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: **03/08/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/52356-52357/2015-CU[DB]** dated **17/07/2015**

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/448/2009	**C.C.E. INDORE** Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
2	ST/534/2009	**C.C.E. INDORE** Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
		Name and Address of Respondent
3		RUCHI SOYA INDUSTRIES LTD. 301, MAHAKOSH HOUSE, 7/5 SIUTH TUKOGANJ, INDORE. (MP),,
4		RUCHI SOYA INDUSTRIES LTD. 301, MAHAKOSH HOUSE, 7/5, SIUTH TUKOGANJ, INDORE (M.P.),,

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s): **Shri. R.C. Chaure, Advocate**

6 Additional Party's Name & Address :
7 Bar Association, CESTAT, Delhi
8 Director Publications, Customs, Excise. I.P. Estate, Delhi
9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
16 C.D.R. 17 Office Copy 18 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 17.07.2015

For Approval &Signature :

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

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/448/2009-CU[DB]

[Arising out of Order-in-Appeal No.IND-I/50/2009, dated 09.03.2009 passed by the C.C.E.(Appeals), Indore-I]

Appeal No.ST/534/2009-CU[DB]

[Arising out of Order-in-Appeal No.IND-I/129/2009, dated 19.05.2009 passed by the C.C.E.(Appeals), Indore-I]

C.C.E., Indore — Appellant

Vs.

M/s. Ruchi Soya Industries Ltd. — Respondent

Appearance

Shri BB Sharma, DR - for the appellant

Shri R.C. Choure, DR - for the respondent

CORAM: **Hon'ble Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order Nos. 52356-52357/2015, **dated 17.07.2015**

Per Mr. R.K. Singh :

Revenue has filed these appeals against respective Orders-in-Appeal which allowed refund of service tax paid under the category of port services in terms of Notification No. 41/2007-ST, dated 06.10.2007.

2. The respondent is a manufacturer and exporter of soya refined oil. It filed refund claims in terms of Notification No. 41/2007-ST. The primary adjudicating authority sanctioned part of the refunds claimed. Out of the amounts of refunds rejected by the primary adjudicating authority, Commissioner (Appeals) allowed refund of service tax remitted under port service classified under Section 65(105)(zn) on the ground that port services under 65(105)(zn) of the Finance Act, 1994 are mentioned in the Schedule to the said Notification. The commissioner (Appeals) noted that although in the case of ***Velji P Sons vs CCE [2007(8)STR 236(Tri-Ahm)]***, it has been held that activities of handling, stevedoring, loading, unloading and tug hire and labour arrangement (hereinafter referred to as the said activities) do not fall under the category of port service, as the service tax had actually been paid under port service 65(105)(zn)*ibid*, the refund of the said amount had to be permitted.

3. Revenue filed these appeals on the ground that the said activities do not fall under Port Services as held by CESTAT in the case of ***Velji P Sons*** (supra), the Commissioner(Appeals) was not legally correct in permitting the refund merely because those activities were wrongly classified by the service provider under Section 65 (105) (zn) *ibid* while paying service tax.

4. No one appeared on behalf of the respondent.

5. We have considered the contention of Revenue. We find that in the schedule to Notification No. 41/2007-st, port services classified under Section 65 (105) (zn) *ibid* are mentioned. It implies that if the service provider has actually paid service tax under Section65 (105) (zn)*ibid*, the said notification exempts the same by way of refund if it is received by an exporter and used for export of goods. It is not open to the service recipient to question the classification of the service received by it as the issue of classification is only between the service provider and the jurisdictional service tax authorities and so as per the said Notification the condition is sufficiently fulfilled for granting the refund of such service tax. It is seen that the only reason for Revenue to file appeal was that in the case of***velji P Sons*** (supra) CESTAT held the activities of handling, stevedoring, loading, unloading, etc. provided in the port area as not falling under Port services. However, the said judgement no longer represents good law in the light of the CESTAT Larger Bench decision in the case of ***Western Agencies Pvt. Ltd. Vs. CCE, Chennai [2011(22)STR305(Tri-LB)]*** which held as under:-

> "***12.*** *In the light of the aforesaid discussions, the questions referred to Larger Bench may be answered as under :*
>
> *(a) Provisions other than clause (q) of Section (2) of the Major Port Trusts Act, 1963 or any provisions other than clause (4) of Section (3) of the Indian Ports Act, 1908 are not applicable to interpretation of "port service" defined under Section 65(82) of the Finance Act, 1994 in absence of statutory intention thereof.*

(b) *Stevedoring in a major or minor port is a "port service" within the meaning of this expression defined under Section 65(82) of the Finance Act, 1994 following judgment of Hon'ble High Court of Karnataka in Konkan Marine case - 2009 (13) S.T.R. 7 (Kar).*

(c) *Activities/operations like intercarting (transportation of cargo after its unloading from a vessel, to a place of storage within the port area), storage of cargo in plots allotted by the Port, blending of different grades of coal in the port area and other kinds of cargo handling in the port area (other than export of cargo) can be held to be services ancillary to stevedoring and classifiable as "port services" under Section 65(82)."*

6. In the light of the foregoing, we find that in the light of the CESTAT Larger Bench decision quoted above, we do not find any infirmity in the impugned orders. Revenue's appeals are, therefore, dismissed

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK