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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: **22/10/2014**

To

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

Final Order No. **ST/A/54038-54068/2014-CU[DB]** dated **16/10/2014**

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/2502/2012	**Suncity Art Exporters** Village Kudi, Main Pali Road, Jodhpur (raj.)
2	ST/2503/2012	**Jyot Overseas Pvt Ltd** G-26, Arbuda Ind. Area, Abu Road, (raj.)
3	ST/2504/2012	**Art & Craft Inc** C-63a, 64 & 64a, Mia, Basni Phase-ii, Jodhpur (raj.)
4	ST/2505/2012	**Prince Art Exporters** F-288-289, Mia, Basni Phase-ii, Jodhpur (raj.)
5	ST/2506/2012	**Shreenath Gum & Chemicals** E-378, Mia, Basni Phase-ii, Jodhpur (raj.)

(P.T.O.)

6 ST/2507/2012 **Lalji Handicrafts**
Umaid Bhawan Palace Road,
Jodhpur (raj.)

7 ST/2508/2012 **Shree Ram Industries**
C-80, Mia, Basni Phase-ii,
Jodhpur (raj.)

8 ST/2509/2012 **Prince Art Exporters**
F-288-289, Mia, Basni Phase-ii,
Jodhpur (raj.)

9 ST/2510/2012 **Shekhawati Art Exports**
C-24/2-3, Mia, Basni Phase-i,
Jodhpur (raj.)

10 ST/2511/2012 **Shekhawati Art Exports**
Special-1, Epip, Phase-iii,
Boranada, Jodhpur (raj.)

11 ST/2512/2012 **Suncity Art Exporters**
Village Kudi, Main Pali Road,
Jodhpur (raj.)

12 ST/2542/2012 **Suncity Art Exporters**
Village Kudi, Main Pali Road,
Jodhpur (raj.)

13 ST/2543/2012 **Suncity Art Exporters**
Village Kudi, Main Pali Road,
Jodhpur (raj.)

(P.T.O)

14	ST/2544/2012	**Suncity Art Exporters** Village Kudi, Main Pali Road, Jodhpur (raj.)
15	ST/2545/2012	**Lalji Handicrafts** Umaid Bhawan Palace Road, Jodhpur (raj.)
16	ST/2546/2012	**Lalji Handicrafts** Umaid Bhawan Palace Road, Jodhpur (raj.)
17	ST/2547/2012	**Shekhawati Art Exports** Special-1, Epip, Phase-iii, Boranada, Jodhpur (raj.)
18	ST/2548/2012	**Shekhawati Art Exports** Special-1, Epip, Phase-iii, Boranada, Jodhpur (raj.)
19	ST/2549/2012	**Shree Ram Gum Chemicals Ltd** C-79, Mia, Basni Phase-ii, Jodhpur (raj.)
20	ST/2550/2012	**Jainsons India Industries** F-547, Mia, Basni Phase-ii, Jodhpur (raj.)
21	ST/2551/2012	**Aztec Shiva Handicrafts & Art Pvt Ltd** E-589-595, Epch, Boranada Ind. Area, Jodhpur (raj.)

(P.T.O.)

22 ST/2552/2012 **Sun Art Exporters**
(100% Eou), 2, Main Pali Road,
Jhalamand Circle Jodhpur (raj.)

23 ST/2553/2012 **Fateh Granites Ltd**
F-88, Riico Ind. Area,
Jalore (raj.)

24 ST/2554/2012 **Art & Craft Inc**
C-63a, 64 & 64a, Mia,
Basni Phase-ii, Jodhpur (raj.)

25 ST/2555/2012 **Makers Mart**
F-204-205, Boranada Sez ,
Jodhpur (raj.)

26 ST/2559/2012 **Shekhawati Art Exports**
C-24/2 & C-24/3, Mia,
Basni Phase-i, Jodhpur (raj.)

27 ST/2560/2012 **Jyot Overseas Pvt Ltd**
G-26, Arbuda Ind. Area,
Abu Road, (raj.)

28 ST/2561/2012 **Prince Art Exporters**
F-288-289, Mia, Basni Phase-ii,
Jodhpur (raj.)

29 ST/2562/2012 **Sun Art Exporters**
(100% Eou), 2, Main Pali Road,
Jhalamand Circle Jodhpur (raj.)

30 ST/2563/2012 **Fateh Granites Ltd**
F-88, Riico Ind. Area,
Jalore (raj.)

31 ST/2564/2012 **Lalji Handicrafts**
Umaid Bhawan Palace Road,
Jodhpur (raj.)

Name and Address of
Respondent

32 **Commissioner of CUSTOMS-**
Jaipur-ii
N C R BUILDING,
STATUE CIRCLE...C-
SCHEME,
JAIPUR-302005
RAJASTHAN

Other Appellants and Respondents as per Annexure

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

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34 Additional Party's Name & Address :
35 Bar Association, CESTAT, Delhi
36 Director Publications, Customs, Excise. I.P. Estate, Delhi
37 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
38 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
39 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
40 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

41 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

42 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

43 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

44 C.D.R. 45 Office Copy 46 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.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 16/10/2014.
DATE OF DECISION : 16/10/2014.

Service Tax Appeal Nos. 2502-2512, 2542-2555 and 2559-2564 of 2012

[Arising out of the Order-in-Appeal No. 48-68 (AKJ)/ST/JPR-II/12 dated 15/05/2012 passed by The Commissioner (Appeals-II), Customs & Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, 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?	:	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

M/s Suncity Art Exporters]
M/s Jyot Overseas Pvt. Ltd.]
M/s Art & Craft Inc.]
M/s Prince Art Exporters]
M/s Shreenath Gum & Chemicals]
M/s Lalji Handicrafts]
M/s Shree Ram Industries]
M/s Prince Art Exporters]
M/s Shekhawati Art Exports]
M/s Suncity Art Exporters]
M/s Lalji Handicrafts]
M/s Shekhawati Art Exports]
M/s Shree Ram Gum Chemicals Ltd.] Appellants
M/s Jainsons India Industries]
M/s Aztec Shiva Handicrafts & Art Pvt. Ltd.]
M/s Sun Art Exporters]
M/s Fateh Granites Ltd.]
M/s Art & Craft Inc.]
M/s Makers Mart]

M/s Shekhawati Art Exports]
M/s Jyot Overseas Pvt. Ltd.]
M/s Prince Art Exporters]
M/s Sun Art Exporters]
M/s Fateh Granites Ltd.]
M/s Lalji Handicrafts]

Versus

CCE & ST, Jaipur – II Respondent

Appearance

Shri O.P. Agarwal, C.A. – for the Appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 54038-54048/2014 Dated : 16/10/2014

Per. Archana Wadhwa :-

All the appeals are being disposed by a common order as the issue involved in all of them is identical.

2. After hearing both the sides duly represented by Shri O.P. Agarwal, learned Chartered Accountant for the appellant and Shri Sanjay Jain, learned DR for the respondent, we find that the appellants are exporters of mostly handicrafts and are entitled to the refund of service tax paid on the various specified input services in terms of Notification No. 17/09-CUS dated 7/7/09. Accordingly, they filed the refund claims in respect of various services like shipping and forwarding agent services, CHA services, terminal handling services, bill of loading services,

documentary charges and transportation by rail etc. including the technical testing and analysis services and fumigation services.

