour of the asessees in the case of Intas Pharma (supra) wherein it was held that under :

> ***11.*** *On true and fair construction of Notifications 9/2009 and 15/2009 issued under Section 93(1) of the Act, considered in the light of the overarching provisions of Sections 7 and 26(e) of the 2005 Act, the conclusion appears compelling that neither Notification 9/2009 nor 15/2009 disentitle immunity to Service Tax enjoined by the provisions of the 2005 Act. It therefore appears that Notification Nos. 9/2009 and 15/2009 merely contour the process by which the benefit of exemption/immunity to tax is operationalised. Notification Nos. 9/2009 and 15/2009 have provided a facilitative regime whereby a developer or units of SEZ, as recipients of taxable service are enabled the facility of claiming refund of Service Tax, remitted by taxable service providers in relation to the taxable services provided to a unit in a SEZ. On this harmonious construction, the immunity to Service Tax provided under Section 7 or 26 of the 2005 Act cannot be so interpreted as to be eclipsed the procedural prescriptions of Notification No. 9/2009 or 15/2009. These Notifications are calibrated to enable recipients of taxable services (exempt from liability to tax under the provisions of the 2005 Act), to claim refund of the Service Tax, wherever assessed and collected by Revenue or remitted otherwise by the taxable service provider, inadvertently. Considered in the light of this analysis, the substituted provisions, of clause/sub-paragraph 'c' of Notification No. 15/2009 cannot be inferred to have imposed any disability on the recipient of services consumed wholly within the SEZ, from seeking refund of Service Tax remitted on such transactions, by the providers of such services.*

5. As regards the issue of time-bar the appellant has contended that in one case there is a delay of 2 days because of the intervening Saturday and Sunday and the claim was filed on Monday. Further the Assistant/Deputy commissioner had power to condone the delay in terms of para 2 (f) of notification No. 9/2009 – ST which reads as under:

> *The claim for refund certified within 6 months or such extended period as the Asst Commissioner of Central Excise or the precursors and*

excise as the case may be shall permit from the date of actual payment of service tax by such developer or unit to service provider.

Having regard to the nature of refunds and quantum of delay, we are of the view that the delay not being unreasonable deservedto be condoned in terms of the aforesaid para 2(f) of Notification No.9/2009-ST.

6. In view of the foregoing, we set aside the impugned orders and allow the appeals with consequential relief.

(Justice G. Raghuram)
President

(R.K.Singh)
Technical Member

scd/