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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: **04/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/727-729/2012-CU[DB]** dated **30/11/2012**

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)**

Name and Address of Respondent

1 ST/852/2009 **AGRO SOLVNT PVT. LTD.**
St/482/10 DATIA (M.P.)
St/734/11

Name and Address of Appellant

2 **C.C.E. INDORE**
Manik Bagh Palace, Post Box No. 10,
Indore 452001 (M.P.)

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**Copy To**
3Advocate(s) / Consultant(s):
Mr. Sandeep Mukherjee
c/o Appellant

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**4** Bar Association, CESTAT, Delhi

**5** Director Publications, Customs, Excise. I.P. Estate, Delhi

**6** M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

**7** Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

**8** Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

**9** Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

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

**13** C.D.R. **14** Office Copy **15** Guard File

**Asstt. Registrar(CUSTOMS Appeal Branch)**

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

**Service Tax Appeal No. 852 of 2009**
**Service Tax Appeal No. 482 of 2010**
**Service Tax Appeal No. 734 of 2011**

Date of Hearing: 28.08.2012
Date of Hearing: 30.11.2012

**For approval and signature:**

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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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 should 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 Departmental authorities? : Yes

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**Service Tax Appeal No. 852 of 2009**

[Arising out of Order-in-Appeal No. IND/170/2009 dated 31.7.2009 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Indore]

Commissioner of Central Excise,. Indore — Appellants

Vs.

M/s. Agro Solvent Products Pvt. Ltd — Respondent

**Service Tax Appeal No. 482 of 2010**

[Arising out of Order-in-Appeal No. IND-I/20/2010 dated 19.1.2010 passed by the Commissioner of Customs, Central Excise (Appeals), Indore]

Commissioner of Central Excise,. Indore — Appellants

Vs.

M/s. Agro Solvent Products Pvt. Ltd — Respondent

**Service Tax Appeal No. 734 of 2009**

[Arising out of Order-in-Appeal No. IND/69/2011 dated 11.2.2011 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Indore]

M/s. Agro Solvent Products Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise, Indore Indore — Respondent

**Appearance**:

Shri V.P. Batra, AR for the Appellants Revenue
Shri Sandeep Mukherjee, Advocate for the Respondent assessee

**CORAM**:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final **ORAL ORDER NO** ST/A/727-729/12-cus

**Per Archana Wadhwa ( for the Bench)**:

All the three appeals, two filed by the Revenue and one by the assessee are being disposed of by a common order as the issue involved is identical.

2. The appellant is engaged in the manufacture and export of exempted goods – Indian yellow soya bean meal (extraction). They filed claim for refund of Service Tax paid on the services utilised for export of the goods pertaining to different quarters in terms of Notification No. 17/09 ST dated 17.7.09.

3. Proceedings were initiated against the appellant by way of issuance of show cause notice proposing denial of refund claim on the point of limitation as also on the ground that the description of the services rendered by the said service provider as mentioned in their respective bills / invoices are not in line with the services as specified under the said Notification. It is seen that the show cause notice issued in all three cases were adjudicated by the original adjudicating authority, who observed that the services provided by various providers are technical testing analysis services, or technical inspection and

certification services, customs house agents services, clearing and forwarding services commonly known as terminal handling which are specified services under notification No. 17/09-Service Tax. As such, he allowed the refund claim falling within the period of limitation.

4. It is seen that the Revenue filed appeal before Commissioner (Appeals) against three orders passed by Asstt. Commissioner. In two matters, i.e. in Appeal No. 852/2009 and 482/2010, Commissioner (Appeals) rejected the appeals filed by revenue. By a detailed order he held that the services provided by the service providers were falling within the specified services in terms of notification and as such, the assessee was entitled to the refund of the same. He observed that Revenue's objection that the services provided were supervision of sample analysis and rake loading supervision services which are not technical testing analysis services. He observed that admittedly the services provider has paid Service Tax on the activities undertaken by them which are related to the export of the goods and Revenue has not objected to collection of Service Tax. He further held that if the Revenue was having any doubt, the remedial measure had to be initiated at the service provider's end by asking for correct classification of the services under proper heading. Once the Service Tax was paid by the service provider, Revenue has no right to deny the claim of the same. He also referred to various decisions of the Tribunal.

5. In Appeal No. 734/11, Commissioner (Appeals) however, accepted the Revenue's appeal on the ground that the invoices raised by the service provider reveal different type of services provided by them and invoices stand raised for the services which are eligible for the refund. Hence the said appeal is by the assessee whereas the other two appeals are by the Revenue. However, we make it clear that as the original adjudicating authority had rejected the refund claim of Rs.19,257/- on the point of time bar and the assessee had not challenged the said order of rejection, the said part of the order of Assistant Commissioner had attained finality. As such, the present appeal pertains to the refund of Rs.1,38,172/- only, which was put to challenge by the Revenue before Commissioner (Appeals) and which part stand accepted by the appellate authority.

6. After hearing both sides and after going through the impugned orders, we find that the original adjudicating authority has verified and examined the invoices raised by the service provider. Going by the definition of technical testing and analysis, as also by the definition of testing inspection and certification, he has concluded that the services provided by the service providers were covered by the said definition. Similarly, the other services are customs house agent services, Clearing and Forwarding services which are commonly known as terminal handling services, Commissioner (Appeals) has simplicitor go by the fact that invoices / bills raised by the service provider indicate that they

5. In Appeal No. 734/11, Commissioner (Appeals) however, accepted the Revenue's appeal on the ground that the invoices raised by the service provider reveal different type of services provided by them and invoices stand raised for the services which are eligible for the refund. Hence the said appeal is by the assessee whereas the other two appeals are by the Revenue. However, we make it clear that as the original adjudicating authority had rejected the refund claim of Rs.19,257/- on the point of time bar and the assessee had not challenged the said order of rejection, the said part of the order of Assistant Commissioner had attained finality. As such, the present appeal pertains to the refund of Rs.1,38,172/- only, which was put to challenge by the Revenue before Commissioner (Appeals) and which part stand accepted by the appellate authority.

6. After hearing both sides and after going through the impugned orders, we find that the original adjudicating authority has verified and examined the invoices raised by the service provider. Going by the definition of technical testing and analysis, as also by the definition of testing inspection and certification, he has concluded that the services provided by the service providers were covered by the said definition. Similarly, the other services are customs house agent services, Clearing and Forwarding services which are commonly known as terminal handling services, Commissioner (Appeals) has simplicitor gone by the fact that invoices / bills raised by the service provider indicate that they

are engaged in providing different type of services than the one specified in the invoice. It is seen that no verification has been done by the Revenue at the service providers end so as to factually verify whether the services actually stand rendered by them or not. Once the invoices describing the type of service stand issued by the service provider and service tax stand paid on the same, we find no justifiable reason to deny the benefit of refund of such Service Tax to the assessee. Accordingly, while rejecting two appeals filed by the Revenue, we allow the appeal filed by the appellant.

7. All three appeals are disposed of in the above manner.

(Pronounced in the open court on 30/11/12

( Archana Wadhwa )
Member(Judicial)

( Mathew John )
Member(Technical)

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