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: 19/06/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/51943-51945/2015-CU[DB]** dated **07/05/2015**

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/CROSS/160/2009	ST/395/2009	C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
2	ST/CROSS/159/2009	ST/396/2009	C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
3	ST/CROSS/161/2009	ST/397/2009	C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)

	Name and Address of Respondent
4	DEWAS SOYA LTD. PLOT NO. 96-97, INDUSTRIAL AREA NO. 3, A.B. ROAD, DEWAS (MP),, ,
5	DEWAS SOYA LTD. PLOT NO. 96-97, INDUSTRIAL AREA NO. 3, A.B. ROAD, DEWAS (MP),,

(P.T.O)

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DEWAS SOYA LTD.
PLOT NO. 96-97, INDUSTRIAL
AREA NO. 3, A.B. ROAD,
DEWAS (MP)

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

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 C.D.R. 19 Office Copy 20 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 : 7.5.2015

Appeal No. ST/395/2009 with CO/160/2009 ST/396-397/2009 with CO/159 & 161/2009

(Arising out of Order-in-Appeal No. IND-I/37-38 & 42/2009 dated 24.2.2009 passed by the Commissioner (Appeals), Customs, Central Excise, Indore)

For Approval & Signature :

Hon'ble Mr. 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?	
2.	Whether it would 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 Department Authorities?	

CCE, Indore — Appellant

Vs.

M/s Dewas Soya Ltd. — Respondent

Appearance:

Shri B.B. Sharma, D.R. - for the Appellant

On merit - for the Respondent

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

F. Order No. 51943-51945/2015

Per **R.K. Singh :**

Revenue has filed appeals against Order-in-Appeal dated 24.2.2009 in terms of which Revenue's appeals before Commissioner (Appeals) seeking recovery of the refund amount of Rs.32,779/-, Rs. 1,12,604/- and Rs.12,269/- of service tax paid under technical testing and analysis service [Section [65(105)(zzh) of Finance Act, 1994] in respect of goods exported was sought to be recovered on the ground that the service involved was weighment, sampling and stuffing which was not covered within the definition of technical testing and analysis service given in Section 65(106) ibid. The Commissioner (Appeals) discussed the nature of service provided in the name of weighment, sampling and stuffing service and came to a clear finding that it was covered within the ambit of technical testing and analysis service and thus dismissed the Revenue's appeal before him.

2. Revenue has contended that weighment, sampling and stuffing of containers is not covered within the scope of technical testing and analysis service. Stuffing of containers involved supervision of wagon loading/unloading which is not in the nature of technical testing and analysis service. Similarly sampling and weighing do not fall under the said service.

3. In the cross objections, respondent referred to the definition of technical testing and analysis service and the scope of the words testing and analysis and added that the service provider

(testing agencies) have submitted reports containing the particulars of the test carried out.

4. We have considered the contentions of both sides. As per definition of technical testing and analysis service given in Section 65 (106) ibid, technical testing and analysis *means "äny service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals."* Physical testing and analysis would clearly include weighment and sampling also is based on certain physical or chemical characteristics. It is also seen that in this case stuffing required specific conditions/arrangements like putting of silica gel packs together with craft paper which was technical in nature and thus was a specialised job. As per Section 65(108) ibid technical inspection and certification means "any inspection or examination of goods or process or material or any immovable property to certify that such goods or process or material or immovable property qualifies or maintains the specified standards, including functionability or utility or quality or any other character or parameters but does not include any service in relation to inspection of pollution levels." Testing involves a critical examination, observation or evaluation and analysis involves examination of a complex, its element and their relation, the

identification or separation of ingredient of a substance. It is not in dispute that the service was rendered by technical agencies engaged in providing service in relation to technical testing and analysis thus satisfying the definition given in Section 65 (107) ibid. In the present case, for determination of the specifications of protein, fat moisture etc. samples were required to be drawn mixed and then analysed. Indeed, we find that the service providers issued proper certificates certifying weighing, packing and stuffing and the specification of protein, fat, moisture etc.

5. In view of the analysis above, we are of the view that refund of the aforesaid amounts was correctly sanctioned as per the provisions of Notification No. 41/2007-ST dated 6.10.2007 as amended. Thus, the impugned order does not suffer from any infirmity. Revenue's appeals are therefore dismissed. Cross objections also stand disposed of.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM