REGISTERED / AD

FAX : 011-26108426

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

Dated: 22/01/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53916-53918/2015-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/784/2009	**SHIVAM EXPORTS (100% EOU)** E-119, BORANADA IND. AREA, JODHPUR (RAJ.)
2	ST/786/2009	**MEC SHOT BLASTING EQUIPMENT PVT. LTD.** E-279, MIA, BASNI, PHASE-II, JODHPUR (RAJ.)
3	ST/788/2009	**SHRI RAM INDUSTRIES** C-80, MIA, BASNI, PHASE-II, JODHPUR (RAJ.)

		Name and Address of Respondent
4		-C.C.E. JAIPUR II N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.
5		-C.C.E. JAIPUR II N.C.R.Building, Statue Circle, "C" Scheme, Jaipur 302005.

P.T.O.

-C.C.E. JAIPUR II
N.C.R.Building, Statue Circle,
"C" Scheme, Jaipur 302005.

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

Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. II

Appeal No. ST/784, 786, 788/2009-ST(DB)
[Arising out of Order-in-Original No. 78, 91, 98/KKG/ST/JPR-II/09 dated 31.07.2009 & 03.08.2009 by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

For approval and signature:
Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri R.K. Singh, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the 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?	

M/s. Shivam Exports
M/s. Mecshot Blasting Equipment (P) Ltd.
M/s. Shree Ram Industries **....Appellants**

Vs.

CCE Jaipur **....Respondent**

Appearance:

Shri O.P. Aggarwal, CA for the Appellant
Shri Ranjan Khanna, Advocate for the Respondent

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

Date of Hearing: 26.11.2015

FINAL ORDER NO. 53916-53918 /2015-ST(DB)

Per R.K. Singh:

Appeal have been filed against respective orders in appeal which upheld rejection of refunds claimed under notification no.

41/2007-ST. The summary of the refunds rejected, period involved and grounds of rejection are summarized below:

S. No.	Appeal No.	Name of the Appellate	Amount Rejected	Period of Rejection	Grounds of Rejection
1	ST/784/ 2009	M/s. Shivam Exports, Jodhpur	63,069/-	01.10.2007 to 31.12.2007	1. Service not covered under Port Services. 2. Non Submission of proof of payment of service tax on GTA services. 3. Debit note not proper documents.
2	ST/786/ 2009	Mecshot Blasting Equipment (P) Ltd.	19,681/-	01.10.2008 to 31.03.2008	1. Service not covered under Port services 2. Non Submission of proof of payment of service tax on GTA services. 3. Debit note not proper documents.
3.	ST/788/ 2009	M/s. Shree Ram Industries	76,892/-	01.10.2008 to 31.03.2008	1. Service not covered under Port services 2. Non Submission of proof of payment of service tax on GTA services. 3. Debit note not proper documents.

2. The appellant claimed the refund of service tax paid on services like THC, Manual documentation, business support services, business auxiliary services, Express release fees, BL charges and also GTA services on the strength of invoices which were held to be improper invoices not being in the proper form as per the provisions of Rule 4 A of the Service Tax Rule 1994 as they did not contain complete details.

3. The appellant has contended that:

i) These services are covered under the port services / port charges as clarified by CBEC F. No. D-II/I/2000-TRE dated 09.07.2001.

ii) Vide Circular No. 112/06/2009-ST dated 12.03.2009 CBEC clarified that the Notification No. 41/2007-ST does not require verification of the registration certificate of the supplier of services. Further, CBEC vide Circular No. 106/9/2008-ST dated 11.10.2008 further clarified that the it is not incumbent upon the exporter to give proof that the service provider has actually paid services tax to the Government and to that extent 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 cited judgments in the cases of ***SRF Ltd. Vs. CCE Jaipur-I 2015-TIOL-2241-CESTAT-DEL***, ***CST Ahmedabad Vs. Adani Enterprises Ltd. 2015 (37) STR 667 (Tri-Amhd.), and CCE Ahmedabad Vs. AIA Enterprises (P) Ltd.-2014 (36) STR 1236 (Guj)*** in its support.

3. Ld. DR while supporting impugned order referred to the judgment of CESTAT in the case of ***Rajasthan Textile Mills Vs. CCE Jaipur-2015(37) STR 410 (Tri-Del).***

4. We have considered the contentions of both the sides. Perusal of notification No. 41/2007-ST reveals that it is an exemption notification operationalised by way of refund and therefore, the onus is on the exporter to show that it has paid service tax to the

service provider which can be inferred from the invoices issued by service providers containing the element of service tax. As regards the various charges like Terminal handling charges, Bill of Lading, Misc export expenses, Business Auxiliary services, etc. availed in connection with the port services, it has been held by CESTAT in the case of ***SRF Ltd.*** (Supra) that refund under notification No. 41/2007-ST is admissible in respect thereof. The judgment of CESTAT in the case of ***Rajasthan Textile Mills*** (Supra) cited by the Ld. DR has been duly considered by CESTAT judgment in the case of SRF Ltd. (Supra). As regards, the transport charges, the High Court of Gujarat in the case of ***Adani Enterprises Ltd.*** (Supra) observed that there is no dispute as to export of goods and services were received in relation to export of goods and procedural aspect cannot be reason for rejecting refund claim. As regards the so called improper invoices it was held by CESTAT in the case of ***SRF Ltd.*** (Supra) that so long as the documents (debit notes) reveal the essential details like registration no service provided, service recipient, value of taxable service, refund cannot be rejected [merely because the documents are debit notes]. Further, it has been held by CESTAT in the case of ***M/s. Nahar Fibres Vs. CCE Chandigarh vide the Final Order no. 58362/2013 dated 26.11.2013*** as below:

"6. On a true and fair construction of the relevant entry at Sl. No. 2 of the table under exemption Notification No. 41/2007-ST, the inference is compelling that any service provided in relation to port services in a port, in any manner to an exporter and where such service is used for export is exempted from whole of the service tax leviable under Section 66 and Section 66A of the Act.

8. By reference to the exemption provided at Sl. No. 16 of the table in Notification No. 17/2009-ST, the adjudicating authority inferred; and in the considered view of this Tribunal erroneously, that terminal handling charges when provided within the port do not fall under port services vide the Notification No. 41/2007-ST. This conclusion of the adjudicating authority which found resonance in the order of the Commissioner (Appeals), is in my considered view erroneous and proceeds on a fallacious interpretation of the provisions of Notification No. 41/2007-ST; and I hold so for the reasons adverted to in paras 5 and 6 above."

5. In the case of M/s. ***Suncity Art Exporters & Ors. vide Final order no. 54038-54068/2014 dated 16.10.2014***, held that " that refund of service tax paid on THC Charges, REPO Charges, BL charges, DDC Charges and hollage charges is admissible in as much as the same are the port services.

6. In the light of the aforesaid judicial pronouncements and for the reasons alike, we are of the view that the impugned orders are not sustainable and therefore, the same are set aside and the appeals allowed.

(Operative part of the order pronounced in the open court)

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

Bhanu