3. Without going into the individual reasons for denial of refund claim in each and every case in respect of each and every issue, we find that in some cases refund stand rejected for non-submission of original invoices raised by the service providers. The appellant's contention is that such invoices which are computerised invoices have been down loaded through the internet and have been held to be valid invoices in number of cases. Reference is made to the Tribunal's decision in the case of **CCE vs. Gokul Refoilds & Solvents Ltd.** reported in **2012 (286) E.L.T. 62 (Trib.)**, which allowed the refund claim even on the certified photocopies. Similarly, in the case of **Creative Architects & Interiors** reported in **2012 (26) S.T.R. 477,** precedent decisions were taken note of and it was held that Cenvat credit is not to be denied on the basis of computer generated invoices. Learned Advocate submits that the said invoices contained all the details like container number or shipping bill number , bill of loading number etc. and fully establishes the availment of the service used in the export of the goods.

4. In view of the above, we find that the denial of refund of service tax on the said ground is not in consonance with the precedent decisions referred (supra) as also in terms of the Board Circular No. 112/6/2009-ST dated 12/03/2009. We accordingly

direct the Assistant Commissioner to verify the appellant's refund claim afresh.

5. A part of the claim stand denied on the ground that the various services provided by the persons at the port like bill of loading charges, documentary charges, REPO charges etc. cannot called to be port services as also on the ground that the service providers are not registered under the port services category, but are registered under different categories.

We find that Larger Bench of the Tribunal in the case of **Western Agencies Pvt. Ltd. vs. CCE** reported in **2011 (22) S.T.R. 305 (Tri. – LB)**, has held that any services provided on the port are "port services". Further in the case of **Aarvee Denims & Exports Ltd. vs. CCE** reported in **2010 (17) S.T.R. 262 (Trib.)** as also in the case of **CCE vs. Dishman Pharmaceuticals & Chemicals Ltd.** reported in **2010 – TIOL – 1639 – CESTAT** it has been held that refund cannot be denied on the ground that service providers are not registered for any particular services. We also take note of the Tribunal's decision in the case of **CCE vs. Ramdev Food Products Pvt. Ltd.** reported in **2010 (19) S.T.R. 833 (Trib.)** laying down that refund of service tax paid on THC charges, REPO charges, BL charges, DDC charges and haulage charges are admissible in as much as the same are port services.

In view of the above, we direct the Assistant Commissioner to examine the appellant's refund claim and verify the same from the documents and decide the refund claim accordingly.

6. The refund claim of service tax paid on CHA services/clearing and forwarding agent services stands denied on the ground that the invoices issued by the said persons do not ~~prescribe~~ mention the goods. The appellant's contention is that admittedly the said invoices have cross reference to either invoice number or the shipping bill number and/or container number. From the said cross references the description of the goods can be found out and the denial of the claim on the said ground is not justified when admittedly the services have been used for the export of the goods.

The said portion of the impugned order is also set aside with directions to the Adjudicating Authority to undertake the necessary exercises for cross reference of the invoices with the description of the goods.

7. Further a part of the refund has been denied on the ground that CHA has charged other charges which do not fall under the CHA services and as such the service tax paid by the CHA cannot be allowed as refund. We are of the view that in as much as ~~that~~ are as long as the CHA paid the service tax on the entire consideration under the category of CHA services, the service recipient would be entitled to the benefit of the same. No such objection was raised by the Revenue at the time of collection of

service tax from the CHA and allowing them to raise such an objection at the time of grant of refund would be against the principles of justice.

8. In some cases, we note that the refund claim was filed by describing the transportation of the goods ~~under~~ by road, whereas the actual transportation was rail; the claim was filed under the category of THC instead of CHA, These are the inadvertent mistakes having occurred in the hands of the person preparing the refund claim. Similarly claiming the service tax under a different service category by referring to a wrong sub-Section should not result in denial of the refund, if otherwise due to the appellant on merits.

9. For all the reasons, we set aside the impugned orders and remand the matter to Assistant Commissioner for examining the appellant's refund claim afresh, in the light of the law declared by the Tribunal in various decisions as also after verification of the documents, without raising technical and procedural issues. All the appeals are thus allowed by way of remand.

(Dictated and pronounced in open court.)

20/10/14

(Archana Wadhwa)
Member (Judicial)

20/10/14

(Rakesh Kumar)
Member (Technical)

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